

August 27, 2015

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VIA EMAIL TO BOARDLETTERS@CO.SANTA-BARBARA.CA.US

Chair Janet Wolf
Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

RE: Las Varas Ranch Project

Dear Chair Wolf and Honorable Supervisors

The applications for the Las Varas Ranch project were submitted eleven (11) years ago, so the applicant is very pleased to be in a position to present a project that has been through trial by fire and longevity. The project truly represents a compromise. The applicant doesn't like being subject to 85 conditions and is reluctant to dedicate a trail along the existing ranch road. The staff proposes condition wording that the applicant wants to tweak, in a few instances. Opponents who don't understand the project express baseless fears that the character of the ranch will fundamentally change as a result of project approval, and people who consider themselves to be trail advocates seem more interested in winning a "personal best" than in obtaining a dedication of trails that will serve the broadest cross-section of the public by providing coastal access without destroying the agricultural operation. In short – no one is 100% pleased. That's the definition of a true compromise.

Project Benefits

What does the County get from the compromise, in addition to the offer to dedicate a parking lot and three (3) public trails, all on private property?

- In lieu of the 9 existing legal parcels, the project proposes 7 parcels.
- In lieu of parcels where each owner could build a single family home virtually anywhere, the project proposes that every parcel will have a Residential Designated Envelope (RDE), restricting the owner's residential structures and related improvements and landscaping to a maximum of 2 acres.

- Where existing and potentially future ranch structures may be visible from Highway 101, the applicant proposes RDEs that are carefully sited to minimize and avoid visual impacts on Highway 101 and the railroad tracks viewsheds. The two RDEs abutting the ocean are set well back to minimize the impact of residential development on beach users.
- To protect biological and cultural resources, the applicant proposes that RDEs be sited to avoid archaeological resources and to minimize and avoid impacts to biological resources. Conditions imposed upon the RDEs and the owner's improvements further reduce impacts on a variety of resources.
- By County-enforceable condition and by private CC&Rs, the livestock grazing operation will continue to be communally operated, with prohibitions upon individual owners to prevent encroachment into the grazing land outside the RDEs.
- The project extinguishes 2 lots north of 101 and preserves as one parcel the pristine habitat of Gato Canyon. The RDE sites lie north of the avocado orchard, each behind a knoll to protect the scenic viewshed from Highway 101. Gato Canyon provides a distinct microclimate that enhances the rotational grazing program and is home to a vast array of native plants, riparian habitat, and wildlife, including bear and mountain lion and their prey. Without the project, this canyon could be subject to development of two additional parcels now proposed for merger.
- The domestic water system for the project is designed to serve no more than 14 connections within the RDEs. This is a reasonable worst case scenario based upon 7 main residences and 7 accessory structures that could include a farm worker dwelling. Approval of the shared water system requires a conditional use permit (CUP). Expansion of the system, what some are calling "growth inducement," would be a new project and a new CUP process. It is not part of this project. It would require County approval.

Project Conditions

For the most part, staff and the applicant's representatives have coordinated to iron out any disagreements. Nine (9) conditions continue to be problematic, although in some cases the disagreement hinges solely on wording. To avoid extending this letter unnecessarily, we enclose a list of the conditions that simply are not acceptable as written.

The Findings For Denial Are Not Supported By Substantial Evidence

As demonstrated by the EIR, there are no Class I (significant and unmitigable) impacts of the project as the applicant currently proposes it. That simple fact makes it extremely difficult to prepare findings for denial. That fact also makes it difficult for the Board to exercise **reasonable** discretion to deny the project. A property owner is entitled to use his or her property for any use that falls within County ordinances and the law. This project complies with all County ordinances and with applicable law. We contend that the Board cannot deny this project without violating its duty to exercise its discretion reasonably.

The analysis below addresses the findings set forth in the Staff Report.

Findings for Denial of Lotline Adjustment

The Staff Report states that the lotline adjustment may be denied due to lack of conformity with the County General Plan because it would facilitate development that would be inconsistent with local and state policies for preservation of agricultural resources and protection of significant biological and visual resources. The evidence in the Revised EIR contradicts this contention. The sole significant unmitigable (Class I) impact of this project, as analyzed in the EIR, was the impact of the Parcel 2 Residential Development Envelope (RDE) because of its proposed proximity to Gato Creek, a sensitive riparian corridor and home to listed species. The applicant has agreed to move the Parcel 2 RDE to the area recommended by the Revised EIR, resulting in mitigation of all environmental impacts to a less than significant level.

The truth is that the project provides a comprehensive framework, in the form of CC&Rs with a minimum term of 50 years and a supporting County-enforceable condition of approval, for the long-term preservation of the agricultural enterprise on this property. That framework includes the requirement for best management practices in the orchards and a mandatory communal grazing program that reserves the grazing land outside the orchards and the RDEs for grazing. The RDEs are limited to a maximum size of two (2) acres, within which a parcel owner must place all residential structures, landscaping, and appurtenances. This severely limits the conversion of agriculturally productive land to non-agricultural uses. Contrary to the Staff Report contentions, individual parcel owners would not be able to fill the grazing land with agricultural structures that would supplant the communal grazing. Without the project, the property's existing legal parcels would be subject to very limited conditions and the individual lot owners could not be required to participate in a communal grazing program. Only the project provides the CC&Rs needed to establish and run a communal operation.

The siting of the RDEs was accomplished through extensive visual study and consultation with biologists to ensure maximum protection of biological resources consistent with the operation of agriculture and minimum visibility of the improvements

within the RDEs from public viewing places, particularly the viewsheds for Highway 101 and the railroad.

The Staff Report also suggests that the project is contrary to Land Use Element Visual Resources Policy 2 that requires that the height, scale and design of structures to be compatible with the surrounding natural environment and subordinate in appearance to natural landforms. The project proposes no structures. The RDE sites provide topographic screening that brings potential structures into conformity with natural landforms and, what the siting doesn't accomplish, the required review by the Central Board of Architectural Review (CBAR) will address because the CBAR is required to make findings that any approved project is consistent with County design requirements. Any new residence will require either a Coastal Development Permit or a Land Use Permit, neither of which may be issued if it violates existing County policies and ordinances. In addition, the applicant has agreed to a 15-foot height limit for new structures on the coastal plain and a 16-foot height limit for new structures in the hillside portion of the project.

The staff-proposed findings not are supported by substantial evidence, or by **any** evidence, in the record.

Findings for Denial of the Tentative Map (Lot Split)

Because the project involves moving a parcel from the north side to the south side of Highway 101, a tentative map was required procedurally. The Staff Report concludes that the lot split is inconsistent with Coastal Land Use Plan (CLUP) Land Use Policy 8-4, requiring that approval of any land division requires a finding that the long-term agricultural productivity of the property will not thereby be diminished, and the addition of one parcel south of Highway 101 will intensify residential development on productive agricultural land. How the reduction of total number of parcels results in an intensification of residential development remains unexplained in the Staff Report. Taken as a whole, it is clear that the project represents the best chance for long-term agricultural productivity on this property. Yes, the 2-acre RDEs will be taken out of agricultural production, but isn't that superior to nine (9) parcels going onto the market without the RDEs and without the extensive conditions and CC&Rs that are part of the project approval?

The Revised EIR concluded that there were no significant unmitigable impacts on agriculture from this project and based that conclusion upon comprehensive evidence in the record.

The Staff Report also contends that the project is inconsistent with various Coastal Act policies and certain CLUP policies because introduction of even a single parcel south of Highway 101 will degrade habitat and impact biological resources by disrupting normal

wildlife activity.¹ As above, the Staff Report also speculates, incorrectly, that “non-commercial agricultural development,” introduced and encroaching into the grazing land, will result from the project and result in visual and biological impacts. For the same reason stated above – the prohibition (in the conditions and the CC&Rs) on individual parcel owners encroaching into the grazing land on their parcels – this is an inaccurate statement and is unsupported by evidence in the record.

Finally, the Staff Report states that the lot split violates the County’s Comprehensive Plan and CLUP policies requiring avoidance of historic and archaeological resources. As noted at length in the EIR, the project as designed has no significant unmitigated impacts upon cultural resources. In fact, the applicant went to great lengths to avoid cultural resources and has made revisions to RDE design in furtherance of that effort.

The staff-proposed findings are not supported by substantial evidence, or by **any** evidence, in the record.

Subdivision Map Act Findings

For the same reasons stated above, the Staff Report contends that the project is inconsistent with the County Comprehensive Plan and, surprisingly given the site acreage of almost 1800 acres and the net reduction in parcels, that the site is not physically suitable for type of development proposed. The basis for this finding is the statement that a 400-acre parcel is proposed to be divided into 3 lots. This is untrue. Two existing parcels, one that is 165.21 acres and one that is 239.53 acres, lie between Highway 101 and the railroad. The fact that, procedurally, the two parcels are deemed merged in order to end up with 3 parcels doesn’t mean that new parcels are being created. The project results in 3 parcels on land where 2 legal parcels currently exist.

The Staff Report contends that the creation of the lots “would break up an existing agricultural operation.” This, too, is untrue. The orchards will remain intact. The grazing operation will remain intact.

The Staff Report also contends that the agricultural viability will be substantially impaired by the siting of an RDE near two highly productive avocado orchards and the RDE being on prime soils. This, too, is directly contrary to the EIR analysis and to common experience throughout the County. Many agricultural operators site their homes next to their orchards so they can provide security against poachers and thieves and because they enjoy looking at avocado trees. They are a beautiful sight all year round, not just when they are budding.

¹ The Staff Report does not state why moving a parcel from north of the highway to south of the highway intensifies residential use and has a greater impact on agriculture. The entire ranch is devoted to agriculture so this same residence would displace grazing in any event. None of the RDEs would displace prime agricultural production – the orchards will remain intact. There is no magic that makes grazing land south of the highway more desirable and productive than grazing land north of the highway.

The staff-proposed findings are not supported by substantial evidence, or by **any** evidence, in the record.

CUP Findings

The Staff Report states that, because the water system makes it possible for these lots to be developed, it “would facilitate greater development on the lots” than individual well systems and that the finding cannot be made that the project site is adequate in physical characteristics to accommodate the proposed use and level of development proposed. That is not growth inducement. That is serving the project. Growth inducement is creating new infrastructure that will generate additional growth beyond the project. Moreover, the project site is almost 1800 acres in size, certainly large enough to accommodate seven (7) parcels. Because of the restriction of new owner development to the RDEs, the level of development provided by the project is far less than what could occur otherwise. A property owner is constitutionally entitled to build a home on his/her legal parcel and the County cannot refuse to grant a permit for a shared water system in order to block that development unless the County is prepared to pay just compensation. The result could be far more development without the project because of the extensive project conditions restricting development.

Finally, regarding the water system, the Staff Report concludes that the shared water system is not in conformance with all applicable provisions and policies of the Article II zoning ordinance and the CLUP because it will require installation of about 7,000 feet of buried pipelines to distribute the water and the trenching will disturb riparian and other native vegetation as well as archaeological sites. This finding ignores the many conditions imposed on the project to prevent damage to these resources to the extent feasible, as well as the mitigation measures incorporated into the project and imposed by the County on all development permits to preserve sensitive resources.

The Staff Report uses the same flawed reasoning to conclude that the project will be detrimental to the health, safety, comfort, convenience and general welfare of the “neighborhood” and will be incompatible with the surrounding area. The project has been designed carefully to avoid any such detriment and the EIR provides the evidence of the success of that design.

The staff-proposed findings are not supported by substantial evidence, or by **any** evidence, in the record.

Coastal Development Permit Findings

The Staff Report states that, for all of the reasons discussed above, the findings for approval of a Coastal Development Permit cannot be made. The flawed analysis in the Staff Report does not justify such a conclusion and there is no substantial evidence in the record that would support it.

Findings for Rezone and Certificate of Compliance, including Coastal Development Permit for Certificate of Compliance

The Staff Report states that all findings required to take these actions can be made.

Conclusion

Mrs. Doheny and your Board have reached the crossroads. She has made compromises that she never expected to make, including agreeing to allow the east-west trail to displace her ranch road and moving the Parcel 2 development envelope so far from the beach that the owner of that parcel will have to hike a substantial distance from home just to reach the ocean, then hike back uphill to get home.

The project provides incredibly generous benefits to the public by including dedication of a parking area and three trails comprising miles of rural hiking and beach access.

Others will urge the Board to hold out for more. But there is no more. Without this project, nine (9) separate parcels one day will be available for sale. The only conditions that can be imposed upon them will be those ordinarily imposed on single family homes. There will be no beach trail because the U.S. Supreme Court has ruled in *Nollan v. California Coastal Commission* that a dedication of the beach cannot be exacted in exchange for building a residence. There will be no parking area. There will be no vertical access to the beach because this parcel already has a single family home. There will be no east-west trail for the same reasons. There is no legal basis for exacting a trail in exchange for a permit to build a residence.

The project has no significant unmitigable impacts and it decreases the net number of lots on the property. There simply is no rational basis to deny this project and doing so would be an abuse of discretion.

We urge you to approve the project and to modify the conditions as described in the enclosed list of Project Conditions.

Sincerely,



Susan F. Petrovich

APPLICANT'S COMMENTS ON AND OBJECTIONS TO

PROPOSED CONDITIONS OF APPROVAL

Project Description – parts of the description are antiquated, particularly in describing the proposed east-west trail. As a significant compromise and out of respect for the GavPAC recommendation, this trail is now proposed to follow the existing ranch road starting at the proposed new parking area, proceeding west past the orchards, crossing under Highway 101 via the existing tunnel, and picking up the remaining route of the trail now described in the project description (see attached trail map).

Fence between trails and orchard will be 6-foot high chain link topped by 3-strand barbed wire.

Deleted Conditions/Mitigation Measures

2. (AES 1) – has been deleted. Applicant concurs that this condition no longer applies.

27 (BIO13) -- has been deleted. Applicant concurs that this condition no longer applies.

54 (TRANS 3) -- has been deleted. Applicant concurs that this condition isn't required.

80 -- has been deleted. Applicant concurs that this condition isn't required or appropriate.

81 -- has been deleted. Applicant concurs that this condition no longer applies.

Conditions Not Acceptable to Applicant

Unless otherwise indicated below, the proposed conditions in the staff report are acceptable to the applicant.

6. (AES 5) -- The orchards must be protected or the trail will not work. As worded, fence design is at staff's discretion. The applicant has made it clear from the outset that chain link fencing (which can be coated to darken it and make it visually more appealing) is essential between the trail and the orchard. Both food safety and avoidance of theft and vandalism are essential to the continued growing of fruit on this property. The orchards are the backbone of the economic success of agriculture on this land.

AES 5 Fencing must be reworded to read: "To minimize the impacts of the trail fencing to the visual character of the site, while preventing trespassing, cattle and worker harassment, vandalism and theft within the adjacent agricultural areas, the fencing between any public trail and any orchard shall be chain link approximately six feet high, and the fencing between any public trail and the grazing land shall be hog wire with 2 strands of barbed wire above for a total height of 48" or more, with the height and construction of fencing being subject to further fortification if trespassers, poachers,

thieves, vandals or others gain entry through the fencing. Wildlife accessible passageways or culverts will be incorporated into the fence design to avoid impeding wildlife corridors. The trails through the property, and the parking lot at the trailhead, shall be closed from dusk to dawn to protect the existing agricultural operation and the security and privacy of existing and future residents.” The remainder of the condition is acceptable.

By describing the fencing in detail, the owner, not P&D and Parks Division, is selecting the fence design that best works for the agricultural operation while accommodating the wildlife seeking to pass into and through the agricultural areas. Secure fencing will make it possible for trail users to have their dogs on the trails without burdening the agricultural workers with the job of catching loose dogs and without the risk of dogs and cattle mixing. Trail users, agricultural workers, cattle, and the various operations scattered through the property will remain separated and safe from one another.

25 (a). (BIO 12-1) -- Subsection (a) must be deleted. It prohibits replacement of grazing land with cultivated crops if the land area to be cultivated contains “native vegetation.” Virtually the entire ranch has native vegetation. Such an intrusive condition is unjustified by the potential environmental impacts and replaces the judgment of the agricultural operator for that of the County. It would be effective upon recordation of the Final Map and CC&Rs, long before any new residence is built as part of the project.

Flexibility is the key to long-term agricultural viability. A rancher’s management practices must remain flexible to respond to water shortages, changing climate cycles, market forces, and other practical considerations in order to successfully maintain a ranching enterprise. This condition is directly contrary to County and Coastal policies that mandate protecting and preserving the productivity of agricultural lands.

28. (BIO 15-1) – The first sentence should begin, “Except as necessary to relocate the existing ranch road to accommodate the Ranch Road Coastal trail, trees in the monarch groves shall not be trimmed or removed” The rest of the condition is acceptable, but it should be noted that after years of study, only the southerly portion of this one eucalyptus grove on the property has ever been used by monarch butterflies. Because the condition uses the term “monarch groves” without a definition, it is vague and overly broad. We presume that it applies to monarch roosting sites and there is only one historic roosting site on the entire ranch. Eucalyptus trees are notorious for their shallow root system so they frequently blow over. They also drop limbs. This blanket prohibition on trimming and removal without P&D involvement should be confined to trees that provide monarch roosting habitat and not applied widely throughout the rest of the ranch.

29. (BIO 15-2) – For the same reasons stated above in #28, Condition 29. BIO 15-2 should commence with “In any grove where monarch butterflies are known to roost, future applicants for structural development shall prepare and implement a Monarch

Butterfly Protection Plan.” The Doheny family has no current need for a Monarch Protection Plan but future applicants may. As long as the Plan is prepared before additional residential development occurs, the butterfly habitat, wherever it may be, will be protected by requiring new applicants to have a protection plan, applicable to the proposed development, prepared. Modify the first sentence under **Plan Requirements and Timing** to add the following language: “This condition applies solely to construction activity that occurs within 50 feet of monarch butterfly habitat.”

31. (BIO 18) – add to the second and fourth sentences the following language: “to the extent reasonable.” Waterlines represent a temporary disturbance and remain benign for years. Because of the prevalence of native habitat and sensitive plants on Las Varas, the cost of routing pipelines to avoid all of these habitats could become prohibitively expensive. Given the lengths to which the Staff Report has gone to justify a public trail that will have on-going biological impacts on the trodden path and extending outward from there, it is unreasonable to require the landowner to have to route pipelines hither and yon to avoid temporary impacts that are readily mitigable.

41. CULT 5 –Parcel 5 should be deleted from this list. The Parcel 5 RDE is located a substantial distance from the historical structures, completely outside their viewshed because two tree-lined drainages separate the two sites. It is of a different architectural style and has no connection to the historic structures, either spatially or visually.

82. – This condition would route the beach trail up into the pasture land. The applicant cannot and will not accept this condition. The area upland of the sandy beach is cattle pasture and sensitive habitat, including the Gato Creek lagoon, connected riparian habitat, sensitive plant species, native grasses, and cultural sites.

85. – Parcel 4 Residential Development Envelope location – the applicant continues to point out that any residential structure will be far less visually intrusive, from Highway 101 and the railroad, if the RDE is as shown in Alternative 3C, not 2A. The 2A site is highly visible from the railroad tracks and is uncomfortably close to the historic rural tableau. No matter how skilled an architect might be, asking that a new residential structure be both compatible with the old barns, with their rusted galvanized sheeting, and with the ultra-Victorian cottage, is inviting compromise. The applicant proposes siting any new residence a substantial distance from the barns and existing house, and the railroad, and behind a knoll so its visibility from Highway 101 is interrupted by topography. It still must be compatible with the existing historic structures, but it will not intrude into that classic viewshed.

90. – Applicant’s primary objection to this condition is timing. For example, (i) states that the applicant must execute and deliver the irrevocable OTD to County before all potential appeals and litigation have been exhausted. That is unreasonable. The applicant is agreeable to recording an Offer to Dedicate the trails to which the applicant agrees, with the Final Map when approvals, including the Coastal Commission are final,

no longer subject to legal attack, if the Offer to Dedicate is subject to conditions precedent, including the final (all appeals and litigation resolved in favor of issuance) issuance of the Coastal Development Permit required to construct the first residence within an RDE south of Highway 101. The second paragraph of (i) appears to capture the timing and, in so doing, conflicts with the first paragraph.

