LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

January 31, 2014

County of Santa Barbara
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

By hand delivery and by email to sbcob@co.santa-barbara.ca.us

RE: Paradiso del Mare Ocean and Inland Estates Project – Appellants' Response to Board Letter

Dear Chair Carbajal and Members of the Board of Supervisors,

This office represents the Gaviota Coast Conservancy (GCC), who together with the Santa Barbara chapter of the Surfrider Foundation, Santa Barbara Audubon, and marine mammal expert Peter Howorth, appealed the Planning Commission's approval of the Paradiso del Mare Ocean and Inland Estates Project ("Project") and certification of the EIR for the Project. Our appeal letter (dated December 16, 2013) comprehensively describes the appeal issues, and we hope your Board will read and consider it carefully together with the Board Letter. There are a handful of issues however that we want to clarify after reviewing the Board Letter.

1. Appeal Issue 1: Inclusion of the Naples Townsite Lots

The Board Letter explains that the application is for two homes on two lots. However the application is also for the construction of a waterline and roadway out to the western property boundary where they are expected to serve future development of the Applicant's "Naples Townsite" lots. The Board Letter contends that the "applicant has submitted no plans or applications for development on the Naples lots thus the EIR analysis is appropriately restricted to the two home project at hand" and that "[a]cknowledgement of the growth inducing effects of the waterline construction is the appropriate way to treat the issue, as compared to considering the Naples lots to be part of the project." (Board Letter, p. 3.)

The Board Letter however does not respond to the CEQA authority cited by Appellants, which clarifies that CEQA does not allow the EIR to ignore the potentially significant impacts in addition to growth inducement that will be caused by future development of the Naples lots. For example, EIR must analyze the indirect impacts of extending urban services to the Naples lots including the biological, aesthetic, recreation, and other impacts of developing 10 residences on the Naples lots.

City of Antioch v. City Council (1986) 187 Cal. App. 3d 1325 is illustrative. In that case the environmental document evaluated the impacts of constructing a new roadway and utilities, but not any future development the project would facilitate. Future development served by the roadway and utilities would be subject to separate discretionary entitlements and future environmental review. (*Id.*

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at 1329). In the *Antioch* case, the court rejected the use of a negative declaration[1] for the roadway and utilities, on the basis that the impacts of the development facilitated by the roadway and utilities must be considered and may be significant. The court reasoned:

> Construction of the roadway and utilities cannot be considered in isolation from the development it presages. Although the environmental impacts of future development cannot be presently predicted, it is very likely these impacts will be substantial. . . . It ignores reality to contend that a sewer system has no significant impact on the environment because it will not be connected until some future date. As with construction of the roadway, it is important to consider prior to construction issues of location, capacity, type of system and its impact. . . . Because construction of the project could not easily be undone, and because achievement of its purpose would almost certainly have significant environmental impacts, construction should not be permitted to commence until such impacts are evaluated in the manner prescribed by CEQA. . . . the fact that a particular development which now appears reasonably foreseeable may, in fact, never occur does not release it from the EIR process. Similarly, the fact that future development may take several forms does not excuse environmental review.

(Id. at 1336-1338.)

This case, and others cited in our appeal letter, make clear that whether or not the applicant has submitted plans to develop the Naples lots, and regardless of the uncertainties associated with that development[2] and the fact that that development would be subject to environmental review, the EIR must evaluate the impacts that are reasonably likely to result from extending urban services to the Naples lots. Mere acknowledgement that the Project will be growth inducing does not constitute an analysis of the myriad environmental impacts that will be caused by future development of the Naples lots.

The Board Letter also states that "both the size of the waterline and the flow rate of water within the line are driven by County Fire Department requirements for the two homes [and i]n addition, the use of water tanks (in lieu of a waterline extension) on the subject property would not meet the requirements of the County Fire Department for fire protection." (Board Letter, p. 3.) However, whether or not the size of the waterline and flow rate is itself required to serve two houses does not relieve the County of its CEQA obligation to evaluate the reasonably foreseeable impacts associated with the waterline because it is acknowledged that the waterline is also sufficient to serve additional development on the Naples lots.

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[1] Though this is a negative declaration case, its reasoning is equally applicable to the EIR at issue in this case.

[2] By virtue of the Standstill Agreement, the development of the Naples lots is considerably less uncertain or amorphous than any of the cases distinguishing *City of Antioch.*

2. Appeal Issue 4: Harbor Seals.

The Board Letter notes that "the discussion of the Naples harbor seal rookery in the DEIR was expanded in the response to comments section of the EIR in consideration of Mr. Howorth's comments", and that testimony at the Planning Commission hearings supplement the discussion in the EIR. (Board Letter, p. 10.) There are two reasons why this statement does not resolve the issues identified by Appellants. First, the County is required to prepare a legally adequate *draft* EIR; fundamental deficiencies in the draft EIR or the omission of significant information cannot be "cleared up" in a final EIR. (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App. 3d 1043, 1052 (court refused to consider whether the final EIR "clears up some of the deficiencies of the draft" because "[i]f we were to allow the deficient analysis in the draft [EIR] to be bolstered by a document that was never circulated for public comment . . . we would be subverting the important public purposes of CEQA."); *see Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal. App. 4th 1351, 1388 ("information introduced at the end of the environmental review process without analysis or the benefit of public scrutiny or participation does not fulfill the informational function of an EIR.").

The *draft* EIR's failure to include relevant baseline information regarding impacts to the seal rookery is a significant CEQA error, as illustrated by *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal. App. 4th 99 and *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal. App. 4th 74. Both of these cases involved failures to include relevant baseline information at the draft stage, when the public and government agencies are able to review and comment on the draft EIR, and receive a written response from the lead agency in the final EIR with respect to those comments. In *Save Our Peninsula* the court considered whether the modification of a baseline water use determination at the end of the environmental review process without benefit of analysis or public participation complied with CEQA's informational disclosure requirements, and concluded that it did not. (87 Cal. App. 4th at 127-128.) In *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal. App. 4th 74, 94-95, the draft EIR omitted the amount of groundwater in the aquifer affected by a landfill Project, but the decisionmaking body considered a report containing that information prior to certifying the EIR, and determined that the information did not change its view and that it should certify the EIR anyway. The *Cadiz* court concluded "the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information." *Cadiz*, 83 Cal. App. 4th at 95.

The second reason the above statement in the Board Letter does not resolve the issues Appellants have identified, is that the information added in response to public comment and at the Planning Commission is itself woefully inadequate to establish that the Project will not significantly impact the seal rookery, or to satisfy CEQA's informational requirements. For example, the Board Letter refers to a revision in the final EIR referring to data collecting during a year-long study of the Naples haul-out site ***completed in the mid-1970's.*** To even suggest that a 40-year old study might constitute adequate data for describing current conditions at the site constitutes a fundamental misunderstanding of CEQA's requirement to conduct baseline studies at the time environmental

review for the Project is commenced. (*See* CEQA Guidelines § 15125 (a) ("An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective."), *see also* Guidelines § 15125 (c) ("Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project."))

This antiquated study is then used as 'evidence' that the haul-out has been used primarily as a nighttime haul-out, and accordingly that construction during daytime hours and related effects of noise, vibration and visual disturbance will be less than significant on the seals. (Board Letter, p 10.) The notion that this 40-year old study might constitute evidence establishing that the haul-out is primarily used at night *today* is laughable. By contrast, Mr. Howorth currently monitors the Naples seal rookery regularly, and has observed substantial numbers of seals hauled out during the day.

Additionally, the Board Letter includes the unsubstantiated assertion that "harbor seals are not particularly averse to lighting or human activity while in the water". (Board Letter, p. 10.) The assertion is supported by "personal communication" with John Storrer, and by the observation that harbor seals are observed in the Santa Barbara Harbor and near an industrial pier in Carpinteria. Of course, as pointed out in our appeal, CEQA requires that an EIR contain facts *and* analysis, not just an agency's bare conclusions. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.) Even assuming that a personal communication and general observation constituted evidence, it does not constitute substantial evidence with respect to the Naples seal rookery. This is because the Naples seal rookery currently exists in an undeveloped rural area (which constitutes the baseline for environmental analysis). According to recognized local marine mammal expert Howorth, the introduction of a new use, and a new source of night lighting in the immediate vicinity of the rookery, will impact the seals hauling out at Naples unlike seals venturing into the harbor (incidentally not to haul-out or pup) or seals hauling out in Carpinteria where development and night lighting are and have been part of the environmental baseline for years.

Finally the Board Letter asserts that the Project, as mitigated, would have an overall beneficial effect with regard to protection of the seal haul-out. (Board Letter, p. 11.) This statement is wholly speculative and there are a number of reasons why it is not accurate. First, as discussed at length in our appeal letter, the impacts of constructing and occupying a residential estate adjacent to the rookery in a currently undeveloped rural area may cause the seals to change haul-out patterns or even abandon the rookery. Second, the Project will destroy the existing public beach access point, and will not provide any public access from February through May. As many have noted, "surfers will find a way", and if surfers approach from the east they will have to walk *through* or immediately next to the haul-out as opposed to just west of it as they do currently. This would result in *greater* impacts to the seals.

3. Appeal Issue 5: Recreation

In our appeal letter we clearly explain why there is no basis for the 2013 EIR's departure from the 2009 EIR's conclusion that loss of an informal public beach access route would result in a Class I significant impact. The Board Letter incorrectly states that "[n]otably, the 2009 project proposal did not include the offering of public access dedications whereas the currently proposed project offers numerous public access dedications." (Board Letter, p. 12.) In fact the 2009 Project included the dedication of a lateral easement on the bluff for a trail south of the railroad, a lateral easement on the beach, and a vertical easement for a stairway near Eagle Canyon. (2009 EIR, pp. 2-25 – 2-26, 3.13-19.) Additionally, the 2009 EIR required that as mitigation the applicant construct a parking area, access trail from the parking area to the lateral access trail, the lateral access trail, and a lookout area near Eagle Canyon. (2009 EIR p. 3.13-31:) The 2009 EIR concluded that despite these public access offerings, and required mitigation measures, the Project would nonetheless cause a Class I significant and unavoidable impact to public recreation and public access. (2009 EIR p. 3.13-29.)

The Board Letter also incorrectly alleges appellants stated without substantiation that the County "will 'never accept the easements or improve them for public use'". (Board Letter, p. 13.) The Board letter misstates Appellants' quote, which actually reads "the County *may* never accept the easements or improve them for public use." (Appeal Letter, p. 10 (emphasis added).) Moreover, the appeal letter explains exactly why the County may never accept or improve these easements – namely, the cost (conservatively estimated in excess of $750,000, not including the cost of environmental review), and the County's prior objection on visual grounds to the stair structure proposed at Santa Barbara Ranch. (*Id.*). As observed by the County's own 2009 DEIR, there is substantial evidence of the public's historical use of the property to access the beach, and it is only the County's newly found unwillingness to recognize that this evidence establishes a significant impact that led the County to conclude, incorrectly, that the trails dedications and improvements could not be imposed as mitigation measures for the Project's impacts to recreational uses. (*See* FEIR p. 3.13-17 ("a proposed project may have a significant effect on recreation if it will: conflict with established recreational uses of the area".)

4. Appeal Issue 6: Alternatives Analysis

In attempting to explain why the alternatives analysis need not consider impacts on the kites or the seals, the Board Letter reiterates that the EIR did not identify significant and unmitigable impacts to kites and seals. (Board Letter, p. 14.) Clearly, Appellants disagree with that conclusion of the EIR, and have put forth substantial evidence demonstrating the significance of the impacts to kites and seals, and the substantial flaws in the EIR's evidence and analysis regarding the Project's impacts to these two precious biological resources. Moreover, the function of CEQA's alternatives analysis is not merely to avoid Class I unavoidable impacts, rather to avoid or substantially lessen any of the significant effects of the project including Class II impacts. Indeed, the east end alternatives include no new Class I impacts – they are projected to similarly cause only the Class I impacts associated with the Project. (*See* FEIR pp. 6.0-26 - 6.0-47.) Notably, the EIR concludes that for

Alternative 2, aesthetic impacts and biological impacts would be reduced to less than significant with mitigation, that "neither of the proposed homes or development envelopes disturb a known archaeological resource", and that hazardous materials impacts and land use impacts "are anticipated to be similar to the proposed project". (FEIR pp. 6.0-30- 6.0-35.) The EIR reaches similar conclusions with respect to Alternative 3's impacts on biological resources, and land use impacts, and also concludes it "could also result in a lesser impact to visual character." (FEIR p. 6.0-40.) With respect to archaeological resources, the EIR concludes Alternative 3's archaeological impacts "would continue to be mitigated." (FEIR p. 6.0-44.) Hazardous materials impacts for Alternative 3 would also be mitigated. (FEIR pp. 6.0-47.) Indeed, the only basis for the EIR's conclusion that neither Alternative 2 nor Alternative 3 is environmentally superior besides the applicant's refusal to offer public benefits (trail and conservation easements) associated with the proposed Project, is that they may result in increased impacts to biological resources. (*See* FEIR p. 6.0-56.) Accordingly, Appellants' argument that the alternatives analysis should have been revised to considered impacts to the kites and seals (even assuming they are merely Class II), is squarely on point. Indeed, had the alternatives analysis considered these new biological impacts, its conclusion regarding the environmentally superior alternative may have been meaningfully different.

The Board Letter asserts that the question of the private covenant was addressed at the Planning Commission, and that the appellants and applicant disagree regarding the meaning of the agreement. (Board Letter, p. 15.) However, Staff continues to avoid any independent analysis of the covenant's meaning. Three separate attorneys representing the appellants have read the covenant, and concluded that it restricts development on the applicant's Naples lots in addition to the two Project lots. The applicant's attorney has to date refused to answer any questions regarding the covenant. The applicant's interpretation of the covenant rather has been iterated through their planning consultant. Moreover, the meaning of the covenant is not ambiguous in any way. In our appeal we provided the page citation to where the covenant exists in the EIR, and quoted from it, but here we attach the full easement agreement which includes the covenant (at paragraph 9), and the legal description of the "Dominant Estate" (at attachment A), and we strongly urge each Board member to *simply read it* to ascertain its meaning. (Exhibit 1, Grant of Easement and Declaration of Covenants (4/3/09).)

5. Conclusion

If this Project is approved as proposed, extraordinary resources present on this site will be significantly and unnecessarily impacted. The EIR is badly flawed, and significantly understates the Project's impacts to seals, kites, and public access. The EIR also lacks an accurate and adequate alternatives analysis, artificially limiting the apparent options for avoiding or minimizing the impacts of this Project. Accordingly, we strongly urge the Board to uphold the appeal, and either deny the Project or direct that the EIR be revised and recirculated to accurately reflect the Project's significant impacts in the areas of biological resources and public access, the feasibility of a partial off-site alternative, and the relative impacts between the proposed Project and its alternatives.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO

Ana Citrin
For the Gaviota Coast Conservancy

Exhibit 1, Grant of Easement and Declaration of Covenants (4/3/09)

Recording Requested by:

LAWYERS TITLE COMPANY

- Accommodation Only -

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Joseph L. Cole
P.O. Box 5476
Santa Barbara, California 93150

2009-0018110

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Santa Barbara
Joseph E. Holland

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GRANT OF EASEMENT AND DECLARATION OF COVENANTS

THIS GRANT OF EASEMENT AND DECLARATION OF COVENANTS (this "Grant"), is made effective as of April 2, 2009 (the "Effective Date"), by and between Gaviota Holdings, LLC ("Grantor") and CPH Dos Pueblos Associates, LLC ("Grantee").

RECITALS

A. Grantee is the owner of that certain real property located in the unincorporated area of the County of Santa Barbara, California and more particularly described at Exhibit A attached hereto and by this reference incorporated herein (the "Dominant Property"), and Grantor is the owner of that certain real property also located in the unincorporated area of the County of Santa Barbara, California and more particularly described at Exhibit B attached hereto and by this reference incorporated herein (the "Servient Property").

B. The Dominant Property and the Servient Property are adjoining properties, with the eastern boundary of the Dominant Property abutting the western boundary of the Servient Property.

C. Grantee and Grantor intend to develop their respective properties, and each require the installation of public utilities to or across their properties, including electrical power, telephone service, cable service and natural gas (collectively, the "Utilities").

D. The purpose of this Grant is to provide for an easement on, over, under, across and along a twenty-foot wide area of the Servient Property, commencing at the eastern boundary of the Servient Property extending westerly across the Servient Property approximately parallel to and just south of the railroad right-of-way and actively used tracks owned by Union Pacific Railroad (the "Rail Line"), and terminating south of the point where the Rail Line intersects the Dominant Property (the "Utilities Easement Area"), as more particularly described on Exhibit C attached hereto and by this reference incorporated herein, and shown on Exhibit C-1 attached hereto and by this reference incorporated herein, for the installation and operation of the Utilities on the Dominant Property, together with the rights of ingress and egress thereto.

Exhibit 1

E. In addition to other consideration for the grant of the Utilities Easement (as defined below), Grantee desires to covenant and agree, for the benefit of Grantor and the Servient Property, to limit development on the Dominant Property.

F. The parties wish to make other related agreements as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

1. **Grant of Utilities Easement**. Grantor hereby grants and conveys to Grantee (a) a perpetual, non-exclusive easement on, over, under, across and along the Utilities Easement Area on which Grantee may lay, construct, install, use, operate, maintain, remove, repair, replace, improve and upgrade pipelines, power lines, telephone lines, wirings, conduits, valves, meters and other facilities (the "Facilities") required in connection with the installation and operation of the Utilities to the Dominant Property, and (b) a perpetual, non-exclusive easement on and over the Servient Property for the purpose of ingress and egress for vehicular traffic to the Utilities Easement Area (collectively, the "Utilities Easement").

2. **Conditions to the Grant of Utilities Easement**. The grant of the Utilities Easement is subject to the following conditions:

a. Grantee shall install and maintain all Facilities below the surface or ground level of the Utilities Easement Area; provided, that those Facilities absolutely required to be installed aboveground and which are absolutely necessary for the ongoing operation and maintenance of the Utilities may be installed aboveground, as long as such Facilities are located and installed in a manner so as to minimize the appearance of such Facilities on the Servient Property.

b. Grantee shall remove or cause to be removed any Facilities currently located aboveground on the Servient Property, and shall move, install and maintain such Facilities below the surface or ground level of the Utilities Easement Area; provided, that those Facilities absolutely required to be installed aboveground and which are absolutely necessary for the ongoing operation and maintenance of the Utilities may remain aboveground, as long as such Facilities are located in a manner so as to minimize the appearance of such Facilities on the Servient Property.

3. **Temporary License**. In connection with the Utilities Easement, Grantor grants to Grantee a temporary, non-exclusive, revocable license (the "License") over an area immediately adjacent to the Utilities Easement Area, for the sole purpose of equipment and material storage, staging and other activities related to the construction and installation of the Facilities. The term of the License shall commence as of the date hereof and shall terminate upon the substantial completion of the Facilities.

4. **Consideration.** In consideration of the grant of the Utilities Easement, Grantee shall pay to Grantor the amount of $750,000 (the "Consideration") payable on the same day of the recordation of this Grant by depositing into an escrow account of the entire Consideration in immediately available funds, in cash, cashier's check or through the wire transfer of funds.

5. **Use of Utilities.** Any Utilities installed and maintained within the Utilities Easement shall be stubbed with connections to all such Utilities available above ground for the benefit of the Servient Property, at the approximate location designated on Exhibit C-1 attached hereto, or at such other initial location within the Utilities Easement as may be designated in writing by Grantor to Grantee.

6. **Use of Utilities Easement.**

a. No walls, fences or other barriers that prevent or impair the use of the Utilities Easement will be constructed, maintained or permitted on the Utilities Easement, or any portion thereof, by Grantor or Grantee.

b. Ingress and egress to the Utilities Easement by Grantee, its contractors and subcontractors, shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Grantee agrees to give Grantor a minimum of 48 hours advance notice before using such ingress and egress to the Utilities Easement.

c. No future construction, expansion, replacement or other modification of improvements located on the Servient Property shall have any effect on the Utilities Easement granted herein or the use and enjoyment thereof by Grantee or any other rights and obligations of the parties hereto or their respective successors and assigns.

d. Grantor reserves for itself, their successors and assigns, all rights as owner of the Servient Property, including the right to use the Utilities Easement for all purposes not inconsistent with this Grant.

7. **Construction, Maintenance and Repair.** All construction, maintenance and repair of the Utilities Easement Area shall be diligently performed by Grantee and its contractors and subcontractors to completion in a good and workmanlike manner, and shall be done in accordance with all applicable laws, ordinances and other legal requirements, including appropriate permits, in a manner so as to minimally interfere with the use and enjoyment of the Servient Property. Grantee shall be solely responsible for the costs and expenses in connection with the maintenance of the Facilities in good condition and repair; provided, however, that if any maintenance or repairs are required in whole or in part by any act or omission of Grantor, occupants of the Servient Property, and their successors, assigns or invitees, Grantor shall be responsible for the cost of such maintenance and repair.

8. **Tax and Insurance Obligations.** Grantee shall not be responsible for any property taxes, nor shall Grantee be responsible for the maintenance of insurance, with respect to the Servient Property.

9. **Covenant to Restrict Development.** Grantee, for itself, and its successors and assigns, covenants and agrees for the benefit of Grantor and the Servient Property that Grantee shall not construct or install any improvements on the Dominant Property, except that Grantee may construct two homes that, together with related structures permitted to support each such home, shall not collectively exceed 20,000 square feet for each home. The site for each home shall be limited to the approximate locations on Grantee's property shown on Exhibit C-1 attached hereto, provided, however, that Grantee may change the location of either or both of such sites: (a) if such change is required for approval of a site by the governing regulatory authorities, and (b) if Grantee provides Grantor with reasonable advance notice of any public proceedings respecting the change of such locations.

10. **Indemnity.** Grantee shall indemnify and hold harmless Grantor and the occupants of the Servient Property, and their predecessors, successors and assigns from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) arising out of the exercise of the rights granted by this Grant, except to the extent any such liability, loss, damage, costs and expenses arises in whole or in part from the intentional acts or gross negligence of Grantor or the occupants of the Servient Property.

11. **Default and Remedies.** In the event of any breach of this Grant by a party hereto, the non-breaching party may give the breaching party written notice describing the breach and 30 days in which to cure; provided, however, that there shall be no such cure period in the event of any breach of this Grant by Grantor that prevents or unreasonably interferes with the use and enjoyment of the Utilities Easement Area by Grantee or ingress and egress thereto. Should the breaching party fail to cure such breach within the 30 day cure period, or if such cure period is not provided, in addition to all other rights and remedies available to them at law or in equity, the non-breaching party shall have the right, but not the obligation, to perform any and all installation, construction, maintenance, repairs, alterations or other acts necessary in order to bring the breaching party in compliance with this Grant. The expense of any such acts, together with a fee equal to 10% of the expense, shall be the obligation of the breaching party and shall be payable promptly upon demand of the non-breaching party. Notwithstanding the foregoing, no breach of this Grant or other circumstance shall entitle any party to cancel, rescind or otherwise terminate this Grant.

12. **Force Majeure.** If either party hereto fails to perform in a timely manner any of the obligations to be performed by such party under this Grant, and such failure is due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, acts caused directly or indirectly by the other party (or such other party's employees, agents, licensees, invitees or contractors) or any other cause beyond the reasonable control of the non-performing party, then the non-performing party shall not be deemed in default hereunder as a result of such failure. The foregoing shall not excuse any failure to make any payment of money in a timely manner or any failure to perform any non-monetary obligation as a result of a party's lack of funds or inability to obtain financing.

13. **No Gift or Dedication**. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Utilities Easement Area to or for the general public or for any public purposes whatsoever, it being the intention of Grantor and Grantee that the Utilities Easement granted herein shall be strictly limited to and for the purposes herein expressed.

14. **Mortgagee Protection**. No breach or violation of this Grant or of the restrictions provided herein shall render invalid the lien of any mortgage, deed of trust or similar instrument securing a loan made in good faith and for value with respect to any portion of the Dominant Property or the Servient Property, but all of the provisions of this Grant shall be binding upon and effective against any subsequent owner (including any mortgagee or beneficiary under a deed of trust) who acquires title to the Dominant Property or the Servient Property or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

15. **Successors and Assigns; Covenants Running with the Land**. This Grant is binding upon and shall inure to the benefit of the Dominant Property, the Grantee and the successive owners of the Dominant Property during their respective periods of ownership, and to the benefit of the Servient Property, the Grantor and the successive owners of the Servient Property during their respective periods of ownership. All of the provisions of this Grant shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, without limitation, Section 1468 of the California Civil Code.

16. **Authority**. Grantor and Grantee represent and warrant to one another that each is fully authorized to enter into this Grant and that this Grant shall be binding and enforceable against them and their respective successors and assigns, in accordance with its terms.

17. **Governing Law**. This Grant shall be governed by and construed in accordance with the laws of the State of California.

18. **Recordation**. This Grant shall be recorded in the office of the recorder of the County of Santa Barbara, State of California.

19. **Notices, Demands and Communications**. Formal notices, demands and communications between the parties shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by facsimile transmission or reputable overnight delivery service with a receipt showing date of delivery to the address for each party set forth below. Such written notices, demands and communications may be sent in the same manner to such other addresses as the parties may from time to time designate by mail as provided in this section. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

If to Grantor:

Gaviota Holdings, LLC
2300 Carillon Point
Kirkland, WA 98033-7353
Attn: Teresa L. Mason

With a copy to:

Joseph L. Cole, Esq.
P.O. Box 5476
Santa Barbara, California 93150

If to Grantee:

CPH Dos Pueblos Associates, LLC
4100 MacArthur Blvd., Suite 200
Newport Beach, California 92660

20. **Severability**. If any provision of this Grant is prohibited or held to be invalid, illegal or unenforceable for any reason, the Grantor and the Grantee hereto agree to the fullest extent permitted by law that (a) the validity, legality and enforceability of the other provisions shall not be affected or impaired thereby; and (b) the parties hereto shall endeavor in good faith negotiations to replace the invalid or unenforceable provisions with valid and enforceable provisions, the economic effect of which comes as close as possible to that of the invalid or unenforceable provisions.

21. **Counterparts**. This Grant may be executed in counterparts, each of which is deemed an original and all of which, when taken together constitute one and the same instrument.

22. **Entire Agreement**. This Grant contains all of the grants and agreements of the parties hereto and supercedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Grant shall be construed as a whole and not strictly for or against any party.

23. **Amendments**. This Grant may be modified or amended only by a written instrument which expresses that it is intended to amend this Grant, and which is executed by the then-current owners of the Dominant Property and the Servient Property.

24. **Attorneys' Fees**. In the event of a dispute arising out of this Grant (including enforcing any indemnity provision), the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and other expenses incurred in connection therewith.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

GRANTOR:

GAVIOTA HOLDINGS, LLC,

By: _____
Name: TRAVIS L. WILSON
Title: Vice President

GRANTEE:

CPH DOS PUEBLOS ASSOCIATES, LLC,
a Delaware limited liability company

By: Makallon Dos Pueblos, LLC
Its Managing Member,

By: Makar Properties, LLC
Its Managing Member

By: _____
Name:
Title:

By: _____
Name:
Title:

ACKNOWLEDGEMENT

State of California WA)
)ss.
County of King)

On this 31st day of March, 2009, before me, a notary public in and for said county, personally appeared Teresa, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument, and he/she acknowledged that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

MONICA L. WINDHAM
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
APRIL 1, 2011

Monica L Windham
Notary Public

Teresa L. Wason

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

GRANTOR:

GAVIOTA HOLDINGS, LLC,

By:_____
Name:
Title:

GRANTEE:

CPH DOS PUEBLOS ASSOCIATES, LLC,
a Delaware limited liability company

By: Makallon Dos Pueblos, LLC
Its Managing Member,

By: Makar Properties, LLC
Its Managing Member

By:_____
Name: PAUL MAKREDCHIAN
Title: CEO

By:_____
Name:
Title:

ACKNOWLEDGEMENT

State of California)
)ss.
County of Orange)

*Albert Lum
Paul Makarechian

On this 1 day of April 2009, before me,* a notary public in and for said county, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument, and he/she acknowledged that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ALBERT LUM
Comm. # 1647781
NOTARY PUBLIC-CALIFORNIA
Orange County
My Comm. Expires April 6, 2009

Notary Public

Exhibit A

Legal Description for Dominant Property

[Attached hereto]

EXHIBIT A-1

Policy No. 5606684 - E

Page 1

DESCRIPTION

PARCEL ONE:

That portion of the Rancho Los Dos Pueblos in the County of Santa Barbara, State of California, described as follows:

Beginning at the point of intersection of the centerline of Eagle Canon Creek with the southerly line of the tract of land described as Parcel Two in deed to State of California, recorded March 8, 1956 as Instrument No. 4508 in Book 1366, page 177 of Official Records, records of said county; thence southerly, meandering the centerline of said Eagle Canon Creek to its intersection with the line of mean high tide of the Pacific Ocean; thence westerly along said line of mean high tide to its intersection with the center of Canada Tomate, being the easterly line of the Townsite of Naples as shown on map recorded in Book C, page 9 of Miscellaneous Records, records of said County; thence in a general northerly direction along said last mentioned line to its intersection with the northerly line of the tract of land described as "Parcel 1" in deed to Signal Oil and Gas Company, a corporation, recorded June 26, 1961 as Instrument No. 22186 in Book 1855, page 348 of Official Records, records of said County; thence easterly along said last mentioned line to its intersection with said southerly line of said tract of land described as Parcel Two in deed recorded in Book 1366, page 177 of Official Records, above referred to; thence easterly along said last mentioned line to the point of beginning.

EXCEPTING THEREFROM those portions conveyed to Southern Pacific Railroad Company in document recorded August 26, 1901 in Book 78, page 211 of Deeds in the office of the County Recorder of said county.

APN# 79-200-04, 79-200-08

PARCEL TWO:

All of Block One Hundred Forty-Two (142) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Mazzini, Pompei, 7th and 8th Avenues, measured to the centerline of said avenues, adjoining said block.

All of those portions of the Townsite of Naples lying (A) Westerly and Northerly of the centerlines of Pompei and 8th Avenues (B) Southerly of the State Highway as described in deed to the State of California, recorded March 8, 1956 as Instrument No. 4508 in Book 1366, Page 177 of Official Records, records of said County, and (C) Easterly and Northerly of the center lines of Mazzini and 8th Avenues.

APN#79-180-48

PARCEL THREE:

All of Block One Hundred Forty-Four (144) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Mazzini, Pompei, 8th and 6th Avenues, measured to the

DESCRIPTION

centerline of said avenues, adjoining said block.

EXCEPTING therefrom, those portions included within the lines of the tracts or parcels of land described in the deed of the Southern Pacific Railroad Company, a corporation, recorded in Book 78, Page 311 of Deeds, records of said County.

ALSO EXCEPTING therefrom those portions included within the lines of the tracts or parcels of land described as "First" in deed to Southern Pacific Railroad Company, a corporation, recorded September 25, 1901 in Book 78, Page 296 of Deeds, and re-recorded October 4, 1901 in Book 78, Page 486 of Deeds, records of said County.

APN# 79-180-58, 79-180-57

PARCEL FOUR:

All of Block One Hundred Forty-Six (146) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1868, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Mazzini, Pompei, 3rd and 4th Avenues, measured to the centerline of said avenues, adjoining said block.

APN# 79-180-59

PARCEL FIVE:

All of Block One Hundred Forty-Eight (148) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1868, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Mazzini, Pompei, 2nd Avenue, measured to the centerline of said avenues, adjoining said block.

EXCEPTING therefrom any portion thereof lying Southerly of ordinary high tide of the Pacific Ocean.

APN# 79-180-61

PARCEL SIX:

All of Block One Hundred Seventy (170) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1868, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Santa Lucia, and 6th Avenues, measured to the centerline of said avenues, adjoining said block.

All of those portions of the Townsite of Naples lying; (A) Easterly and Northerly of the centerlines of Santa Lucia and 6th Avenue, and (B) Southerly of the State Highway as described in deed to the State of California, recorded March 8, 1956 as Instrument No. 4568 in Book 1336, Page 177 of Official Records, records of said County.

DESCRIPTION

APN# 79-180-54

PARCEL SEVEN:

All of Block One Hundred Seventy-Two (172) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Santa Lucia, 5th and 6th Avenues, measured to the centerline of said avenues, adjoining said block.

EXCEPTING THEREFROM those portions included within the lines of the tracts or parcels of land described in deed of the Southern Pacific Railroad Company, a corporation, recorded in Book 70, Page 211 of Deeds, records of said County.

ALSO EXCEPTING therefrom said those portions included within the lines of the tracts or parcels of land described as "First" in Deed to Southern Pacific Railroad Company, a corporation, recorded September 25, 1901 in Book 78, Page 196 of Deeds and re-recorded October 4, 1901 in Book 78, Page 486 of Deeds, records of said County.

APN# 79-180-56, 79-180-66

PARCEL EIGHT:

All of Block One Hundred Seventy-Four (174) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Santa Lucia, San Rafael, 3rd and 4th Avenues, measured to the centerline of said avenues, adjoining said block.

Together with the land, if any, lying Southerly of the above described land and Easterly of the Southerly prolongation of the Westerly line of the above described land, and Westerly of the Southerly prolongation of the Easterly line of the above described land and Northerly of the mean high tide line of the Pacific Ocean.

APN# 79-180-68

PARCEL NINE:

All of Block One Hundred Forty-Three (143) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Manzini, Pompei, 6th and 7th Avenues, measured to the centerline of said avenues, adjoining said block.

APN# 79-180-49

PARCEL TEN:

DESCRIPTION

All of Block One Hundred Forty-Five (145) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 21rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Marzini, Pompei, 4th and 5th Avenues, measured to the centerline of said avenues, adjoining said block.

APN# 79-180-58

PARCEL ELEVEN:

All of Block One Hundred Forty-Seven (147) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 21rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Marzini, Pompei, 2nd and 3rd Avenues, measured to the centerline of said avenues, adjoining said block.

APN# 79-180-60

PARCEL TWELVE:

All of Block One Hundred Seventy-One (171) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 21rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Santa Rafael 6th and 7th Avenues, measured to the centerline of said avenues, adjoining said block.

APN# 79-180-55

PARCEL THIRTEEN:

All of Block One Hundred Seventy-Five (175) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 21rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of San Rafael and 4th Avenues, measured to the centerline of said avenues, adjoining said block.

EXCEPTING therefrom any portion thereof lying Southerly of the ordinary high tide of the Pacific Ocean.

APN# 79-180-69

PARCEL FOURTEEN:

All of Block One Hundred Forty-Nine (149) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the

DESCRIPTION

Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Pompei and 2nd Avenues, measured to the centerline of said avenues, adjoining said block.

EXCEPTING therefrom any portion thereof lying Southerly of the ordinary high tide of the Pacific Ocean.

APN# 79-180-63

PARCEL FIFTEEN:

All of Block One Hundred Fifty-One (151) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Pompei, Santa Lucia, 3rd and 4th Avenues, measured to the centerline of said avenues, adjoining said block.

APN# 79-180-64

PARCEL SIXTEEN:

All of Block One Hundred Fifty-Three (153) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Pompei, Santa Lucia, 5th and 6th Avenues, measured to the centerline of said avenues, adjoining said block.

EXCEPTING therefrom those portions included within the lines of the tracts or parcels of land described in the deed of the Southern Pacific Railroad Company, a corporation, recorded in Book 70, Page 211 of Deeds, records of said County.

ALSO EXCEPTING therefrom those portions included within the lines of the tracts or parcels of land described as "First" in Deed to Southern Pacific Railroad Company, a corporation, recorded September 25, 1901 in Book 78, Page 396 of Deeds and re-recorded October 4, 1901 in Book 78, Page 486 of Deeds, records of said County.

APN# 79-180-51, 79-180-65

PARCEL SEVENTEEN:

All of Block One Hundred Fifty-Five (155) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Pompei, Santa Lucia, 7th and 8th Avenues, measured to the centerline of said avenues, adjoining said block.

DESCRIPTION

All of those portions of the Townsite of Naples lying (A) Westerly and Northerly of the centerlines of Santa Lucia and 6th Avenues (B) Southerly of the State Highway as described in deed to the State of California, recorded March 8, 1956 as Instrument No. 4508 in Book 1346, Page 177 of Official Records, records of said County, and (C) Easterly and Northerly of the center lines of Pompei and 8th Avenues.

APN# 79-180-53

PARCEL EIGHTEEN:

All of Block One Hundred Seventy-Six (176) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of San Rafael and 4th Avenues, measured to the centerline of said avenues, adjoining said block.

APN# 79-180-70

PARCEL NINETEEN:

All of Block One Hundred Fifty (150) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Pompei, Santa Lucia, 2nd and 3rd Avenues, measured to the centerline of said avenues, adjoining said block.

EXCEPTING therefrom any portion thereof lying Southeasterly of the ordinary high tide of the Pacific Ocean.

APN# 79-180-63

PARCEL TWENTY:

All of Block One Hundred Fifty-Four (154) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Pompei, Santa Lucia, 6th and 7th Avenues, measured to the centerline of said avenues, adjoining said block.

Excepting from said land all oil, gas, and other minerals underlying those portions included within the lines of Block 154 of said Townsite of Naples as shown on map thereof recorded in Book C, Page 9 of Miscellaneous Records and of those portions of Pompei, Santa Lucia, 6th and 7th Avenues adjoining said block, together with all easements and rights of way in connection with said substances, as reserved by Sidney I. Volz and George F. Volz, each as to an undivided 1/2 interest, in Deed recorded February 16, 1953 as Instrument No. 2145 in Book 1229, Page 363 of Official Records, records of said County.

DESCRIPTION

APN: 79-160-52

PARCEL TWENTY-ONE:

All of Block One Hundred Seventy-Three (173) as laid down and designated on the map of plat of the Townsite of Naples, Santa Barbara County, California, as filed in the Office of the County Recorder of said County, on the 23rd day of July, 1888, in Book C, Page 9 of Miscellaneous Records, records of said County.

All of those portions of Santa Lucia, San Rafael, 4th and 5th Avenues, measured to the centerline of said avenues, adjoining said Block.

APN: 79-160-10

PARCEL TWENTY THREE: (PARSONS PIPELINE EASEMENT)

That certain real property being a portion of Rancho Los Dos Pueblos in the County of Santa Barbara, State of California, described as follows:

Said Parcels Two through Twenty-two above also being those lots depicted on the "Official Map of the Town of Naples" recorded October 1, 1991 in Book 99, Pages 4 through 9, Official Records of said County.

An easement appurtenant to Parcels One through Twenty-two above, for the purposes of constructing, laying, removing, operating, maintaining, replacing, changing the size of and remove pipelines and related above-ground and below-ground appurtenances and facilities, including the right of ingress thereto and egress therefrom, as described in that certain easement and agreement dated as of July 15, 1980, a memorandum of which was recorded November 18, 1980 as Instrument No. 80-46387 and re-recorded October 8, 1982 as Instrument No. 82-42511, as amended by that certain modification agreement dated September 28, 1990 and as further amended and/or assigned pursuant to that certain consent, assignment and assumption agreement dated as of _____, 1998, over, under, upon and through a strip of land ten (10) feet in width, lying five (5) feet on each side of the following described centerline:

Beginning at a point in the Easterly line of the tract of land described as "Parcel One" in the Corporation Quitclaim Deed to Crocker National Bank, et al, recorded July 13, 1973 as Instrument No. 27800 in Book 2472, Page 692 of Official Records, records of said County, from which the point of intersection of said Easterly line with the Southerly line of the tract of land described in the deed to Southern Pacific Railroad Company, a corporation, recorded February 1, 1900 in Book 69, Page 412 of Deeds, records of said County bears N. 1° 26' 47" E. 16.83 feet distant (bearings and distances herein used are based on the grid meridian of the California Coordinate System, Zone 5, multiply distances shown by 1.0000678 to obtain ground level distances); thence N. 84° 32' 20" W. leaving said Easterly line and into said "Parcel One," 133.65 feet; thence, N. 86° 42' 19" W. 136.48 feet; thence, N. 69° 10' 38" W. 92.27 feet; thence, N. 82° 09' 22" W. 241.51 feet; thence, N. 82° 07' 55" W. 469.91 feet; thence, N. 82° 06' 09" W. 388.43 feet; thence, N. 82° 21' 23" W. 385.65 feet; thence, N. 81° 50' 32" W. 149.90 feet; thence, S. 45° 37' 42" W. 86.38 feet; thence, N. 81° 58' 31" W. 210.32 feet, more or less, to a point in the Westerly line of said "Parcel One" of said deed to Crocker National Bank, being on the centerline of Eagle Canyon Creek.

EXHIBIT A-2

PARCEL TWENTY TWO:

All that certain land situated in the State of California in the unincorporated area of the County of Santa Barbara, described as follows:

Block 152 of the Townsite of Naples, in the County of Santa Barbara, State of California, according to the map thereof recorded July 23, 1888 in Book C, Page 9 of Miscellaneous Records in the Office of the County Recorder of said County and all of those portions of Santa Lucia Avenue, Pompeii Avenue, 4th Avenue and 5th Avenue measured to the centerline of said Avenues, adjoining said block.

Said Parcels Two through Twenty-two above also being those lots depicted on the "Official Map of the Town of Naples" recorded October 3, 1995 in Book 59, Pages 4 through 9, Official Records of said County.

Exhibit B

Legal Description for Servient Property

[Attached hereto]

Ex B

PARCEL THREE:

That portion of the Rancho Los Dos Pueblos, in the County of Santa Barbara, State of California, described as follows:

Beginning at the Southwest corner of the land formerly owned by Hayes at the foot of a bluff near high water mark;

Thence along pole fence 1st North 30.67 chains to center of road;

Thence 2nd N 87° 45' W., 30.69 chains to the center of Aguilla Creek (now known as Eagle Creek), from which a live oak tree bears N. 84° 30' W., 1.17 chains distant, from which a sycamore tree two feet in diameter bears S. 55° 30' E., 1.17 chains distant;

Thence down the center of Aguilla Creek 3rd S. 25° W., 4.70 chains;

Thence continue down the center of Aguilla Creek 4th S. 13° W., 4.97 chains;

Thence continue down the center of Aguilla Creek 5th S. 35° 30' E., 4.25 chains;

Thence continue down the center of Aguilla Creek 6th S. 37° 15' w. 4.96 chains;

Thence 7th S. 30° 30' E., at 2.00 chains leave creek and ascend bank 6.00 chains to station on sand at highwater mark of the ocean;

Thence along high rocky bluff 8th S. 73° 15' E., 8.50 chains;

Thence continue along foot of bluff 9th S. 71° E., at 14.00 mouth of gulch, at 19.50 mouth of gulch, at 24.27 chains to the place of beginning.

EXCEPTING therefrom that portion of the above described property that lies Northerly of the Southerly line of the land granted to the Southern Pacific Railroad Company by a deed recorded February 1, 1900 in Book 69, Page 412 of Deeds;

Said land is described in a County of Santa Barbara Certificate of Compliance recorded March 22, 2004 as Instrument No. 2004-26598 of Official Records, records of said County.

APN#79-200-05

Exhibit C

Legal Description for Utilities Easement Area

[Attached hereto]

EXHIBIT C

Being a twenty (20.00) foot wide strip of land over that certain parcel of land described as Parcel Three in Exhibit "A" of Grant Deed recorded May 21, 2007 as Instrument No. 2007-0037586 of Official Records of Santa Barbara County, California, the centerline of which is described as follows:

Beginning at a point in the westerly line of said land, said point being distant South 61°18'54" East, 791.27 feet from a that certain survey monument known as "EAGLE" as shown on map recorded in Book 35, Pages 87 through 92, inclusive, of Records of Survey, in the office of the County Recorder of said County;

Thence 1st, South 82°03'26" East, a distance of 127.27 feet;

Thence 2nd, North 82°20'16" East, a distance of 376.87 feet;

Thence 3rd, South 82°10'17" East, a distance of 1,411.09 feet;

Thence 4th, South 61°41'17" East, a distance of 78.48 feet;

Thence 5th, South 81°03'35" East, a distance of 199.51 feet to a point in the easterly line of said land.

The sidelines of said twenty (20.00) foot wide strip shall be lengthened or shortened to meet at angle points and to terminate westerly in the westerly line of said land and easterly in the easterly line of said land.

The bearings and distances recited herein are based on the California Coordinate System Grid, Zone 5, NAD 1983 (CCS83).

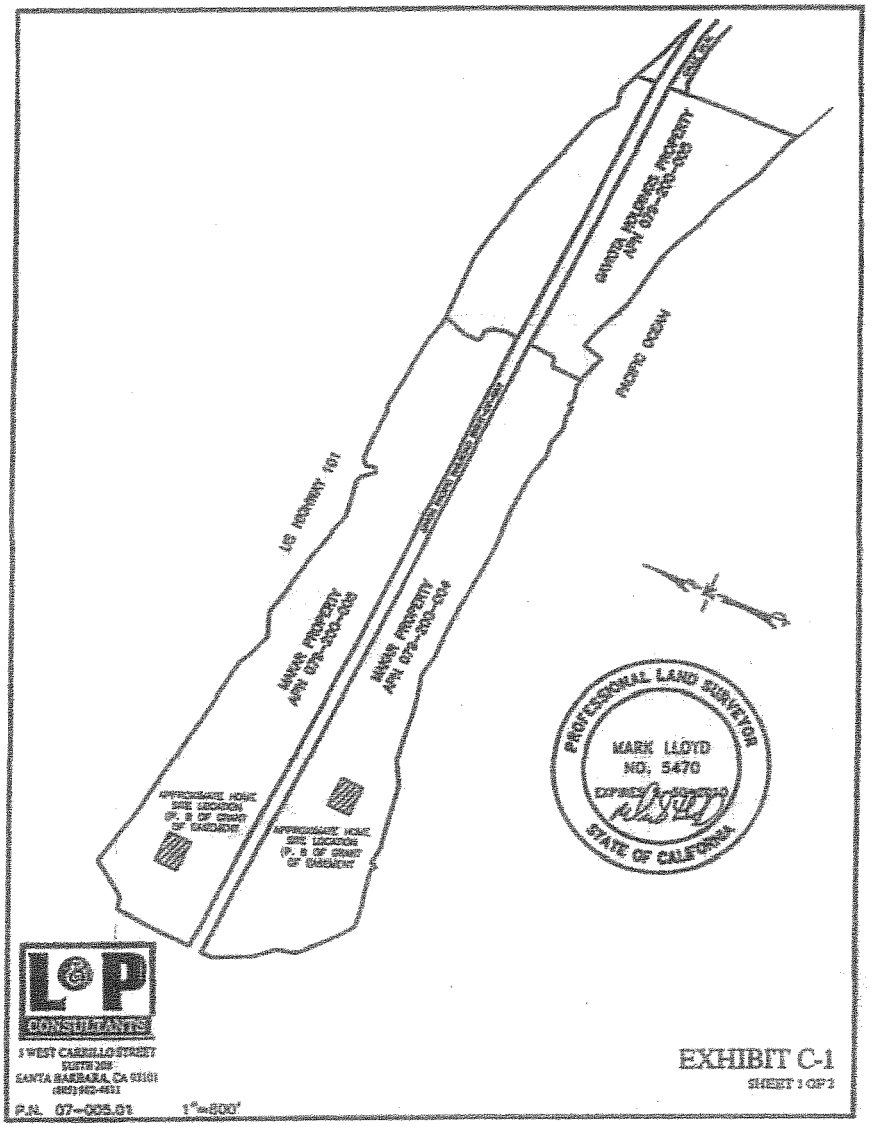
PROFESSIONAL LAND SURVEYOR
MARK LLOYD
No. 8479
STATE OF CALIFORNIA

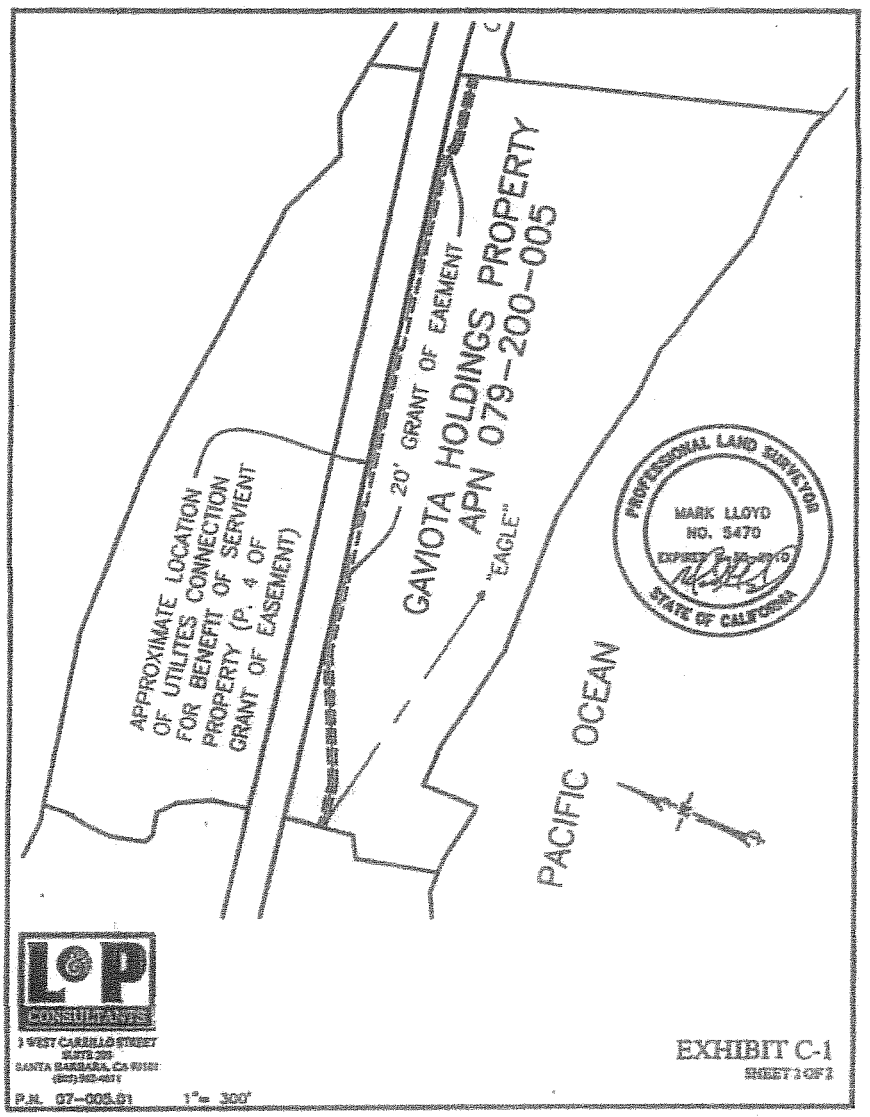
March 26, 2009
P.N. 07-026.01
MAKAR Water Line Easement Legal.doc

Exhibit C-1

Map and Restrictions

[Attached hereto in two sheets]


US HIGHWAY 101
PACIFIC OCEAN
MARK LLOYD
NO. 5470
STATE OF CALIFORNIA
EXHIBIT C-1
SHEET 1 OF 2
P.N. 07-005.01
1"=500'


APPROXIMATE LOCATION OF UTILITIES CONNECTION FOR BENEFIT OF SERVIENT PROPERTY (P. 4 OF GRANT OF EASEMENT)
20' GRANT OF EASEMENT
GAVIOTA HOLDINGS PROPERTY
APN 079-200-005
"EAGLE"
PACIFIC OCEAN
PROFESSIONAL LAND SURVEYOR
MARK LLOYD
NO. 5470
STATE OF CALIFORNIA
LSA CONSULTANTS
P.M. 07-005.81
1"= 300'
EXHIBIT C-1