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PLANNING AND DEVELOPMENT DEPARTMENT
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

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ITEM 1

SANTA BARBARA PLANNING COMMISSION
SPECIAL HEARING
PARADISO DEL MARE OCEAN AND INLAND ESTATES

-oOo-

Transcription of Recorded Proceedings

Santa Barbara, California

November 20, 2013

Transcribed by

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SANTA BARBARA, CALIFORNIA

WEDNESDAY, NOVEMBER 20, 2013

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CHAIRPERSON HARTMANN: We're moving on to the public comment for items not on the agenda, and while we look, I would like to make some comments about the public comment rules or ground rules for the Paradiso matter.

I had a number of requests for people to speak longer than the traditional three minutes, and people have a lot of special expertise and longstanding interest, and so what I've decided to do is allow people to -- allow one person to cede their time to another person for a total of six minutes. So two speaker slips would have to be submitted together noting who is ceding and who is using the time.

The person ceding the time must be in the room, must be here in attendance today, and the maximum time would be six minutes. So only one person, not two or three, can cede their time, and we will hold tight to that six minute limit.

As Ms. Black noted, staff and Commission have to be here all day tomorrow for another special hearing, so ti- -- we're going to give this all the time it needs, but any efficiencies, if people have

1 something to say that has been said by someone else or
2 you just want to state your position, you don't have
3 to use your full three minutes, and we would be most
4 appreciative.

5 So are there any public speaker slips for
6 matters that are not on today's agenda?

7 UNIDENTIFIED MALE: No Ma'am.

8 UNIDENTIFIED FEMALE: Yes, you've got one.
9 (Inaudible) there's a public speaker slip -- where's
10 that? It was here. You handed me one.

11 CHAIRPERSON HARTMANN: Is -- is Mr. Werner here
12 to -- are you addressing us on something not on
13 today's agenda, or did you come to talk about the
14 Paradiso Project?

15 MR. WERNER: It's in the context of the project.

16 CHAIRPERSON HARTMANN: Okay. So you'll come
17 during regular public comment?

18 All right. Thank you.

19 So with that, Mr. Villalobos, would you
20 read that into the record?

21 MR. VILLALOBOS: Yes, thank you, Madam Chair.

22 The following is a hearing on the request
23 of Brooks Street to consider 06CDH-38,39, 07CUP-
24 65,09CDP-45, 10CUP-39, as well as 94. Applications
25 filed on July 27, 2006, July 28, 2006, August 9, 2007,

1 July 21, 2009, and November 12, 2010 and to certify
2 the Environmental Impact Report 09EIR3 revised
3 February 13, Biological Resources Section, revised
4 August 2013 pursuant to the state guidelines for the
5 implementation of the California Environmental Quality
6 Act.

7 CHAIRPERSON HARTMANN: Thank you.

8 Site visits ex parte communications to
9 report on the part of the Commissioners?

10 Commissioner Brown.

11 COMMISSIONER BROWN: Thank you.

12 As I related previously, I have been to the
13 site several times, one during the Santa Barbara Ranch
14 Project and the other -- oh, I think also when CBAR
15 was there to do their site visit to look at story
16 poles, and thirdly when the Coastal Commission made
17 their trip there.

18 For my ex parte, I've had conversations
19 with Ms. Citrin, with Bob Keats, I met with the
20 County's biologist, John Storrer for an hour, plus on
21 Monday he provided me some documentation that none of
22 you got, but it just provides background information
23 on white-tailed kites, probably nothing -- it just
24 gives a little expanded information of what's in our
25 documents.

1 I think you all know that I'm a birder, and
2 I'm also a member of Santa Barbara Audubon, and I've
3 attended their Conservation and Science Committee
4 meetings where they have discussed not only white-
5 tailed kites but other birds within the area.

6 Several years ago, I'm not sure, it's maybe
7 a couple by now, I contributed to their white-tailed
8 kite monitoring program which did not encompass this
9 project. I repeat, did not encompass this project.
10 It's a different area from Winchester Canyon up to San
11 Marcos Preserve. And I was at a meeting most recently
12 when the results of the monitoring for this year were
13 discussed.

14 And I also met with the applicant and his
15 team. I'm sure there's others over the course of
16 time, but that's it so far.

17 Thank you.

18 CHAIRPERSON HARTMANN: Commissioner Cooney.

19 COMMISSIONER COONEY: Thank you, Madam Chair.

20 I have visited the site, though not in the
21 last month or so, and received telephone calls from
22 Ana Citrin from the office of Marc Chytilo and from
23 Bob Keats of the Surfrider Foundation.

24 CHAIRPERSON HARTMANN: And Commissioners Blough
25 and Ferini?

1 COMMISSIONER BLOUGH: Site visit a long time ago.
2 No other ex partes.

3 COMMISSIONER FERINI: Nothing new to report.

4 CHAIRPERSON HARTMANN: Thank you.

5 And, I too visited the site, an extensive
6 visit prior to our March hearing. I spoke with Ms.
7 Citrin representing Gaviota Coast Conservancy, Bob
8 Keats from Surfrider, and the applicant, Mr. Sileski,
9 Mr. McLeod, Mr. Yelich, and Ms. Winecki. And I also
10 spoke with Mr. Aredondo on the way in today.

11 So that does it. I think in terms of that,
12 and I -- I think we're ready then to turn to the staff
13 presentation.

14 Ms. Lieu?

15 MS. LIEU: Good afternoon, Madam Chair and
16 Members of the Commission.

17 I will begin my presentation and try and --
18 I'm trying to keep it as brief as possible and not go
19 over items that we already discussed, so I'll go over
20 the background, the project description as a
21 refresher. I'll discuss the recent recirculation of
22 the Biological Resources Section of the EIR and will
23 follow up on issues that your commission raised at the
24 March hearing and will provide staff's recommendation.

25 So beginning with a site plan. This aerial

1 photo shows the two subject properties outlined in
2 red-- a 78-acre inland parcel and a 64-acre coastal
3 parcel. The property is just east of the Bacara --
4 two -- two parcels east of the Bacara, in between the
5 Bacara and the -- oh, sorry -- west. In between the
6 Bacara and the subject property is the property known
7 as 8501 Hollister, LLC. That is the property over
8 which the water line to serve the two subject
9 properties would extend, and beyond the property
10 is -- are the Naples lots.

11 So a little bit of background. The two
12 parcels were previously app- -- approved to -- to
13 contain a golf course by the County in 1993. The
14 County also certified an EIR in 1993 for that golf
15 course. It was subsequently approved and then later
16 denied by the Coastal Commission, which resulted in a
17 lawsuit and ultimately a standstill and settlement
18 agreement between the property owner and the Coastal
19 Commission which allowed for two homes on the subject
20 properties and ten homes on the applicant's 25 Naples
21 lots.

22 In 2006 the applicant submitted for two
23 homes on the subject properties, and an EIR was
24 prepared and circulated in 2009. As a result of
25 comments received on that EIR, the applicant went back

1 and revised their project, which is the project that
2 we analyzed in the most recent EIR which was
3 circulated from September 12 to October 26, 2012. We
4 then held the last PC hearing on March 20.

5 Between the March -- March hearing and the
6 re- -- planned rescheduled date, which was, I believe,
7 going to be in April, the applicant made some findings
8 in their regular biological surveys of the property
9 pertaining to white-tailed kites, which I will discuss
10 in more detail later. As a result, we revised and
11 recirculated the Biological Resources Section for the
12 EIR.

13 Now moving to a brief description of the
14 project. As far as changes between the last hearing
15 and this one to the project, not much has changed
16 except that you'll see this green area, this proposed
17 106-acre, open-placed- -- open-space conservation area
18 is now 117 acres, so it encompasses the majority of
19 the property.

20 So now I'll just go over a brief summary of
21 the project, and this is for the Ocean Estate prior to
22 the mitigations that we've applied as a part of the
23 Bio- -- Biological Resources Section.

24 So the Ocean Estate would include
25 approximately a 5,000-square-foot home, 1400 square

1 feet of garage and mechanical space, 800-square-foot
2 guesthouse, and 651-square-foot garage to serve the
3 guesthouse. All of that would be housed within an
4 approximately 1.9-acre development envelope, and
5 future development would be restricted to that
6 development envelope as well.

7 In addition, the Ocean Estate would have a
8 1.7-acre envelope to allow for agricultural uses,
9 which would not include new buildings.

10 On the Inland Estate, the project includes
11 about a 7,000-square-foot home, 1800 square feet of
12 basement and garage mechanical space, an 800-square-
13 foot guesthouse, all housed within a 2.5-acre
14 development envelope, and that lot also includes a
15 larger agricultural envelope of 16.3 acres that's
16 shown in the -- in the brown polygon here; and it may
17 be a little bit difficult to see, but within that
18 agricultural envelope, there's some hatched areas, and
19 within those hatched areas the project proposes the
20 planting of dwarf citrus orchards.

21 As I mentioned before, there would be a
22 water line that was extend from the adjacent 8501
23 Hollister, LLC property onto this property and extend
24 underneath the coastal trail and ultimately serve the
25 two proposed homes.

1 The project includes an offering by the
2 applicant of a number of public access easements.
3 Those easements include a coastal trail, which is
4 shown in the light green along the coastal parcel from
5 one end to the other. The areas that are shown in
6 dark green are areas within which that coastal trail
7 could vary in its location, ultimately as determined
8 by the future implementing entity which would likely
9 be the County.

10 The project also proposes seven
11 poten- -- one vertical access easement to the beach
12 where a stairway could be located. Those are shown in
13 pink, and so it would be any one of these access
14 easements down could be chosen by the implementing
15 entity at their discretion. Upon that decision being
16 made, the rest would be off the table.

17 Also included you'll see in the -- in the
18 mustard color up here is an offering for access from
19 Highway 101 to a parking lot. The applicant is
20 providing area for a 20-space parking lot and then
21 access over the railroad tracks to the coastal trail.

22 Finally, two more things, 1600
23 square -- 1600 linear feet of the trail would be
24 constructed by the applicant. That 1600 feet extends
25 from the get -- from the 8501 Hollister property, as

1 I'm following this line here, roughly to the start of
2 the access over the railroad tracks.

3 And then the final item that is offered by
4 the applicant, shown in orange and yellow along the
5 base of the bluffs all along the length of the
6 property, is an offering from the base of the bluffs
7 to the start of the mean high-tide line to the public
8 for -- for access along the beach.

9 Going back to the 117-acre, open-space and
10 conservation easement, that would be offered by the
11 applicant to be an undeveloped area that -- that could
12 be under the control of a non-profit organization.
13 And you'll see, and I'll go into this in a little bit
14 more detail later, on the Inland Estate in the center
15 portion of the Inland Estate, all of the hatched and
16 shaded areas, they're also green, that is an area that
17 would be the subject of a 23-acre restoration plan for
18 habitat restoration.

19 Now I'm just going to go through a couple
20 of slides to give you some visuals of the proposed
21 project. This is a -- a site plan for the proposed
22 Inland Estate that also includes landscaping and shows
23 the orchard configuration.

24 Moving on, these are elevations for the
25 Inland Estate and elevations for the guesthouse at the

1 Inland Estate.

2 This is the unmitigated Ocean Estate site
3 plan and the elevations for the residence and the
4 guesthouse with garage.

5 The -- in order to access the Ocean Estate,
6 the project includes a private bridge extending from
7 the Inland Estate to the Ocean Estate, and this is a
8 visual simulation of that bridge.

9 Going into a little bit more detail about
10 the habitat restoration plan, the habitat restoration
11 -- each of the polygons that are shown in color on
12 this slide are different vegetation types. So the
13 habitat restora- -- but the habitat restoration plan
14 is shown in the mustard color.

15 The restoration avoids existing native and
16 sensitive habitats and looks to restore areas that
17 could use the benefit of restoration and would include
18 coastal sage shrub indicated by the vertical hatching,
19 Arroyo willow, purple needle grass, and an exotics
20 removal zone, which is described in more detail in
21 some of our mitigation measures.

22 But the goal in that area would be to allow
23 for the natural succession of native vegetation to
24 replace invasive black mustard that has begun to take
25 over the site.

1 Just briefly going over the EIR issue
2 areas, Class 1 impacts were found in the area of
3 cultural resources, specifically as a result of
4 impacts to site SBA 76 as a result of the water line
5 extension, and in the area of esthetics as a result of
6 the cumulative effect of build out all along the
7 Gaviota Coast.

8 Class 2 is significant, but mitigatable
9 impacts were found in the areas of esthetics,
10 biological resources, cultural resources, fire,
11 geo- -- geology, hazardous materials, land use, public
12 facilities, transportation, and water and flooding.

13 I'll now move into the white-tailed kite
14 findings that took place just after your March hearing
15 and prior to this hearing.

16 Kites were -- are known to have nested on
17 the site in two years, in 2002 and then in 2013 most
18 recently. The 2013 survey -- I should go back and say
19 that Dudek or other biological monitors have been
20 monitoring the site for kite nesting for many years
21 since 2002, and so the only years where nesting was
22 found was in 2002 and then again in 2013, that's
23 successful nesting.

24 During the 2013 survey period that occurred
25 just after the March hearing, the survey identified

1 one successful nesting pair and six successful
2 fledglings from that nest. That nest was located in a
3 tree within the Ocean Estate development envelope, and
4 we therefore revised and recirculated the Biological
5 Resources Section of the EIR.

6 Also, as a result, impacts to kite nesting
7 analyzed in this section were raised from less-than-
8 significant to less-than-significant with mitigation.

9 Part -- so the reasoning behind that
10 increase in impact is due to the fact that that nest
11 tree in the unmitigated scenario would be located 30
12 to 50 feet from various portions of the Ocean Estate
13 development, and although kites are not generally
14 known to reuse nest sites, the proximity of the
15 development could reduce the chance of future use by
16 kites.

17 We therefore put together some mitigation
18 measures. We also hired a specialist. We hired John
19 Storrer, who is here to help with responses today. He
20 is a county-approved, county-qualified biologist that
21 has specific expertise in the area of kites, so we
22 hired him to help us revise that biological resources
23 section and prepare the mitigation measures for white-
24 tailed kite nesting.

25 In -- in brief summary, the mitigation

1 measures that we have -- we prepared require a
2 100-foot setback for structures and 75-foot setback
3 for the driveway from the 2013 nest tree identified
4 this year. And -- it also requires setbacks from nests
5 during construction, so pre-construction surveys and
6 setbacks during construction activities.

7 And then, finally, restoration on site to
8 increase foraging habitat, including the planting of
9 trees to establish potential sites for perching.
10 Those trees would also be of a type that would be
11 suitable for nesting should -- should kites find them
12 to be preferable, so that would include mature and
13 sapling trees.

14 So, this -- this slide shows the miti- -- a
15 example of a mitigated layout for the proposed Ocean
16 Estate, so I'll just sort of walk through it here.
17 This is -- at the top of the slide you'll see the --
18 the driveway coming over from the railroad tracks and
19 looping around the far side -- looping around the far
20 side of the development envelope.

21 The boundaries of the development envelope
22 shown here are the same as the -- the boundaries
23 previously proposed, and then it results in all of the
24 structures being clust- -- clustered towards the
25 bottom of the development envelope, including the

1 guesthouse over here in order to establish a buffer
2 around this canopy of the -- the tree -- the nesting
3 area identified in 2013.

4 Now I'm going to move on quickly through
5 each of the issue areas that your Commission asked
6 staff to follow up on in March starting with cultural
7 resources.

8 At the last meeting, we heard from a number
9 of Native Americans who had concern about their
10 involvement in the process and also concern about
11 impacts to site SPA 76.

12 And in summary, part of their concern
13 derived from the fact that the mitigation measures
14 that we applied in -- in attempts to mitigate impacts
15 to SPA 76 required a data collection program that in
16 itself, the Native Americans felt in the act of doing
17 that data collection, would cause disturbance to the
18 site.

19 So we held two meetings with Native
20 Americans in April and in July, and that resulted in
21 the recommended edits that you will see in your
22 planning commission hearing. What those edits do is
23 eliminate a requirement for a full data collection
24 program and instead require presence/absence testing.

25 So this would occur -- there's a small

1 strip going through part of the currently known
2 boundaries of SPA 76 on the adjacent property where
3 the water line would go through, so within that strip
4 the water line would be going through inside of a
5 berm.

6 And in order to minimize the impacts of
7 that, what -- what the mitigation measure sets forth
8 is that we'll look at the existing expected boundaries
9 of the site, go 200 feet out from there, and then
10 starting from those 200 feet test inward until the
11 very first artifacts or cultural material is found.
12 Then -- then the study will stop, and from that point
13 out a 100-foot buffer will be put out and from those
14 exterior boundaries in, that's where the berm will be
15 located.

16 So the intent of that is to minimize
17 disturbance of any cultural resources to the maximum
18 extent feasible.

19 And -- from the perspective of the
20 archaeological community, I'm looking at having the
21 data from an archaeological academic perspective, this
22 is not a huge loss because, again, the materials will
23 still be preserved underneath that berm and not
24 disturbed, and when you look at the overall size of
25 the site, this is approximately five percent of the

1 site.

2 So we felt that this provided a good
3 compromise between protecting the concerns of the
4 Native Americans but also -- but also protecting the
5 site itself and allowing for future studies should it
6 be required.

7 I'll note one other item that we talked
8 about at the last hearing was the size of -- of that
9 berm, that fill cap, and the reduction of it from
10 47 feet wide to 25 feet wide and the reduction in the
11 height from 4-1/2 feet to 2.7 feet deep.

12 There's a question of the integrity of that
13 pipe, and we have -- today we have an engineer from
14 Penfield & Smith that can speak to that, but, in
15 summary, the construction of the pipe will be such
16 that the 2.7 feet should be adequate to support that
17 pipe and -- and prevent any sort of leakages.

18 We were also asked to follow up on the
19 question of hazardous materials, and our existing
20 mitigation measure at the previous hearing and now
21 requires a mitigation measure and a remedial action
22 plan that would be reviewed and up to the standards of
23 both the Health and Safety Code and the County
24 Hazardous Materials Unit, and that remedial action
25 plan would be completed prior to coastal development

1 permit issuance.

2 So that was our existing mitigation
3 measure, and I should note while -- while I'm going
4 through this, we have a couple of experts with us
5 today we -- sitting at the table here. First we have
6 Paul McCaw in the blue and sitting next to him we have
7 Tom Rejzek who will be available to answer your
8 questions on -- relating to hazardous materials.

9 So another item -- another development
10 since the last hearing is that we wanted to -- to get
11 some additional information, specifically about the
12 two development envelopes and any risks posed to human
13 habitation, so we received a Human Health Risk
14 Assessment from AECOM. AECOM is the consultant for
15 ARCO BP, and ARCO BP is the entity responsible for
16 remediation over the entire site.

17 So on a parallel tracked with this project
18 here, is a project in the energy division to remediate
19 the site, and much of that work has already been done,
20 but that's -- that's why AECOM is involved.

21 So in summary, that Health Risk Assessment
22 found that petroleum-related chemicals -- found
23 petroleum-related chemicals to be below levels of
24 concern. It also found elevated levels of naturally
25 occurring metals.

1 That plan is currently under review by our
2 Hazardous Materials Unit, but we did talk with them
3 and, in general, the County's conclusions, although
4 AECOM -- AECOM recommended that there wouldn't need to
5 be any remediation at the site, the County is still
6 going to recommend through the Remedial Action Plan
7 that there would be some soils removal.

8 And then the County is also recommending
9 that the applicant through, again our existing
10 mitigation measure and that Remedial Action Plan, work
11 with the Hazardous Materials Unit to enroll in a
12 voluntary program for the naturally occurring metals
13 on the site. So we can get into that in a little bit
14 more detail as you like.

15 So finally, I'll just say the existing
16 mitigation measure covers county-required remedial
17 action for both hydrocarbons and metals through that
18 Remedial Action Plan.

19 And then we were also asked at the last
20 hearing to put together a condition that would require
21 a 10-foot setback from abandoned wells, so that's
22 another recommended condition that you'll see in your
23 packet today.

24 Because there were some questions about it
25 in some of the letters we received, and I think at the

1 last hearing, I'll just note that on the Inland Estate
2 there are no abandoned oil wells either inside or
3 outside the development envelope. And then on the
4 Coastal Lot, there are abandoned oil wells outside of
5 the development envelope on that property. So those
6 were abandoned -- and we can go into more detail on
7 this as you like, as well. Those were abandoned to
8 current requirements in 1996, so abandoned and
9 plugged.

10 Okay, moving on. There was a question
11 about an offsite alternative considering placing the
12 Ocean Estate on one of the Naples lots, and so we
13 looked into that, as well. So generally CEQA requires
14 that in your environmental EIR that you set forth a
15 reasonable range of alternatives to permit a reasoned
16 choice and that those alternatives should consider
17 lessening significant effects of the projects;
18 however, it also specifies that you may eliminate
19 certain alternatives from detailed consideration if
20 that alternative would fail to meet basic objectives
21 of the project.

22 So our EIR considers a number of
23 alternatives. It considers three different
24 alternative site configurations for the property. It
25 also considers a no-project alternative, and then

1 considers and dismisses a number of other
2 alternatives, including offsite development.

3 So we feel that that was appropriately
4 dismissed as well because offsite development would
5 not fulfill two of the major project objectives, which
6 include building two homes on the two subject
7 properties and resolution of litigation with the
8 Coastal Commission.

9 That standstill and settlement agreement
10 that I referenced before specifically allows for the
11 development of two lots on the subject properties and
12 ten on the Naples lots.

13 Moving on, there were some questions about
14 traffic at the last hearing, as well. We received a
15 letter from Caltrans, and they had brought up some
16 concerns. For our analysis and for review of those
17 letters, we consulted with ATE, that's Associated
18 Transportation Engineers traffic consultants, and they
19 found that the project would meet County traffic
20 thresholds.

21 The project would meet Caltrans' own design
22 criteria for safety and that it would generate a
23 relatively minor amount of traffic and would not
24 significantly impact US Highway 101 operations.

25 A little bit more detail on the Caltrans

1 criteria, it would provide for the existing conditions
2 already at the site, provide for a recessed access
3 opening consistent with Caltrans' criteria, site
4 distance above Caltrans' requirements, and adequate
5 spacing between openings per Caltrans' requirements.

6 Finally, the accident data for the project
7 intersection is below the statewide average for
8 similar ex- -- intersections.

9 As well, we have, in the back of the room,
10 we have Will Roberts- -- Robertson from our Public
11 Works Transportation Division to answer any additional
12 questions that you have about the traffic analysis or
13 safety or how that ties in with Caltrans'
14 requirements.

15 That will conclude my addressing of each of
16 those issues, and staff's recommendation is that you
17 make the required findings for approval, including
18 CEQA findings, that you certify the EIRs modified by
19 the EIR revision letter RV 1, EIR revision letter RV
20 2, the updated Biological Resources Section, and that
21 your commission adopt the mitigation monitoring
22 program contained within conditions of approval and
23 approve the project subject to those conditions.

24 Thank you.

25 CHAIRPERSON HARTMANN: Thank you.

1 Do Ms. -- do commissioners have questions
2 for Ms. Lieu?

3 I'll start with Commission Brown.

4 COMMISSIONER BROWN: Okay. Thank you.

5 Ms. Lieu, could you put up the slide that
6 shows the water line and the portion of the coastal
7 trail that the applicant will be installing, please?

8 Would you just review that? My question
9 really involves the -- the trail that goes from the
10 parking lot to the coastal trail, as well, and I think
11 what you're saying is that the trail that he's going
12 to install is only through the water line to the
13 orange line, is that correct?

14 MS. LIEU: Madam Chair, Commissioner Brown,
15 that's correct.

16 COMMISSIONER BROWN: Okay.

17 The other question I have is about the
18 proposed habitat restoration. If you'd go to that
19 slide, please.

20 Now you had indicated that this 23 acres
21 is -- is the mustard color. I'm sorry, I don't see
22 any mustard color up here. Maybe it's the brown
23 mustard color, I don't --

24 MS. LIEU: Madam Chair and Commissioner Brown,
25 yes, I -- yes, it's -- it's that sort of light brown

1 color in the center portion here of the Inland --
2 COMMISSIONER BROWN: So it --
3 MS. LIEU: -- Estate.
4 COMMISSIONER BROWN: -- extends -- it's which --
5 it's this hatching, this kind of hatching here or --
6 MS. LIEU: It's -- it's multiple types of
7 hatching, and it --
8 COMMISSIONER BROWN: Oh.
9 MS. LIEU: -- extends --
10 COMMISSIONER BROWN: Okay.
11 MS. LIEU: -- which makes it nice and confusing.
12 So if you see this red hatched line here --
13 COMMISSIONER BROWN: It's --
14 MS. LIEU: -- it extends basic- -- the best way
15 to do it is to go by that color because --
16 COMMISSIONER BROWN: Okay --
17 MS. LIEU: -- it's multiple --
18 COMMISSIONER BROWN: -- throughout.
19 MS. LIEU: -- types of hatching, but it --
20 COMMISSIONER BROWN: Okay.
21 MS. LIEU: -- basically --
22 COMMISSIONER BROWN: Okay.
23 MS. LIEU: -- extends from right here --
24 COMMISSIONER BROWN: That's --
25 MS. LIEU: -- all the way over to here. So

1 essentially from the entrance at the 10- --

2 COMMISSIONER BROWN: Right.

3 MS. LIEU: -- at Highway 101 over to almost to
4 the boundary of the envelope --

5 COMMISSIONER BROWN: Okay.

6 MS. LIEU: -- on the Inland Estate.

7 COMMISSIONER BROWN: Okay. That's helpful.

8 Thank you.

9 On cultural resources, you discussed about
10 the fill cap and its reduction in width and height,
11 and I'm wondering, Madam Chair, if we're going to have
12 a chance to hear from the engineer about how they
13 configured that. Is this the time to do it, or do we
14 wait?

15 CHAIRPERSON HARTMANN: Why don't we -- I hate to
16 keep county staff here, but I'd like to move through
17 this --

18 COMMISSIONER BROWN: Okay.

19 CHAIRPERSON HARTMANN: -- formal presentation by
20 staff, questions, and the applicant and then come
21 back --

22 COMMISSIONER BROWN: Okay.

23 CHAIRPERSON HARTMANN: -- to the county experts
24 who are here to --

25 COMMISSIONER BROWN: Okay.

1 CHAIRPERSON HARTMANN: -- help us.

2 COMMISSIONER BROWN: And the last question is
3 about the condition that requires development envelope
4 setback ten feet from abandoned wells, and I think
5 that was Commissioner Blough's condition, and I'm just
6 wondering in the study or analysis of the setbacks,
7 was there any consideration other than ten feet
8 concerning any information that you found out?

9 I don't know, maybe Commissioner Blough
10 needs to speak for himself, but it seems to me this
11 ten feet was sort of arbitrary. Did you validate that
12 ten feet by some other measurement?

13 MS. LIEU: Madam Chair, Commissioner Brown, yes.
14 So the ten -- the ten feet comes from a -- a DOGGR
15 requirement which is -- it's actually a guideline
16 rather than a requirement, but it requires -- I think
17 it's -- and we have someone here, Jonathan Leech, who
18 can probably get with Dudek, who can get into more
19 detail than me, but it requires basically ten feet on
20 two sides, and then -- actually ten feet on one side
21 and then ten feet down clear, and then fifty feet in
22 another direction.

23 So that -- and the applicant, I think, has
24 an exhibit to show you as well. So that works with a
25 configuration of where the -- where the existing oil

1 wells are, and it's -- I may be speaking out of turn,
2 so if any of the experts want to correct me later, my
3 understanding is that it's a guideline and that if
4 that guideline is followed, the goal is to prevent the
5 property owner from having liability in the case that
6 there's a need to access that well in the future.

7 COMMISSIONER BROWN: Do -- do you have any
8 diagram that shows the -- the project or the footprint
9 of the project with those parameters that you've
10 discussed? Just so I can get an understanding. I
11 thought it was just ten feet, and it's a little more
12 complicated than just ten feet, it's multi-dimensional
13 and --

14 MS. LIEU: Madam Chair --

15 COMMISSIONER BROWN: -- you don't need -- just
16 maybe later in the hearing, if you can --

17 MS. LIEU: Madam Chair, Commissioner Brown, I
18 believe the applicant has --

19 COMMISSIONER BROWN: Okay. All right.

20 MS. LIEU: -- has that exhibit in their
21 presentation.

22 COMMISSIONER BROWN: Okay, good. Thank you.

23 CHAIRPERSON HARTMANN: Commissioner Blough or
24 Commissioner Ferini?

25 COMMISSIONER BLOUGH: We have no questions. Go

1 ahead.

2 CHAIRPERSON HARTMANN: Commissioner Cooney?

3 COMMISSIONER COONEY: Thank you, Madam Chair.

4 I'll -- I'll flag all the questions, those
5 for other county consultants can be deferred, but I
6 would like to hear from Mr. Robertson about the
7 Caltrans letter and suggestions for additional safety
8 installations.

9 I'm not sure -- I think the County's
10 consultant would be the best to address the Coastal
11 Commission concern with -- with use of the proposed
12 trail system and its effect on the white-tailed kites,
13 so we can defer those two -- I though Ms. Lieu might
14 be able to answer the question I have with regard to
15 the proposed vertical access crossing of the railroad
16 tracks.

17 Do we have information, Ms. Lieu, as to
18 what would be required with regard to that crossing?
19 Could it be an at-grade crossing or would it require
20 the kind of expensive bridge construction that the
21 applicant is proposing for the homes?

22 MS. LIEU: Madam Chair, Commissioner Cooney, we
23 have spoken preliminary -- preliminarily with the
24 railroad and have also spoken with the applicant's
25 engineer at Penfield & Smith, who helped to design

1 the -- the bridge between the Ocean and Inland
2 Estates, and Caltran- -- I'm sorry -- the railroad
3 will not accept an at-grade crossing.

4 I think that's pretty much across the board.
5 I don't think they're accepting any new at-grade
6 crossings for pedestrian access. They'll only accept
7 a bridge. It would be slightly different than the
8 bridge between the -- the two proposed homes because
9 it would be a pedestrian bridge instead of a vehicular
10 bridge, but it would need to be a bridge, and we
11 have -- I can look it up, too.

12 We have estimates of the approximate cost of
13 the bridge. It would be fairly costly. So it would
14 be a bridge to extend over the railroad tracks and
15 would need to meet certain clearance requirements from
16 -- from the railroad tracks to the bottom of the
17 bridge and -- and width requirements and so forth.

18 COMMISSIONER COONEY: We do have some comment
19 letters suggesting that -- you know, it's more than a
20 million dollars to construct such a bridge, and I
21 don't need you to -- to answer that question right
22 now, but it's a question in my mind. You know, is
23 this really a worthwhile dedication if it's going to
24 require that kind of expense to make that trail a
25 reality? Otherwise, people will have a nice parking

1 lot, they'll get as far as the railroad tracks, and
2 either have to violate the right of way of the railway
3 at their risk or -- or else it's going to stop, and
4 that will be the access. It really wouldn't be
5 effective vertical access.

6 The second question for you, Ms. Lieu, is
7 the guesthouse location after the mitigations were
8 applied. Can you tell me how far that is from the
9 edge of the bluff, roughly?

10 MS. LIEU: Madam Chair, Commissioner Cooney, I'm
11 trying to pull up a -- a little exhibit about the
12 bluff setback. So --

13 COMMISSIONER COONEY: You had -- you did have one
14 slide. Let me --

15 MS. LIEU: So this -- so -- so this slide
16 shows -- actually I'll go between this slide and the
17 one that shows the alternative configuration. So
18 starting with the development envelope which is shown
19 in red, that has stayed the same, and then the home
20 has shifted -- the home and guest -- the guesthouse
21 have shifted -- actually -- okay, let's see -- so the
22 guesthouse is located right in this location here --

23 COMMISSIONER COONEY: Mm-hm.

24 MS. LIEU: -- this smaller gray and then moving
25 to this exhibit it would be located approximately in

1 this location, so it would be greater than 177 to 263
2 feet.

3 This measurement is from the -- the edge of
4 the previous home configuration. And since the
5 guesthouse is inland a little bit more, it would be --
6 depending on -- there's two bluff formations, so
7 that's why we've got two measurements here. We have
8 177 and 263 from the start of the decline of the
9 bluff, so it would be fair to say that the guesthouse
10 would be -- you know, over 200 feet from the edge of
11 the bluff.

12 COMMISSIONER COONEY: That may be right, but from
13 your diagram the measurement appears to come from the
14 corner of the main house and -- and because of the
15 shifting location of the guesthouse to the -- to the
16 ocean edge of the development envelope, I'm wondering
17 if that reduces the distance from the measured on this
18 diagram?

19 MS. LIEU: Madam Chair, Commissioner Cooney, the
20 guesthouse is actually -- the ocean is towards the
21 bottom of the screen, and the guesthouse is located
22 just east of the home in this -- this polygon here, so
23 actually the -- the home itself would be the closest
24 structure to the bluff and to the ocean since the
25 ocean is down towards the bottom of the screen.

1 COMMISSIONER COONEY: Okay. I -- I think I lost
2 the ocean -- I -- I --

3 MS. LIEU: That's understandable. It's not
4 shown --

5 COMISSIONER COONEY: There looks to be a drop off
6 not far from the -- from the edge of the guesthouse.
7 That's not heading down toward to the water?

8 MS. LIEU: Madam Chair, Commissioner Cooney,
9 you're correct. That is one of the drainages on the
10 property that -- so the -- the home is located on a
11 raised portion of the site here, and then that
12 drain -- that drop off that we see is this drainage
13 coming down, Drainage number -- let me expand this --
14 Drainage #6, so -- so that -- that accounts for the
15 drop off as it heads this way, but the -- the coastal
16 bluff itself as shown on that previous slide is in two
17 different locations just south of the home.

18 COMMISSIONER COONEY: Thank you.

19 CHAIRPERSON HARTMANN: I had a couple of
20 questions about the trail, the coastal trail in
21 particular.

22 Could you talk about, not -- the one not on
23 the beach but the coastal, large C, large T, Coastal
24 Trail, how that comports with what is in the
25 Gaviota -- the Draft Gaviota Plan or -- and -- and the

1 -- how -- how much floating is there with this trail?

2 MS. LIEU: Madam Chair, in putting together the
3 location of this -- of this trail the applicant looked
4 at that -- the trails in the Gaviota Plan and also
5 consulted with the Coastal Commission to see where,
6 you know, they would want the trail, which the answer
7 to that is, as close to the ocean as possible. And so
8 -- and the applicant may be able to speak to this in
9 more detail.

10 As far as I know, it -- it comes as close
11 as possible to matching what's in the Gaviota Plan,
12 and then the areas where the trail could vary in its
13 location are the areas shown in the dark green here,
14 and that was allow- -- to allow for -- because -- the
15 way it will work is that the County will accept the
16 dedications but not necessarily rebuilding the trails
17 out immediately.

18 At the point that the County would begin
19 the process to develop the trails, they would need to
20 finalize the design and go through the -- our -- our
21 own coastal development permitting and review process
22 for the specific design of those trails.

23 And, so the intention behind providing some
24 flexibility in the location of those trails is to
25 allow for, at that time, getting the trail as close to

1 the bluff as possible but while also protecting the
2 various resources that we know are on the property and
3 also accounting for, you know, should there be any
4 bluff erosion activity. So that's -- so it's the --
5 the dark green areas that allow for movement of the
6 trail.

7 CHAIRPERSON HARTMANN: I -- I believe
8 Commissioner Brown had a follow on, and then I have
9 some more trail questions.

10 COMMISSIONER BROWN: Thank you.

11 And I pres- -- is it the case that this
12 isn't a hard and fast line? That once there's money
13 for will or whatever that there will be further
14 studies to evaluate what resources are there and where
15 the trail needs to be located?

16 MS. LIEU: Madam Chair, Commissioner Brown,
17 that's correct. So the County would be accepting
18 these offers to dedicate and having them transferred
19 to them. And then upon build out of the trails, it --
20 you know, it's not going to be, you know, tomorrow or,
21 you know, there would need to be monies raised for the
22 build out of the trails as we've discussed before.

23 So at the point that the final design of
24 the trails were determined, there would be a need for,
25 I'm guessing likely county parks, the County to

1 receive coastal development permits at that point in
2 time.

3 And as far as environmental review is
4 concerned, there would be a tiering off of the exist-
5 -- the -- the EIR for the Paradiso Del Mare Project
6 purposefully analyzes to the degree possible any
7 impacts associated with these public access
8 improvements, and the goal behind that is to allow for
9 tiering off of the EIR in the future to reduce the
10 level of environmental review that the County would
11 have to go through to get these trails permitted.

12 So, in my view of it as a planner, what we
13 would do is we'd take the existing EIR, we'd take the
14 proposed project for the trails specifically, and we'd
15 tier off of that EIR. What that would mean is if
16 there had been a change at the site in the biological
17 resources or any other resources present, we need to
18 take those into consideration when considering that
19 final -- final trail location.

20 COMMISSIONER BROWN: So there would be -- because
21 this information will be static at that time, you
22 would need to do another bio-resource evaluation of
23 the white-tailed kite, are they in the area, what is
24 the situation with the seals and so on so forth?

25 MS. LIEU: Madam Chair, Commissioner Brown, I

1 believe that's correct.

2 COMMISSIONER BROWN: And this will be a public
3 process? It's a hearing before the planning --

4 MS. LIEU: Mm-hm.

5 COMMISSIONER BROWN: Okay. Thank you.

6 CHAIRPERSON HARTMANN: Just a couple more
7 questions.

8 Is there a reason why -- I mean, a
9 preference for the floating trail rather than
10 specifically offering to dedicate a specific trail
11 with a proviso that if that proves impracticable that
12 it could be adjusted within the floating area?

13 MS. LIEU: Madam Chair, I may ask for some help
14 from counsel on this at some point, but --

15 CHAIRPERSON HARTMANN: We can come back to
16 this --

17 MS. LIEU: But --

18 CHAIRPERSON HARTMANN: -- too. I'm very aware of
19 the public in not wanting to spend all our time right
20 now on questions, but it -- it is a question that I'd
21 like to get out there to think about.

22 MS. LIEU: So basically because the goal will be
23 to, and, again, correct me if I'm wrong, to accept the
24 offers for this dedication as soon as possible.

25 What we want to do is accept them

1 immediately, but if it takes a number of years to get
2 the final trail design nailed down, we want to still
3 have -- we -- we have -- we have the offer to dedicate
4 and the County holds that, but the flexibility is
5 built in so that we don't have to wait until we're
6 ready with the complete final design of the trail in
7 order to accept that. So it gives the County -- gives
8 the trails to us earlier than -- than if we had to
9 design everything before accepting the trails.

10 CHAIRPERSON HARTMANN: Okay.

11 We -- we can come back to that a little bit
12 later, too. I'll have more questions, but are there
13 any other questions that the commissioners have for
14 Ms. Lieu, and then we can go to the applicant?

15 And I'm just checking with Commissioner
16 Blough and Com- -- Commissioner Ferini.

17 COMMISSIONER BLOUGH: No questions right now.

18 CHAIRPERSON HARTMANN: Okay. Ms. Black?

19 MS. BLACK: Madam Chair, I just wanted to let you
20 know that we do have the staff archaeologist available
21 for questions as well, and so perhaps after the
22 applicant's presentation you might want to ask --

23 CHAIRPERSON HARTMANN: Go straight to the --

24 MS. BLACK: -- questions of --

25 CHAIRPERSON HARTMANN: -- county experts. Okay.

1 So I think with that, we're ready for the
2 applicant.

3 MS. WINECKI: Thank you.

4 Good afternoon, Madam Chair and Planning
5 Commissioners both here and afar.

6 Thank you very much for making time for us
7 today. We really appreciate the fact that you were
8 willing to hold this special hearing. We know that you
9 have a very busy week. And a special thank you to
10 staff. I know that there was an extra workload burden
11 associated with preparing for and planning for
12 this -- this special hearing, and we really appreciate
13 it.

14 My name is April Winecki, I'm with Dudek
15 Environmental Engineering, and with me today that are
16 going to be joining me in this presentation are Alan
17 McLeod, our project architect, as well as Jonathan
18 Leech, also with Dudek.

19 As usual, Nicole did a phenomenal job in
20 her presentation, so I'm going to be able to skip over
21 some of our slides and save us some time this
22 afternoon.

23 So I'll start with just a brief project
24 overview kind of summarizing what you saw in March.
25 Two homes, 143 acres, that included with mitigation

1 116 acres of designated open space, 17 acres of
2 defined agricultural use areas, approximately 6 acres
3 of development envelopes, including all the utility
4 corridor and access road envelopes, and 35 acres of
5 public access dedication easements. And within that
6 35 acres, we anticipate that 4 acres would actually be
7 attributed to building the trails, the access ways,
8 the overlooks, the parking lot, etc.

9 Nicole provided a good overview of the
10 project history, so I'm not going to spend too much
11 time on it, but to revisit about ten years of planning
12 and permitting associated with the previous Golf Links
13 project culminating in the 2005 settlement agreement
14 with the Coastal Commission staff, which really laid
15 the framework for the project before you today.

16 That process resulted in a residential land
17 use being identified as the preferred alternative for
18 this site, and specially allowed for application of
19 two homes on the two lots before you today.

20 That settlement agreement initiated what
21 were -- is now our sixth year in planning and
22 permitting for these two home sites, and that
23 culminated in a hearing before you in March.

24 Since then, we've spent about six months
25 shoring up the findings for the EIR and the -- and the

1 policy consistency analysis under your consideration
2 today. Of course we had the March hearing and
3 slightly, just following that March hearing, our
4 biological team started to observe that there was some
5 kite breeding and nesting activities out on the
6 property.

7 Just subsequent to that, we were scheduled
8 to come before you again in April, and the applicant
9 agreed to postpone that hearing acknowledging the fact
10 that there are several members of the public who
11 wanted to participate in the Coastal Commission
12 hearing being held at that same time.

13 In June, our biological team confirmed the
14 white-tailed kite -- kite nest, the successful nesting
15 that occurred on the site, and during that time the
16 project applicant initiated some additional security
17 measures on the property to make sure that our
18 biological surveys were sound. That included beefing
19 up security and providing educational materials to
20 those entering the property to inform them of the
21 sensitive resources that we were monitoring at that
22 time.

23 CHAIRPERSON HARTMANN: Allow me just to interrupt
24 and ask, do you have a copy of your presentation for
25 the commissioners?

1 MS. WINECKI: A hard copy?

2 CHAIRPERSON HARTMANN: Yes.

3 MS. WINECKI: We do not.

4 CHAIRPERSON HARTMAN: Okay.

5 NS. WINECKI: No. I'm sorry.

6 Of course, we had the recirculation of the
7 Biological Resources Section, and that leads us to
8 what is before you today.

9 In March we had several areas of focus that
10 the Planning Commission asked us to follow up on. I
11 think that Nicole did a pretty good job of reviewing
12 those, so I won't spend too much time on them this
13 afternoon, but I do want to point out a couple of
14 things.

15 You know, knowing that we had kind of the
16 delay that we needed to -- to accommodate to -- to
17 finish up our white-tailed kite surveys and -- and
18 work with County on revising the EIR, we did take that
19 time to do some additional follow up on some other
20 issues that had been raised by the public, both at the
21 March hearing and in the interim, and so that included
22 additional outreach to the Native American community,
23 some additional documentation with respect to
24 hazardous materials, obviously we did a lot of work on
25 the white-tailed kites, and we also did some

1 additional analysis on the -- on the seal haul-out.

2 I'm not going to spend much more time on
3 the Native American Coordination. I think that Nicole
4 covered that pretty well.

5 We prepared this map to try to help
6 everybody understand the context of the previous oil
7 and gas facilities and the proposed development
8 envelopes that are included in the applications. As
9 you can see here, the development envelopes are not
10 located in any area previously used for oil and gas
11 production.

12 We did address the recommended mitigation
13 measure from the last hearing to adjust the ocean lot
14 development envelope to ensure that 10-foot setback
15 from the existing abandoned wells on the Ocean Lot.

16 And at this point, I'm going to go ahead
17 and turn it over to Jonathan Leech who can talk a
18 little bit more detail about hazardous materials.

19 MR. LEECH: Good afternoon, Members of the
20 Commission.

21 As April said, I'm Jonathan Leech. I'm
22 with Dudek. By way of certification, I am a
23 California Professional Geologist, also a registered
24 environmental assessor with the State of California,
25 so hopefully I have the appropriate credentials you're

1 looking for to discuss hazardous materials.

2 So the things that have occurred since the
3 March commission hearing when some concerns were
4 raised about hazardous materials. As indicated, a
5 health risk assessment was completed for the property.
6 It evaluated that contaminated levels in near-surface
7 soils posed less than significant cancer and non-
8 cancer health risks for the property.

9 There was a question about the lack of
10 sampling of groundwater as part of the overall
11 assessment process. No groundwater was encountered
12 during any of the soil samples based on the geology in
13 the region.

14 It is anticipated that the closest
15 groundwater level to the surface is about 180 feet
16 below the surface level. That's the reason for the
17 lack of sampling and also leads to the conclusion that
18 there is very, very little risk associated with the
19 identified shallow surface, low contaminate levels
20 impacting this groundwater.

21 In terms of intrusive vapors, there was a
22 comment that we had not looked into, had not studied,
23 the potential for intrusive vapors into the
24 development envelope area into the future structural
25 locations.

1 The intrusive vapor issues associated with
2 the abandoned well itself, the casement can act as a
3 conduit for those natural gas and other volatile
4 organic compounds to make their way up from the
5 reservoir area to the surface and then affect the
6 nearby development.

7 The abandonment process that's been in
8 place for old oil wells since the mid 1980s is
9 actually a system that incorporates three separate
10 concrete plugs for that old casing. One that is
11 located at the top of the petroleum-containing
12 horizon, one that is adjacent to the water-bearing
13 zones so that you don't have the potential for water
14 contamination to occur from the petroleum products,
15 and you also do not have the potential for migration
16 of the petroleum, including natural gas and other
17 volatiles- -- volatilized compounds to make their way
18 up the casing, and then the final plug is actually at
19 the surface of the casing.

20 So you've got those three distinct plugs
21 that prevent this vapor from making its way up the
22 casing and -- and causing a problem.

23 Mitigation measures. We have confirmed
24 that the site will meet the clean-up standards that
25 have been enforced by the Hazardous Materials Unit

1 before the CDP is issued. And then last, the
2 development envelope has been adjusted to provide that
3 minimum 10-foot setback.

4 The DOGGR standard is actually a minimum of
5 10 feet between a structure, a foundation for a
6 structure, and an abandoned oil well, and that
7 provides adequate clearance for future equipment to be
8 able to get in and access that well head if for some
9 reason there is found to be an issue down the road.

10 But typically, for an oil well that has been
11 abandoned in recent times, and that's since this mid
12 1980 development of this triple-plug system, that the
13 10 foot is really the minimum that DOGGR believes is
14 necessary for separation between a structure
15 foundation and an abandoned well. And in our case,
16 it's further than that because the 10-foot setback is
17 measured from the development envelope not from the
18 structure.

19 With that, I'll turn it back over to April.

20 CHAIRPERSON HARTMANN: I'm sorry. Commissioner
21 Brown had a question for you before you leave.

22 COMMISSIONER BROWN: Mr. Leech, if you don't
23 mind.

24 Thank you.

25 MR. LEECH: I thought I'd be able to get back to

1 my seat fast enough.

2 COMMISSIONER BROWN: Yeah. Not possible.

3 So the last comment you made is that the --
4 the abandoned well is set back 10 feet from the
5 envelope -- development envelope.

6 MR. LEECH: Correct.

7 COMMISSIONER BROWN: Right. Right. Okay.

8 So -- do you have a drawing that's more to
9 scale than this? It's just that this one looks like
10 this -- this is the guesthouse -- looks like it's
11 right on the edge, and it probably isn't, but do you
12 have a drawing that's more to scale? Or --

13 MR. LEECH: I've been told that we don't have --

14 COMMISSIONER BROWN: Okay.

15 MR. LEECH: -- a drawing that provides a better
16 scale than this, but the actual distance from that
17 abandoned well to the corner of the guesthouse is
18 actually about 14 feet.

19 COMMISSIONER BROWN: Okay.

20 And the other question is that we've seen
21 with active oil and gas projects that there are well
22 casing failures and other failures with active oil
23 wells. Does that apply to these kind of abandoned oil
24 wells where something might go awry that -- I mean, I
25 have no idea, but --

1 MR. LEECH: The most --

2 COMMISSIONER BROWN: Are --

3 MR. LEECH: -- the most prevalent failure of a
4 casing is actually during the drilling of the well as
5 they're advancing the drill head and as they're
6 placing the casing behind the drill head to keep the
7 walls from collapsing.

8 That's a very dynamic process in the oil
9 field. There's a lot going on, and you're actually
10 placing that casement, there are pressures that are
11 existing at that time that in an abandoned oil
12 situation where you've got concrete plugs in place,
13 the potential for failure of the casing is orders of
14 magnitude less than in an active field.

15 COMMISSIONER BROWN: Okay. Thank you.

16 MS. WINECKI: Thank you.

17 Okay. Moving on to white-tailed kites.
18 I'm going to spend a little bit of time on this one
19 and -- the information I'm going to be presenting is
20 at a very large scale. Kind of a big picture, of
21 course.

22 We've got a whole lot of experts in the room
23 today that can help answer specific questions, and I
24 will be happy to defer to them on that. But what
25 we've put up here right now is a map that illustrates

1 the documented nesting activity that's been observed
2 between 2000 and 2013, and this is based on all the
3 available data that we have available to us generated
4 through various sources in the County.

5 So of course, we've got the 2013 successful
6 nest site that's located adjacent to Tomate Canyon.
7 We've had an additional confirmed successful nest site
8 located with the orange star. That was confirmed in
9 2002 when the Coastal Commission was reviewing the
10 Golf Links -- the Golf Links proposal, and we have
11 four potential nest sites that have been observed over
12 the years, one in 2000, thank you for the pointer, one
13 in 2004, one in 2002, and then we had some activity
14 observed in 2013 over by Eagle Canyon.

15 But in these four instances, there was
16 activity that was observed, but the data do not
17 suggest that there was any confirmed success or
18 failure of those particular nest sites.

19 Our analysis concludes that nesting habitat
20 on the property is not a limiting factor for white-
21 tailed kites. We've documented and mapped over a
22 thousand trees on the property, either as individual
23 trees or trees located within the various tree groves
24 that are shown here in black and green, and of those
25 thousand trees, over three hundred of them are of the

1 species that seem to be the most preferred by white-
2 tailed kites on this property. That's primarily
3 Monterey pine and Monterey cypress. They also use
4 tamarisk and willow thickets, but those are the
5 species that they tend to prefer most often than not.

6 With the proposed project, you can see the
7 large majority of the tree habitat is going to be
8 preserved in perpetuity. Essentially of the more than
9 one thousand trees on the property, they will all be
10 preserved within the open space conservation easement
11 with the exception of the six trees located within the
12 Ocean Lot development envelope.

13 With the mitigation measure that's being
14 applied, all tree impacts will be avoided with the
15 exception of one potential removal at the entrance
16 road to the property. And pursuant to the proposed
17 restoration plan, 6 native coastal live oaks, 36-inch
18 live oaks, will be planted within Drainage 4 to
19 enhance the nesting habitat on the property.

20 This light here represents our survey area
21 for the 2011 and 2013 surveys that we did for foraging
22 patterns. Pursuant to protocol, our survey area
23 included 500 feet outside of the property boundaries,
24 and essentially we observed similar foraging habitats
25 in 2011 and 2013.

1 And as you can see here in this exhibit,
2 the large majority of that foraging was occurring off
3 site north and west of the property, and this included
4 for the kites that were using the site for nesting
5 purposes in 2013.

6 We believe that the reason why the kites
7 are not using the property for foraging is because of
8 the condition of the habitat.

9 In prior years, we -- we surveyed the
10 property, particularly during the golf course
11 proposal, and there was more extensive suitable
12 habitat on the site at that time, so the suitable
13 habitat is demonstrated here by the light yellow.
14 Those are annual grasslands. They tend to be
15 grasslands that are more suitable for kites because
16 they don't grow too high, and the kites essentially
17 can -- can see their prey base.

18 The large orange expanses that you can see
19 on this slide are invasive black mustard, and we
20 are -- we've been observing a transition to this
21 invasive plant species over the last couple of years.
22 Not conducive to supporting white-tailed kite foraging
23 habitat, and it's for that reason that we focus the
24 restoration plan the way we have.

25 So you can see here in the bright green,

1 that's the 23-acre focused restoration area, it's been
2 located to basically replace the largest expanses of
3 the mustard fields on the property. You can see where
4 we are retaining the suitable foraging habitat that
5 does exist on the property.

6 And then pursuant to the mitigations
7 recommended in the EIR, you can see what the green
8 diagonal hatching -- those additional mustard field
9 areas that will be maintained in perpetuity as part of
10 the conservation easement.

11 So with the proposed project, what you have
12 is an open-spaced conservation easement of almost 118
13 acres now that really encompasses what we believe are
14 all of the critical elements of a suitable white-
15 tailed kite habitat that includes both nesting and
16 foraging areas.

17 And now I'm going to turn it over to Alan,
18 and he can talk to you a little bit about how we've
19 accommodated the mitigation for the nest tree
20 setbacks.

21 MR. MCLEOD: Madam Chair, Commissioners, Alan
22 McLeod, Shubin & Donaldson Architects.

23 I just want to cover quickly, and Nicole
24 did a good job earlier on, but what I've done in this
25 exhibit is actually overlay the existing or the

1 previous scheme so you can see how the -- the pieces
2 have shifted. So originally the road came in and
3 wrapped around the exhibit tree where the white-tailed
4 nest was located, and the -- the access came in
5 and -- and worked to the side of the home.

6 We've re-worked this and actually
7 eliminated some of the grading associated with
8 the -- with the bridge embankment and brought it down
9 the east side of the -- oh, it's -- I'm sorry -- to
10 the west side of the -- of the tree, so we -- we also
11 have less impact to the existing tree stock here and
12 the tree stock in this location.

13 The guesthouse which was located up against
14 the -- the grouping of trees has now moved as
15 indicated to the west -- to the east side of the main
16 house. The orig- -- the main house also moved just
17 slightly. The original being dashed in black and the
18 new location in gray. We're still maintaining
19 approximate 180 feet from the bluff as a setback.

20 Moving on. So just the bullet points
21 associated with the move. It avoids development on
22 all the tree clusters. It also reduces the fuel
23 modification requirements from the fire department, so
24 we've -- we've eliminated the -- or reduced those
25 impacts. It increases the open space and conservation

1 easements.

2 We've retained the ample bluff setback for
3 both the guesthouse as well as for the main house.
4 We've reduced grading, and it reduces the -- the
5 visibility of the -- the fill from the -- from the
6 freeway.

7 The next piece that I just want to cover
8 quickly is visuals from the beach to up the bluffs to
9 the homes.

10 So we took -- we've studied the location of
11 the -- the seal haul-out in relationship to the -- to
12 the main house sitting up on the bluff. What we've
13 done is we've cut a number of sections through the --
14 through the house and through the bluffs, and what
15 these lines indicate are angles from the beach through
16 the bluffs so that we can show that the -- the home is
17 -- is not visible actually from the beach for either
18 seals or for the public as they traverse the beach
19 access.

20 The other piece of this is noise from
21 construction. Ambient noise level on the bluffs are
22 running around 45 decibels. With the increase of
23 construction activity on the bluff and the distance to
24 the seal haul-out, we get a -- a 10-decibel drop,
25 which basically drops that sound level below ambient

1 at the beach, so there would be no impact to the seals
2 from -- from construction noise.

3 So with that, I'll pass it back over to
4 April.

5 MS. WINECKI: Thank you, Alan.

6 So to -- to summarize the project before
7 you today with mitigation. We still have two homes on
8 143 acres, designated open space of 118 acres,
9 agricultural use areas at about 16.3 acres, and we
10 still maintain the development envelope at 6 acres and
11 the OTDs at 35 acres with about 4 acres of physical
12 improvements that would be associated with -- with the
13 public access trails.

14 I do want to spend just a little bit of
15 time talking a little bit more about the public access
16 issues that have been raised.

17 We very much appreciate the dialogue that
18 has occurred today with both the County, Coastal
19 Commission staff, representatives of the California
20 Coastal Conservancy, and our various local trail
21 groups here in town. It was really that dialogue that
22 led to the alignments that you see being offered
23 today.

24 The floating easements were really a
25 response to Coastal Commission staff and their

1 concerns that there be maintained some flexibility of
2 how the specific trail alignments might fall in the
3 future, and assuming those trail alignments it's
4 determined that they be -- they should be located
5 closer to the bluff edge, but that floating easement
6 accommodates any potential bluff erosion so that the
7 trails can migrate with the bluff if necessary.

8 But the specific alignments are consistent
9 with what's been lined out in the Gaviota Coast Plan.
10 We received very specific direction early on from the
11 Santa Barbara Trails Council in terms of how the
12 alignment should look. We also looked at it from
13 minimizing environmental impacts based on the
14 conditions as they exist today.

15 The California Coastal Trail up on the
16 bluff essentially follows an existing roadway, and so
17 that really minimizes the level of impact associated
18 should that -- should that be the ultimate alignment
19 chosen.

20 We hope that the addi- -- additional
21 discussion that we have here today will provide an
22 example of how private and public entities can
23 collaborate on making these sorts of dedications
24 happen and -- and more often contribution to -- to the
25 process. We hope that this is an example that will

1 encourage other property owners to do the same to take
2 a proactive approach to offer these sorts of
3 dedications as opposed to discourage them in light of
4 the fact that some of these issues associated with the
5 public access dedications seem to be the driving
6 factors of potentially continuing the -- the process
7 longer or resulting in a postponement of an action
8 today.

9 So we're hoping that our project team and
10 the approach to this project is providing a positive
11 example of -- of how public access can be secured on a
12 -- on a countywide basis.

13 To talk a little bit more about public
14 access and what's being offered, I do want to cite the
15 California Co- -- Court of Appeal and how the courts
16 themselves described the existing access condition out
17 of the property. This was a -- this is a citation
18 from the California Code of -- Court of Appeal when
19 they were hearing lawsuit regarding the Dos Pueblos
20 Golf Links Project.

21 And the court described the access
22 condition as the project site is private property that
23 is currently fenced, gated, and patrolled by a
24 security guard. There are signs posted against
25 trespass. The site has no legal beach parking, and

1 surfers and beachgoers park along the inland side of
2 Highway 101, run across the highway, scale a barbed-
3 wire fence, cross a railroad track, and climb down an
4 unstable bluff.

5 Those are the sorts of conditions that
6 exist today that we think that a legal, authorized
7 trail system can address and provide safe public
8 access for all entities who want to visit this area of
9 a coast, not just a few individuals.

10 The applicant has gone to rather
11 extraordinary measures to try to set up this
12 process to facilitate implementation of these public
13 access improvements as much as possible. They've
14 conducted preliminary engineering studies to confirm
15 the feasibility of implementing the easement
16 dedications.

17 To list off a few, the applicant has gone
18 ahead and engineered the vertical beach access at
19 Eagle Canyon below the location in which the existing
20 access easement dedication has been recorded with the
21 County Recorder's office, and then they went a step
22 further in response to comments and did a conceptual
23 eng- -- engineering feasibility analysis of the other
24 potential vertical access ways that have now been
25 encompassed in the floating easement.

1 The applicant has also conducted conceptual
2 design for the Union Pacific Railroad bridge design
3 for the pedestrian bridge. To correct some statements
4 that you received, the cost estimate for that bridge
5 is just over \$600,000, not 1.5 million as indicated in
6 some of the comment letters.

7 And of particular note, I think it's pretty
8 amazing that the property owners, in an effort to try
9 to facilitate legal access over the railroad, have
10 essentially offered to extinguish five historic
11 easement rights that the property holds in exchange
12 for securing that public access. If anybody's
13 familiar with working with Union Pacific Railroad, I
14 think you have some sense of how difficult it can be
15 to secure easement rights over their right of way.

16 In addition, the proposed restoration plan
17 actually includes pre-mitigation for the environmental
18 impacts associated with the public access improvements
19 as they're laid out in the plan today. So any
20 vegetation impacts that were calculated as a result of
21 this specific alignment, they are being mitigated
22 within the proposed 23-acre mitigation site, hopefully
23 alleviating the need for the County to implement
24 additional mitigation when that time comes.

25 As Nicole mentioned, we've gone to an

1 additional effort to identify mitigation measures not
2 applicable to the proposed project but potentially
3 applicable to implementation of those future OTDs so
4 that the environmental document is essentially set up
5 to allow for that tiering to occur to again reduce the
6 cost and the effort associated with that future
7 environmental review.

8 The project does include construction of
9 the portion of the California Coastal Trail where it's
10 coincident with the utility corridor.

11 And most importantly, and pretty dear to my
12 heart, is the fact that the proposed bluff top trail
13 and the lateral access trail along the shoreline with
14 the proposed overlooks is really wholly consistent
15 with and implements the vision for the California
16 Coastal Trail.

17 That trail is envisioned to be a braided
18 system and not consisting of just a single alignment.
19 It allows for people to walk the trail along the beach
20 or up on the bluff during high tide, provides
21 opportunities for people who may not be able to get
22 down to the beach to stop at overlooks and enjoy the
23 ocean, and so it really is a -- a contributing element
24 to that statewide vision.

25 So with that, I'm going to go ahead and

1 wrap it up and just reiterate that we believe that
2 this proposed project very carefully balances the
3 ability to implement residential uses on the property
4 coincident with high priority coastal land uses.

5 It protects a significant amount of visual
6 open space and enhanced habitat area and provides safe
7 public access in conjunction with protecting resources
8 in a way that proactively implements the County's
9 certified LCP and the California Coastal Act.

10 And with that, I'll let you know that we've
11 got several individuals here available to answer
12 questions-- our project engineer, project landscape
13 architect, biologist, etc. So feel free to
14 ans- -- ask us any questions that might come to mind.

15 CHAIRPERSON HARTMANN: Thank you.

16 MS. WINECKI: Thank you.

17 CHAIRPERSON HARTMANN: I -- I'd like to ask the
18 commissioners to keep their questions short. We have
19 the county archaeologist here I -- I believe only to
20 3:00 o'clock, and so I think we'll go for maybe 10
21 minutes questions to the applicant and then ask the
22 archaeologist and any questions with that, and then we
23 can come back to questions to the applicant.

24 COMMISSIONER BROWN: Madam Chair, I have a
25 question for the --

1 CHAIRPERSON HARTMANN: Commissioner --

2 COMMISSIONER BROWN: -- some questions for the
3 applicant and -- and maybe while she's sitting down,
4 these are obviously going to be bio-resource
5 questions, and I'm wondering if we don't want to sort
6 of lump those all together at some point in time,
7 obviously about the white-tailed kite and seal haul-
8 out, but -- when I'm hoping also to hear from Mr.
9 Storrer.

10 But -- just to get some clarity from the
11 applicant, if you would, I think in the document it
12 talks about both the County and the applicant will be
13 working with Union Pacific Railway to get access and
14 the PUC as well. Have you started that discussions
15 and -- can you just give me some background? How
16 difficult has it been, and I'm sure it has been,
17 but -- has the -- has the first page been turned, so
18 to speak?

19 MS. WINECKI: Sure.

20 And I'll defer to Nicole. If -- Nicole, if
21 you want to jump in. There have been a number of
22 conversations that have occurred with Union Pacific
23 Railroad. Obviously the -- you know, the initial
24 conversation about securing the -- there's one
25 improved access over Union Pacific Railroad right now.

1 It's the existing wooden bridge, and it's a private
2 easement.

3 But there are five additional easement
4 rights that the property benefits from, and so those
5 preliminary dis- -- discussions with Union Pacific
6 Railroad, essentially what the applicant has offered,
7 is to extinguish those five existing easement rights
8 in exchange for one easement for private residential
9 access purposes and one easement for public access
10 purposes.

11 As Nicole indicated, the Union Pacific
12 Railroad will not accept an at-grade crossing for
13 public access. They will, however, accept a
14 pedestrian bridge, and our project engineer, Penfield
15 & Smith, has looked at crossing opportunities from a
16 conceptual engineering perspective and actually
17 provided a schematic of what that bridge might look
18 like, which provided information we needed to develop
19 the cost estimate associated with that.

20 And so those conversations have taken
21 place. We do believe it's feasible, and I think --
22 I'm looking at -- Michael's here -- and I do -- I also
23 believe that there might be an agreement in place in
24 which the -- the applicant's going to remain involved
25 in that and -- and assist with facilitating

1 the -- the coordination between the County and Pacific
2 Railroad.

3 COMMISSIONER BROWN: Okay. Well, that's helpful.
4 Thank you.

5 The other question, when you were talking
6 about the vertical access to the beach, as I recall,
7 now you can walk from the ocean -- where the Ocean
8 Estate is, you will -- you can walk down to the beach.
9 What is going to happen with that? Is that -- that
10 informal trail still going to exist for the property
11 owners to be able to use that? What's --

12 MS. WINECKI: Yes.

13 COMMISSIONER BROWN: -- the plan for that?

14 MS. WINECKI: Madam Chair, Commissioners, no.
15 The proposed project does not include any provision
16 for private access to the beach, so future residences
17 would have to use the same public access ways as
18 members of the public.

19 COMMISSIONER BROWN: And so how do you facilitate
20 that? Or how do you make that happen? You bulldoze
21 that -- that path, or --

22 MS. LIEU: Madam Chair, Commissioner Brown, in
23 addition to the fact that property owners would need
24 to use the future trails -- the -- similar to the
25 public, the project includes no provisions for

1 physically altering the trail that is used to get down
2 the bluff currently, but what is occurring as a part
3 of the project is a portion of -- let me pull up a
4 slide that I have.

5 A portion of the trail that people -- that
6 is currently used by the public for unauthorized
7 access, the Ocean Estate is going to be on top of a
8 portion of that trail. It wouldn't prevent the public
9 specifically from taking other routes. It also
10 doesn't include any physical provisions for -- let me
11 show you the -- I have a -- so this is the -- this is
12 a general map of the existing and past unauthorized
13 access that's been used. So this purple trail is the
14 trail that when we talk about eliminating access, we
15 talked about most often that the surfers use, so
16 you'll see it goes right over the coastal estate and
17 then down the bluff.

18 So as a result of the home being placed in
19 this location, that traditionally used portion of
20 the -- of the unauthorized trail will be taken out.
21 But there are no physical changes proposed as a part
22 of the project to do grading or fencing or any other
23 sort of prevention of -- of use of this trail.

24 COMMISSIONER BROWN: So -- so my question, though
25 is, if I own that home and I'm living in that home, I

1 can walk down to the beach using that historic trail?
2 There's nothing that would prevent me from doing that?

3 MS. WINECKI: If I may jump in. Madam Chair,
4 Commissioners, the project description specifies that
5 there will be no private access ways to the beach.
6 And so if future residences decided to use that trail,
7 they would be non-compliant with the project
8 description, which is the first condition of approval
9 for the project. If the concern is that there -- that
10 the residences do it anyway, we might want to
11 contemplate a condition of approval that requires it
12 be re-vegetated.

13 It is in -- in erosive condition right now
14 because of the unauthorized access that's occurring,
15 so we could loop that in to the restoration component
16 of the project and re-vegetate that.

17 COMMISSIONER BROWN: Okay. Okay. That's --
18 that's useful information.

19 And I guess my other question, maybe is for
20 Mr. McLeod, and maybe we're going to talk about
21 architecture and some of the lighting issues.

22 When you showed the PowerPoint of the house
23 with the views from the beach, this -- the
24 architecture of this particular home has a lot of
25 glass facing the ocean, and I'm wondering how you're

1 going to control the light escaping from those big,
2 wonderful windows that you're planning.

3 MR. MCLEOD: In the evenings --

4 COMMISSIONER BROWN: Yes.

5 MR. MCLEOD: -- are we talking about?

6 COMMISSIONER BROWN: Mm-hm.

7 MR. MCLEOD: Can we pull up one of the images?

8 I think you have -- Nicole -- no I believe
9 that you had an elevation in your -- in your --

10 (Inaudible talking)

11 Yeah.

12 No, that's the entry side.

13 There it is.

14 The -- the home is orientated actually
15 to -- to -- not directly to the south to the ocean,
16 it's actually orientated on a -- on a north
17 sou- -- northwest, northeast access, so we're not
18 going to have a lot of light directly out to the ocean
19 from the lot, it's actually angled at 45 degrees to
20 the -- to the -- to the ocean.

21 And we will -- you know, on the
22 southwest elevation as can be seen, we do have
23 obviously glazing on the living side of the -- the --
24 the home. We have large eaves that are going to be
25 extended out, and there is the possibility of

1 introducing a shading element within this to deflect
2 light that's working from the interior out over the
3 living spaces.

4 COMMISSIONER BROWN: Have you done any sort of
5 ambient light study that would help you understand
6 just what light will be emanating from those windows
7 at night?

8 MR. MCLEOD: As we develop through the BAR
9 process, we've had a conceptual review. Once we've
10 moved past -- now that we're past the conceptual kind
11 of phase, that can be a component that we'll analyze
12 as we work through preliminary design with BAR and
13 working with the night lighting guidelines that I help
14 you write.

15 COMMISSIONER BROWN: Thank you.

16 CHAIRPERSON HARTMANN: So that's -- Commissioner
17 Brown, those are your questions now for the applicant.

18 Commissioner Blough and Commissioner
19 Ferini?

20 COMMISSIONER BLOUGH: Did you -- we'll chime in
21 when we have a question.

22 CHAIRPERSON HARTMANN: Okay. Thank you. Good.

23 I understand that Ms. Gerber, the
24 archaeologist, for the County is here for a little
25 longer. So if the commissioners do have more

1 questions for the applicant and would like to do that,
2 we could do it now. Otherwise, I think it would be
3 helpful to reintroduce the County experts, and if we
4 have any questions for them from the Commission, we
5 can ask those now and then go to public comment.

6 MS. LIEU: Madam Chair, Members of the
7 Commission, I'll start at the table here. First, in
8 the purple, we have John Storrer, who is our white-
9 tailed kite expert. And then next we have Tom Rejzek
10 -- I keep getting his name wrong -- then we have Paul
11 McCaw, and they are our two hazardous materials
12 experts, and then sitting just a few rows from the
13 back on the right side, we have Will Robertson waving
14 his hand. He is our traffic expert from Public Works,
15 and then next to him is Joyce Gerber, our Planning and
16 Development archaeologist.

17 CHAIRPERSON HARTMANN: And would you two be
18 willing to come up and we'll --

19 And let me just ask the commissioners, are
20 there any questions we've heard about Highway 101 and
21 traffic safety? And I -- I -- do we have any
22 remaining questions about that?

23 Commissioner Brown.

24 COMMISSIONER BROWN: Yes. Thank you.

25 This is for Mr. Robertson. I think, as I

1 recall in our April hearing, there was some
2 documentation from Caltran -- Caltrans that had talked
3 about closing these across-freeway access points -- I
4 don't -- how do I describe that? You -- you
5 understand what I mean, yeah, okay.

6 So I didn't see anything new that would
7 indicate that, but is it something that they could
8 just routinely do and -- some point in the future and
9 without notification of the County or the folks who
10 live along the -- in this area?

11 MR. ROBERTSON: Madam Chair, Commissioner Brown,
12 as you're well aware, there's a letter in the record
13 that states that Caltrans is in direct opposition to
14 any future continuation of at-grade intersection
15 crossings.

16 COMMISSIONER BROWN: Right.

17 MR. ROBERTSON: It's a standard policy that
18 Caltrans has set, and ultimately their goal is to
19 eliminate all those access points.

20 So to answer your question, is it possible
21 that they could come in at any time and block off
22 access? I don't think it's a simple answer --

23 COMMISSIONER BROWN: No.

24 MR. ROBERTSON: -- so I'm going to say partially
25 "yes" depending on the conditions that are present in

1 the field. If they found that there was an elevated
2 accident rate, then they have every right to move
3 forward with either a safety project or closing the
4 access point; however, I think there's also a legal
5 aspect behind that that counsel may weigh in that I
6 don't think you can just come in and close somebody's
7 primary access points without providing them another
8 means of access.

9 COMMISSIONER BROWN: If they were to do that,
10 would that change any of the conditions at the primary
11 access point or the way that that access point is
12 accessed or how it's configured or anything?

13 MR. ROBERTSON: Madam Chair, Commissioner Brown,
14 if -- if I'm asked -- hearing you correctly, you want
15 to know if they came in and closed off the access
16 point, would it change the condition?

17 COMMISSIONER BROWN: The -- the cross freeway --
18 they said, "No, we're going to close that." Will that
19 change any of the conditions of how one accesses the
20 freeway? It's, I guess, from coming south -- not the
21 access -- excuse me -- access the site. Will it
22 change any of the parameters for entry or exit? Does
23 it make any difference? No?

24 MR. ROBERTSON: Madam Chair, Commissioner Brown,
25 if Caltrans came in and actually altered the median --

1 COMMISSIONER BROWN: Yes.

2 MR. ROBERTSON: -- then yes, the traffic patterns
3 would change slightly; however, it would just reroute
4 the drivers --

5 COMMISSIONER BROWN: Right. That's not my
6 question. The question is: Will it affect any changes
7 to the entryway to the property?

8 MR. ROBERTSON: No, it would not.

9 COMMISSIONER BROWN: No. Okay. Thank you.

10 CHAIRPERSON HARTMANN: Commissioner Cooney, did
11 you have any questions? I know this was an issue the
12 first hearing of great concern to you.

13 COMMISSIONER COONEY: It was and is, Madam Chair.
14 And -- Mr. Robertson, what I'm looking for is your
15 expertise with regard to the Caltrans position
16 that -- that the entry at the present time moving from
17 the -- from the south to the north and then turning
18 across the lanes of traffic is not a safe one.

19 It seems that from the staff report, and I
20 assume with your input, it's the conclusion that
21 without an encroachment permit, Caltrans really
22 doesn't have jurisdiction over this project at
23 conditions and -- and to the extent the County does,
24 you don't see adding any additional protections for
25 the entry and exit?

1 MR. ROBERTSON: Madam Chair, Commissioner Cooney,
2 as you're well aware, the -- the process has always
3 been that the County looks to -- in this case,
4 Caltrans, for their recommended conditions of approval
5 to be added into our document, and therefore either
6 approved by your Commission or not.

7 In -- it -- recently Caltrans has been
8 coming forward with conditions that perhaps did not
9 have an access to the actual projects. It's a problem
10 that we've seen from project to project. Mainly meant
11 to achieve their goal of closing at-grade
12 intersections on the freeway. In this case, and
13 several other projects as well, the data does not
14 support the recommendations that Caltrans has put
15 forward.

16 You've seen the documents where the accident
17 rate is below the average expected rate for the state.
18 There really is no documented accident history. Their
19 site distances above the recommended values level of
20 service meets the County criteria and Caltrans
21 criteria.

22 The list goes on about how the data supports
23 the County's position that the existing intersection
24 operates at acceptable levels of service and
25 acceptable safety criteria and standards, therefore I

1 don't see how we can actually support Caltrans'
2 recommended condition on the project.

3 It -- so no, the -- the County staff would
4 not recommended adding the Caltrans conditions to the
5 project.

6 COMMISSIONER COONEY: Just to follow up, Mr.
7 Robertson, I understand that -- I guess I'm looking at
8 it with some legal perspective. It sounds like what
9 you're saying is, we don't have the accident data to
10 justify making changes or recommending changes to the
11 exit and entrance, which is really what I guess we
12 could do, but we don't really know how much additional
13 traffic is going to be caused by construction,
14 vehicles, service vehicles, once the projects are
15 built. We have to develop the data.

16 So it sounds like, and I don't mean this to
17 be pointed at you, but -- but in general, the way that
18 project accesses are developed is based on past data
19 and an assumption of what kind of additional traffic
20 there would be. So if we have an accident or two of
21 vehicles turning left and speeding oncoming vehicles
22 colliding with them, then we would have some basis for
23 making changes to the project.

24 And what concerns me is the timing of our
25 conditions. I don't think you have to have the

1 education and experience you have to know that it's a
2 risky turn to turn across that oncoming traffic. It's
3 only the -- the speed of the oncoming traffic that's
4 difficult to -- to judge.

5 So that's my concern, and I guess I hear you
6 saying at this point, based on the data and our
7 projections, there's nothing we can do about the
8 perceived danger.

9 MR. ROBERTSON: Madam Chair, Commissioner Cooney,
10 I would agree that traffic engineering and traffic
11 operations are not an exact science, and a lot of what
12 we are doing is chasing data. The past data is
13 actually supporting or predicting what may happen in
14 the future, and you are correct here. You can never
15 predict the success of -- of some kind of land
16 development whatever it may be, whether it's this
17 project or whether it's an In-N-Out Burger.

18 So what we can say is that there are large
19 volumes of documented traffic data that kind of
20 generates an overall national or regional pattern that
21 allows us to predict what may or may not go on on a
22 site. And sometimes you overshoot, sometimes you
23 undershoot, but generally the averages work and the
24 data is there to support that, and the national
25 standard is to follow those publications of trip

1 generation national safety data.

2 And if we follow those -- those
3 publications, whether it's engineering design
4 standards or the data that supports trip generation,
5 in general we're -- we're covered under engineering
6 design immunity, so if an accident does happen, we are
7 less likely to be legally bound than if we didn't
8 follow those publications.

9 So there -- there is engineering design
10 immunity. Counsel can correct me if I'm wrong, but
11 that's -- that's the point of following national
12 standards and even locally adopted standards is to
13 cover the County from a litigation standpoint.

14 COMMISSIONER COONEY: Mr. Robertson, I always
15 have found your presentations to be straightforward
16 and on the table, and I agree with maybe where we are
17 legally as safe, but it doesn't resolve my concern
18 with the traffic problems presented by this project.
19 But thank you.

20 CHAIRPERSON HARTMANN: Any other questions on
21 traffic? Let --

22 MS. LIEU: I'm sorry.

23 CHAIRPERSON HARTMANN: Yes, Ms. Lieu, of course.

24 MS. LIEU: Madam Chair, Commissioner Cooney, I
25 also wanted to point out two things. One is that the

1 intersection is operating at a better level of service
2 than the County standards, so it doesn't just meet the
3 County standards, it's operating at a higher level of
4 service. Also that the EIR analyzed the potential
5 traffic generation that is expected as a result of two
6 homes to determine what the traffic impacts would be
7 and found them to be more than acceptable.

8 And finally, that we have an existing
9 mitigation measure on the project that's your
10 Condition 53 that requires preparation of a traffic
11 control plan for traffic control during construction
12 on the site, and you may want to look at that
13 mitigation measure to see if you think it's adequate
14 or if there's anything that you want added to it such
15 as -- for example -- for example, if we wanted to
16 specify in that condition that construction traffic
17 would not take that left turn, we could add that into
18 the mitigation.

19 COMMISSIONER COONEY: Thank you. I looked at
20 that and have a note to that effect when we get to
21 conditions, but thank you very much.

22 CHAIRPERSON HARTMANN: Commissioner Brown.

23 COMMISSIONER BROWN: Mr. Robertson, it strikes me
24 that -- that the traffic analysis is going to have to
25 include at some point, and maybe this isn't the point,

1 the use of the trails by the public that are coming to
2 the parking lot and so on so forth. And if you read
3 CRAHTAC's letter -- excuse me -- Santa Barbara County
4 Trails Council where they said we expect 200 round
5 trips per day, that's quite a bit of use for the trail
6 for people coming into and going out of the project
7 site, and not knowing where these people are going to
8 come. They going to come and go turn left, go right?
9 Who knows?

10 But it seems to me that that might require
11 some analysis or some further consideration when the
12 trails are installed, and if that -- how
13 would -- how would the County handle that? What would
14 be the process for looking at trip circulation at that
15 point in time?

16 MR. ROBERTSON: Madam Chair, Commissioner Brown,
17 to my knowledge, the last time that I looked at the
18 traffic section for this project, it did include an
19 analysis of the --

20 COMMISSIONER BROWN: Okay.

21 MR. ROBERTSON: -- park use -- open space use,
22 I'm sorry.

23 CHAIRPERSON HARTMANN: Are we ready to move on
24 from traffic?

25 I'd like, if we could, then to take up

1 archaeological resources. And Ms. Gerber, thank you
2 for being here.

3 I know you testified at the last hearing,
4 but could you start us out and just -- I mean, I'm
5 looking at the EIR statement. The site overall
6 contains a broad range of a number of artifacts and
7 features and likely has deeply stratified deposits.
8 And on the basis of the significance of these, we have
9 a Class 1 impact that can't be mitigated.

10 There have been some additional mitigations
11 since our March hearing proposed. There's been a lot
12 of consultation with the Native American community,
13 but I'm -- I'm not -- I get differing perspectives on
14 -- on whether that is satisfactory. And I guess my
15 conversation with Mr. Arredondo as I was coming in
16 this morning suggested that this is -- it's not just
17 the artifacts that give this place meaning.

18 So that's sort of the background, and if
19 you could just take it from there and we can then
20 chime in with our questions.

21 MS. GERBER: Madam Chair, thank you. I'm happy
22 to do that, and those are good questions.

23 This site is -- this -- this impact is not
24 being identified as a Class 1 based solely on the data
25 and archaeological values of the site. In fact, I

1 think the driving force in that impact was the
2 concerns of the Native Americans with whom we
3 consulted multiple times on site with their -- the
4 ethnic values and the -- those kind of values that
5 they hold for that Native American community.

6 This site is very large. It does contain
7 probably stratified deposits. It's known to have been
8 a village that was occupied over a very long period of
9 time with all of the attendant, sort of associated
10 things you might expect with that.

11 It probably does have wonderful data
12 potential, and it's also -- it may be an ethno-
13 historic-named village site. It has one of those low
14 numbers, and when you have a site like that, it's one
15 of the large coastal sites identified by David Banks
16 Rogers in 1929 in his book, those sites tend to be
17 larger, they tend to have been, many of them, occupied
18 around the time of historic contact or just before.

19 We have another archaeological site on the
20 property, just to put it into context, that will be
21 traversed by an access corridor, and we're proposing
22 to cap that corridor and re-vegetate over it, and the
23 Native Americans were not as concerned about that
24 site. So it's not just -- and it probably has good
25 data potential as well, so it's not just the data

1 potential and the academic interest of the site, it
2 was -- the impact was really developed as a result of
3 extensive consultation with the Native American
4 community.

5 What we've done based on the several -- Ms.
6 Lieu can probably clarify this, but I think it was two
7 additional consultations that occurred after the last
8 hearing, is that Native Americans were very concerned
9 about additional excavation in this site.

10 So while normally when we cap a sterile
11 fill over a site, we'd require data recovery
12 excavations to get, again, academic data, to make up
13 for the loss of access to that data from the cap. In
14 this case they said, "Can't you reduce that impact?
15 That's an impact to us in itself."

16 So my understanding is that the -- instead
17 of doing the data recovery, we're going to do
18 presence/absence testing from the outside of that area
19 and towards the site, stop when we get to any cultural
20 material at all, and then extend a hundred foot buffer
21 out each way, east and west, from that spot and from
22 there we will cap over the waterline corridor.

23 And also the applicant has proposed to
24 reduce the width of that corridor so that there will
25 be less -- sort of depth -- less horizontal area

1 that's capped.

2 Because of that, because we are going to
3 know where the site begins and ends and we are not
4 really losing access to that much of the site, we've
5 agreed with the Native Americans and think that it's
6 reasonable not to do additional subsurface data
7 recovery and testing.

8 So they're -- they like that better that
9 we're not going to be disturbing the site anymore.
10 They're still extremely unhappy that we're going over
11 it at all with the water line, but given the fact that
12 there really are no viable alternatives to place that
13 line in that area, this was our best compromise.

14 CHAIRPERSON HARTMANN: Mr. Arredondo's letter, I
15 just, if you don't mind, if you'll indulge me while I
16 follow this up. "While these measures could be
17 construed as reducing the impact, it does not. As I
18 have stated consistently, it is my -- any placement of
19 fill on this site will always be a Class 1 significant
20 impact."

21 And -- and how representative is that? And
22 I gather that even with the additional mitigations, we
23 still do regard it as a Class 1 impact and would
24 require a statement of overriding considerations and
25 then we have to make that balance. Is that correct?

1 MS. GERBER: Madam Chair, that is correct. It's
2 -- I think that the -- most of the Native Americans
3 with whom we consulted would agree with that
4 statement. That they feel it is a Class 1 impact and
5 that the mitigations we've proposed have not fully
6 mitigated that impact.

7 It's fairly unusual for that to be the
8 case. It has happened before, however, in the history
9 of the County and our development. It's -- and I
10 think that really highlights their -- the strength of
11 their feelings about the site. Because that -- while
12 it is unusual, it has happened before, and it's
13 something they clearly identified as important to them
14 in this case.

15 CHAIRPERSON HARTMANN: And the reason being
16 because it's a sacred site and not the artifacts? And
17 can you help me understand why this is so important?

18 MS. GERBER: We know that there are human remains
19 in this site, and I was trying to avoid discussing
20 that, but I think that that's probably one of the main
21 concerns that they have.

22 CHAIRPERSON HARTMANN: I gather they do ritual
23 ceremony. It's also sacred in that regard -- in a
24 spiritual -- is that --

25 MS. GERBER: Madam Chair, to my knowledge, there

1 hasn't been use of this particular site for ritual
2 purposes. I think they would like to, but often in
3 situations like this their access to broad regional
4 areas where they'd like to collect materials, plant
5 materials, and -- and perform ceremonies is often --
6 they can't do it because it's private property, so
7 historically it has not been happening here.

8 CHAIRPERSON HARTMANN: Okay.

9 Any other questions for Ms. Gerber?

10 Commissioner Brown.

11 COMMISSIONER BROWN: During the construction
12 phase, there will be protections, County oversight, so
13 on so forth. Once that's concluded and we have this
14 water line in its -- in its footprint, if -- should
15 there ever need to be a repair or reconstruction or
16 alteration, is there some protection -- is there
17 somewhere or some notification that whoever is coming
18 in to fix the line is aware that there are
19 restrictions and they can -- I'm not sure what
20 restrictions that might be, but they have to take some
21 precautions about how they use the area or what
22 equipment they place on it, or they just can't go
23 digging or -- does that information reside somewhere
24 so that the site is -- is fully protected?

25 MS. GERBER: Madam Chair, Commissioner Brown, I

1 think -- I see people looking for this in the
2 conditions, and I'm going to give the microphone to
3 Ms. Lieu.

4 COMMISSIONER BROWN: Okay.

5 MS. LIEU: Madam Chair, Commissioner Brown, part
6 of our condition for that site and also for other
7 sites is that -- that -- that the plan shall include a
8 notation on the final plans designating the buffer as
9 unbuildable area, so the -- the area covered was in
10 that fill cap and the two buffers on either side would
11 be designates as unbuildable area. That's similar to
12 some of the other sites that we have.

13 We do have to be careful that we don't
14 advertise that to the public to protect the resource,
15 but we do have that as a part of this provision and
16 other mitigations.

17 COMMISSIONER BROWN: So in the future, when all
18 this line is in, does -- does that condition somehow
19 go on to a map somewhere so that the people understand
20 the -- they can't bring backhoes in to repair a broken
21 line or something? Because it would seem to me that
22 it wouldn't make sense to go through all this work
23 when there may be some mishap or misconcern about
24 misuse of the property.

25 MS. GERBER: Madam Chair and Commissioner Brown,

1 I think most entities that work in the coastal zone
2 know that they need to come in to the County or the
3 Coastal Commission when they're repairing a facility,
4 and so we would expect that somebody would come in,
5 let us know that they have a repair they need to do,
6 and we would -- we would address that at that point in
7 time.

8 COMMISSIONER BROWN: And that's something --

9 COMMISSIONER BLOUGH: Madam Chair --

10 MS. GERBER: That's something we would do.

11 CHAIRPERSON HARTMANN: Yes.

12 COMMISSIONER BLOUGH: Madam Chair.

13 CHAIRPERSON HARTMANN: Commissioner Blough.

14 COMMISSIONER BROWN: Okay.

15 COMMISSIONER BLOUGH: As I understand, and
16 correct me if I'm wrong, but relative to this water
17 line, we're going to be placing -- or they're going to
18 be placing the water line on top of the existing
19 grade, and then we're going to be adding up to three
20 and a half or four and a half -- some amount of dirt
21 on top of that water line.

22 So if the water line were to break and they
23 would have to take that fill dirt out to repair the
24 water line, they're still not disturbing the ground --
25 the native ground, so I don't see any problem -- am I

1 missing something? I see no concern about that water
2 line having to have -- being repaired and anything
3 special about it because it's going to be above the
4 ground, above any resource, and all the dirt that's on
5 top of it is going to be fill dirt that's brought on
6 the site. Did I miss something?

7 MS. GERBER: Madam Chair, Commissioner Blough,
8 that's absolutely correct. The -- there will be fill
9 dirt placed, the vegetation in that area will be
10 removed by hand, sterile fill will be placed, the pipe
11 will be laid, more fill will go on top, so there's
12 quite -- and then there will be a 20-foot wide
13 easement where the buffer -- where the fill soil will
14 be placed, so there's quite a large area to buffer
15 against any ground disturbance that would be required
16 for subsequent repairs.

17 COMMISSIONER BLOUGH: Okay. So -- I don't think
18 there's any -- I don't see any chance of disturbing
19 any re- -- resource that -- that the Indians would be
20 concerned with, so -- or the Native Americans, I
21 should say.

22 CHAIRPERSON HARTMANN: So are there any other
23 questions for Ms. Gerber while we have her?

24 Okay. I'd like to get a sense of how many
25 questions we have dealing with hazardous materials.

1 Whether -- I'm getting very unpopular with staff and
2 commissioners because I don't call enough breaks, so
3 we're going to need a break soon, but I wonder -- do
4 we have -- Commissioner Brown, do you have a lot of
5 questions on that?

6 Commissioner Cooney?

7 COMMISSIONER COONEY: A few.

8 CHAIRPERSON HARTMANN: All right. Well,
9 let's -- let's go forward, and then I think we're
10 going to need Mr. Storrer the whole time if you can
11 stay. I think -- but -- so we would hold you.

12 So Commissioner Cooney, would you like to
13 ask those questions and then we'll have the break
14 afterwards --

15 COMMISSIONER COONEY: Okay.

16 CHAIRPERSON HARTMANN: -- and then we'll come
17 back to the public comment.

18 COMMISSIONER COONEY: Well I don't want to
19 constrict Mr. Storrer's testimony.

20 So you've seen the applicant's
21 representations and -- and the reports that we've seen
22 indicating that the project conditions are adequate to
23 protect the public against -- and that means the --
24 the public that might be accessing it for trail
25 purposes as well as the residents of the homes.

1 What I guess I don't clearly understand is
2 what the remediation action plan is going to involve
3 and when that's going to occur in relationship to the
4 development of the site.

5 MR. STORRER: Madam Commissioner, Commissioner
6 Cooney, the Remedial Action Plan will follow as the
7 next phase of -- of work both by Arco for the oil
8 impacted area and then also, because of the naturally
9 occurring but elevated metals, they -- they would
10 follow on with the next phase of work here.

11 We will approve the current envelope site
12 assessment report and human health risk assessment
13 once we've completed review of that, and those
14 documents will be used to help develop the Remedial
15 Action Plans, and there will be two of those.

16 The implementation of those plans would
17 occur prior generally to -- certainly do the
18 construction of the homes depending on what was
19 proposed and approved. It may best occur during the
20 course of grading for the actual development itself or
21 can be done prior to the grading. And, again, that
22 would depend on what was proposed and approved by us.

23 I hope that answers your question.

24 COMMISSIONER COONEY: Let me ask a more specific
25 question.

1 Do you see that we've got the project
2 properly sequenced in terms of the health assessment
3 and the correction of the site's known contamination.
4 It's all preceding occupation by residents of a future
5 structure, is that correct?

6 MR. STORRER: That's correct. And I think we do
7 have the proper sequence of events.

8 COMMISSIONER COONEY: Okay.

9 I have this abiding concern, but, you know,
10 if there's -- if there's anything else that you feel
11 needs to be corrected from what we heard from the
12 applicant's expert, maybe you could add that to the
13 record, but if not, that's my only question.

14 MR. STORRER: Madam Chair, Mr. Cooney, from what
15 I saw what the applicant's presented earlier today, I
16 would be in concurrence with what they had offered
17 prefer- -- specifically what their professional
18 geologist had offered.

19 CHAIRPERSON HARTMANN: Okay. Thank you.

20 COMMISSIONER BROWN: I have a question.

21 CHAIRPERSON HARTMANN: Oh --

22 COMMISSIONER BROWN: One question.

23 CHAIRPERSON HARTMANN: Commissioner Brown.

24 COMMISSIONER BROWN: Does it ever occur on these
25 brownfield sites where you think you've got a map and

1 know where all the wells were or the contamination
2 was, and then fast-forward into the future somehow
3 there was one that was overlooked or missed and low
4 and behold there's a contamination issue? Has that
5 ever happened?

6 MR. STORRER: Madam Chair, Commissioner Brown,
7 yes that has happened. Fairly infrequently, but the
8 amount of work that we've done on this site, from what
9 I've seen, we have a pretty good idea of where the
10 wells were, where the historic areas are of concern,
11 and there was quite a bit of investigation done to
12 delineate that -- areas of contamination, so we're
13 fairly clear with what the issues are; however, until
14 you open up something, you -- you never really know
15 until you go open it up, but there has been issues
16 like that.

17 But usually it's nothing that 99 times out
18 of 100 it's never anything that's really a surprise.
19 It's going to be typically the same type of
20 contamination, it just may be in a different area or
21 it was a little bit larger than we thought it was.

22 COMMISSIONER BROWN: Okay. So it's not something
23 that's unknown, it's just the size of what the
24 contamination that -- that you thought was size A and
25 it's really A plus B or something to that nature?

1 MR. STORRER: That's correct.

2 COMMISSIONER BROWN: Okay.

3 MR. STORRER: I'd also like to add that one of
4 the conditions we would place on the grading and
5 development during the course of -- of -- of the
6 development of the actual building envelopes is that
7 if they encounter any field signs of impacts that were
8 not previously identified that they stop work, notify
9 us, and that that area be addressed prior to their
10 continuing.

11 COMMISSIONER BROWN: Okay.

12 And for Ms. Lieu, that's exist- -- Okay.
13 All right. Thank you.

14 CHAIRPERSON HARTMANN: Okay. When we come back,
15 we're going to start with public comment.

16 Mr. Storrer, I think we'll hear things in
17 public comment that we may want to come back and ask
18 you about, so I hope you can stay with us for the
19 duration.

20 MR. STORRER: Yes.

21 CHAIRPERSON HARTMANN: Great.

22 We'll start with Mr. Howorth.

23 Yes, we're going to take a break. Just a
24 minute. I just want people to know. In ten minutes
25 we're coming back. We're going to start with Mr.

1 Howorth and then we'll have Bob Keats, and I know he
2 has a PowerPoint presentation, so if he could get that
3 ready during the break. So in ten minutes we'll be
4 back. We'll start with public comment.

5 Thank you.

6 (Pause in proceedings.)

7 CHAIRPERSON HARTMANN: And we're talking about
8 the Paradiso Project, and we're just ready to go into
9 public comment. And I'd like to thank everyone who
10 has come today and who has written in to us. It's
11 been very informative. It really shapes our questions
12 and it just -- it's what makes the process work. So
13 thank you for being here. Thank you for bearing with
14 us.

15 And we'll start with Peter Howorth.

16 MR. HOWORTH: Madam Chair, Commissioners, thank
17 you for having me here today.

18 I sent a detailed letter, as you know, to
19 the commissioners and to other various agencies and so
20 on, so I don't want to go into a lot of that.

21 Perhaps for the benefit of the audience
22 here, I've been involved with marine mammals for 40-
23 some years I guess now, and been involved in a lot of
24 EIRs, EISs, and so on. I say this in the interest of
25 full disclosure. Also involved with Santa Barbara

1 Marine Mammal Center, which I started in 1976.
2 Nothing to do with anything in terms of how I stand on
3 the project, pro or con, it's more just to establish
4 my credentials for those who may not know about this.

5 The rookeries here in -- marine mammal
6 rookeries in -- in the Santa Barbara County area are
7 very scarce. There's a few on Vandenberg Air Force
8 Base inaccessible to the public. There's the one up
9 at Naples, and there's one in Carpinteria, which is
10 accessible and still has a rookery thanks to the
11 Carpinteria Seal Watch. The rest at Southern
12 California, if you look in Ventura, there's Mugu
13 Lagoon on the Navy Base and then there's Children's
14 Pool in La Jolla, and that's it on the mainland coast.

15 This is a precious resource. It's the --
16 the Harbor Seal Rookeries are considered a sensitive
17 environmental habitat under the coastal plan, and this
18 habitat is also part of the Naples State Marine
19 Conservation Area.

20 I -- I won't be able to go into everything
21 in my letter, but I would encourage you to read that
22 and -- I think it's included in the packet, but I
23 wanted to mention a couple of things about statements
24 made earlier.

25 It was shown that Harbor Seals couldn't see

1 the -- the house when they're on the beach. And I
2 guess my questions was: At what point? Doesn't look
3 like very much, 10 feet off shore, 20 feet off shore,
4 they're going to see it, and it's going to be
5 something new. There's going to be construction
6 equipment, dust -- there's going to be lights, etc.
7 At what point are they going to see it? What impact
8 does it have? Just showing that they're not going to
9 see if from the beach, I'm afraid falls short of -- of
10 any kind of realistic analysis.

11 As far as the noise, 45 decibels is not
12 much, but who's going to watch over that? Who's going
13 to be there to make sure they're in compliance?

14 I think we've all been around heavy
15 equipment. Clank, clunk, rattle, etc. Is it really
16 going to be kept at such low levels? Unless there's
17 some mitigation monitoring going on, it could be noisy
18 as heck.

19 Also, I note in terms of view from the
20 ocean, it mentioned in the EIR that the Ocean dwelling
21 can be seen from the coast, from the beach, and yet we
22 don't see any place in that view from the Harbor Seal
23 Rookery -- we just see right from the rookery itself,
24 but Harbor Seals move, sometimes as much as five or
25 six hundred miles, and they have to get to that

1 rookery somehow. They're going along the coast, and
2 there are places where they'll see this house, they'll
3 see the construction, they'll see the lights. So just
4 saying that immediately directly offshore, I don't
5 know if that's going to be enough. Frankly it's not.

6 Looking at the setback of the bluff itself
7 of X number of feet, I think it said in the EIR at 350
8 feet total from the rookery itself. Carpinteria Seal
9 Watch closes the beach within 750 feet to either side
10 of the rookery there. Why is it so close to this
11 very, very special, precious resource? This is a very
12 special thing for the County of Santa Barbara and
13 shouldn't just be thrown out.

14 I -- I wish we could see the level of
15 detail, but you look really good as far as white-
16 tailed kite, I'd like to see that kind of level of
17 detail when it comes to taking care of the marine
18 mammals here, because this is a special resource.
19 It's not going to go away, but it will very soon. The
20 straw that broke the camel's back. Too many impacts,
21 and it's gone. It's happened in many, many places,
22 well documented.

23 There's a lot of good information out there
24 as far as baseline. I don't see any baseline in this
25 EIR. So many things I don't see, but it's all

1 addressed in that letter to you. I just don't see it
2 even complying with regulatory requirements as far as
3 marine mammal protection.

4 So I'd urge you to read the letter. I know
5 you're busy, and I appreciate the time. I just wanted
6 to hit a few high points, and I'll leave it at that.

7 Thank you.

8 CHAIRPERSON HARTMANN: And would you remain at
9 the mic? I think we have some questions for you.

10 MR. HOWORTH: Uh-oh.

11 CHAIRPERSON HARTMANN: Commissioner Brown.

12 COMMISSIONER BROWN: Yes.

13 Mr. Howorth, thank you very much for
14 writing that letter. I have read it more than once,
15 and if you see my notes on it, there -- there are
16 considerable notes, so I -- I learned a great deal,
17 and I thought it was very useful, and I'm going to ask
18 you some questions, if you don't mind.

19 Do you think it's possible to have a house
20 in this particular location and to have people coming
21 out, walking on the bluffs, trail users, to have this
22 kind of activity compatible with the Harbor Seals?

23 MR. HOWORTH: Depends on the location of the
24 house, and it depends upon the mitigation measures
25 that are imposed. I don't see any mitigation measures

1 to speak of other than Marine Bio 12, which I think
2 says that we'll work something out in the future.

3 COMMISSIONER BROWN: Okay, so --

4 MR. HOWORTH: It's not mitigation to me.

5 As far as people on the bluff, been very
6 well documented -- lots of studies at Carpinteria.
7 I've encouraged the applicant's consultants to look at
8 that. People silhouetted on the bluff scare animals
9 into the water. Coastal trail, coastal access, people
10 on the bluff, that happens enough time, they're going
11 to go away.

12 COMMISSIONER BROWN: I -- I thought that in your
13 letter it -- you talked about the Seal Watch and -- or
14 perhaps it was in Mr. Storrer's documentation. I
15 think it was from your letter, that how the Seal Watch
16 folks had helped to get the seal back -- the seals
17 coming back during the day.

18 MR. HOWORTH: That's correct.

19 COMMISSIONER BROWN: Just because they're more
20 protective, they tell people they have to behave
21 themselves, they are shooing people away from, I
22 guess, on the beach, I'm not quite sure what they do.

23 MR. HOWORTH: Over years, that -- that rookery we
24 know at least was in existence in the late 1800s, and
25 oil company activities took place, increased beach

1 activity increased, population, more beach walkers,
2 more beach users, etc., etc. And the disturbance
3 became so chronic that the animals shifted to a
4 nighttime haul-out pattern, which is typical of very
5 disturbed patterns.

6 That's why I'm very concerned about the
7 lighting of this project, the noise -- if somebody has
8 a loud party 350 feet away from a rookery, it -- it
9 just doesn't make sense to me.

10 COMMISSIONER BROWN: In the evening when, and I'm
11 not sure where seals go in the evening, I guess
12 they're on the beach? They could be if they're -- if
13 they don't have pups or they could be out in the
14 ocean. Would the light from the home affect them if
15 they're out in the ocean? Because there is going to
16 be some ambient light no matter how much protection
17 that -- that we provide for, you know, down-lighting.

18 MR. HOWORTH: They can become acclimatized to
19 light, certainly, as they have in Carpinteria. There
20 are lights out on the pier there --

21 COMMISSIONER BROWN: Okay.

22 And that's --

23 MR. HOWORTH: The point is, this is a new impact.
24 It's something new --

25 COMMISSIONER BROWN: New. So --

1 MR. HOWORTH: And this area has already been
2 subject to a lot of disturbances from trespassers
3 across the bluffs, beach walkers. I go there
4 routinely on rescues, and I do see Harbor Seals there
5 and rescue them, but it's not the way it used to be.

6 COMMISSIONER BROWN: Right.

7 MR. HOWORTH: It's -- they're much more skittish.
8 I wouldn't be surprised if they switched to night
9 time. If they do, it's -- that's even trickier --

10 COMMISSIONER BROWN: Okay.

11 MR. HOWORTH: -- and -- it is a resource for the
12 people of --

13 COMMISSIONER BROWN: Right. For the --

14 MR. HOWORTH: -- of the state --

15 COMMISSIONER BROWN: Yes.

16 MR. HOWORTH: It's something to protect.

17 COMMISSIONER BROWN: And for -- if -- if one were
18 to look at this with a CEQA baseline as of today or
19 this week or whenever one would -- how -- how would
20 that -- because the baseline would include at the
21 moment surfers who go out there, who trespass across
22 the property, access the beach to go surfing. It
23 might include people who are walking on the beach,
24 which already has disturbance, and with this project I
25 could see there might be some more control of

1 trespassers and more control of people accessing the
2 beach.

3 So how -- I guess I'm sort of -- I don't
4 understand, but it seems to me that baseline might --
5 if that's today, what you see and experience and what
6 some surfers tell me they're going to tell me about
7 what they do when they go out there, that if the
8 baseline is here in terms of disturbance, a new
9 baseline where you control access, more access,
10 wouldn't that mean that's better for the seals to some
11 extent? Or -- or are you saying also that there's
12 other -- going to be other factors which are probably
13 going to make it worse?

14 MR. HOWORTH: I think it was mentioned that there
15 were 200 round trips per day or something like that.
16 That's very definitely increased impacts, and access
17 within 200 feet of the seal rookery is pure insanity.
18 You're just walking right down in amongst them,
19 they're going to spook. I could take you down there,
20 you can walk within 200 feet, actually much farther --

21 COMMISSIONER BROWN: Right.

22 MR. HOWORTH: -- they'll jump into the water.

23 COMMISSIONER BROWN: And -- and for the folks in
24 Carpinteria, how do they control access on the beach?

25 MR. HOWORTH: They have stop signs at each end of

1 the beach. Big signs that are -- that are permanently
2 embedded in concrete. They have seal watchers with
3 bullhorns --

4 COMMISSIONER BROWN: Oh, down --

5 MR. HOWORTH: -- and stop --

6 COMMISSIONER BROWN: -- on the beach.

7 MR. HOWORTH: -- signs. They walk along the
8 bluffs. If they see somebody starting to come in,
9 they yell at them. If the person persists, they call
10 for enforcement.

11 One thing I mentioned in my letter is -- it
12 said, "Keep it on the route of law enforcement," --

13 COMMISSIONER BROWN: The dogs.

14 MR. HOWORTH: -- yet -- but -- but is law
15 enforcement going to be able to do that? Do they have
16 the budget for that? Have they been consulted in this
17 EIR? I didn't see that anywhere. Are they going to
18 be routinely patrolling up there?

19 You mentioned "might" in terms of
20 mitigation, and that's the big word right there. We
21 don't have any mitigation in this EIR.

22 COMMISSIONER BROWN: Right. Okay.

23 MR. HOWORTH: You've got something that might
24 happen in the future after construction has begun.
25 Then we're thinking about, "Well, what are we going to

1 do now?"

2 COMMISSIONER BROWN: Okay.

3 MR. HOWORTH: It's too late.

4 COMMISSIONER BROWN: All right. Thank you.

5 CHAIRPERSON HARTMANN: And I -- I just want to
6 clarify a few questions here.

7 The sound analysis that the applicant put
8 up, what is your response to that in terms of how -- I
9 mean -- do seals hear the way people do, or is --

10 MR. HOWORTH: No.

11 CHAIRPERSON HARTMANN: -- could you just respond
12 to what you heard today from the applicant about
13 sound?

14 MR. HOWORTH: I -- I wish I could hear the way
15 the seals do.

16 Actually, Harbor Seals are going to hear in
17 the range of 100 hertz to 180 kilohertz. Our hearing
18 ranges between 20 kertz- -- hertz and 20 kilohertz.
19 They hear things that we can't even hear beyond dog
20 whistles, beyond everything else. Lower frequency
21 sounds they don't hear as well as we do.

22 Assigning A weighting is great for
23 assessing human impacts because it emphasizes sounds
24 within the human hearing range. It has really very
25 limited application when it comes to Harbor Seals or,

1 for that matter, white-tailed kites.

2 CHAIRPERSON HARTMANN: So I just want to be clear
3 about these questions I'm going to ask you --

4 MR. HOWORTH: Sure.

5 CHAIRPERSON HARTMANN: -- your contention is that
6 the EIR analysis, as it deals with the Harbor Seals,
7 is not adequate?

8 MR. HOWORTH: Yes, it is. I think it could be.

9 CHAIRPERSON HARTMANN: But that's your opinion
10 now --

11 MR. HOWORTH: And -- I can -- yeah.

12 CHAIRPERSON HARTMANN: And you don't find,
13 because of that analysis, you don't find the
14 mitigation to be adequate or the enforcement of the
15 mitigation or --

16 MR. HOWORTH: That's correct.

17 CHAIRPERSON HARTMANN: -- to be adequate.

18 MR. HOWORTH: That's virtually no mitigation.

19 CHAIRPERSON HARTMANN: Okay. That does it for
20 me. Thank you.

21 Any other questions on the part of the
22 commissioners?

23 COMMISSIONER BLOUGH: Madam Chair, I do have one.

24 CHAIRPERSON HARTMANN: Yes, please. Commissioner
25 Blough.

1 COMMISSIONER BLOUGH: Is -- are we talking about
2 when the seals are having they're little pups, or are
3 we talking about year-round? Because, I mean -- is it
4 appropriate that we think about closing beach access
5 to everybody while their -- while their pups are
6 there, or is it -- is it some other period of time
7 that I'm not aware of?

8 MR. HOWORTH: The pupping is the most sensitive
9 period, and the applicant has suggested February 1
10 through May 30. That's nice, except Carpinteria Seal
11 Rookery, if they had bothered to check with the Seal
12 Watch folks, I conferred with them at some length, put
13 the closure in from December 1 through May 30 as you
14 have pregnant females that are very near -- near term.
15 We've had Harbor Seal pups born as early as October
16 and November. And it's not uncommon at all to have
17 them in January, February in this area.

18 I also see this dog closure from March
19 through July, which puzzles me, so that, I guess means
20 that the beach is closed from February through July.
21 I don't -- don't quite understand that.

22 CHAIRPERSON HARTMANN: Any other questions.

23 COMMISSIONER BLOUGH: Thank you.

24 CHAIRPERSON HARTMANN: Okay.

25 MR. HOWORTH: Oh, I'm sorry. In terms of -- of

1 year-round, Carpinteria they let the beach open to the
2 public after the Harbor Seal pupping season, which I
3 think realistically is about December 1 to -- to I
4 think it was June 30 or something, I'm -- I'd have to
5 look it up. I have it in my letter, in the
6 Carpinteria area, and it certainly applies to Naples,
7 and the rest of the time the beach is pretty much
8 open, and, yes there are disturbances, yes they are
9 illegal, but it's tolerated.

10 CHAIRPERSON HARTMANN: Thank you.

11 Mr. Keats. And after Mr. Keats will be Mr.
12 Calef.

13 And Mr. Keats has six minutes. Some time
14 has been ceded to him by Mr. Smallwood.

15 MR. KEATS: Madam Chair and Members of the
16 Commission. My name is Bob Keats, and I'm a member of
17 the Surfrider Foundation.

18 I would like to illustrate three of the
19 significant environmental impacts of the proposed
20 Coastal Estate.

21 Surfers have been accessing the surf spots
22 between Eagle Canyon Creek and Naples for over 50
23 years, and to verify that, I've selected pages from a
24 book titled, *The Surfing Guide to Southern California*.
25 As you can see, the cover is well worn because this is

1 my personal copy that I bought in 1966.

2 Next. This is the page that shows the
3 copyright date on the next to last line and the date,
4 it's a little blurry I guess, is 1963.

5 Next. This is the page that describes the
6 surf between Eagle Canyon and Naples as well as
7 displaying a photo of the section of the coast that
8 includes the Paradiso site.

9 Can we go to the next one now. Thanks.
10 Here is a close up of that page. Please note that the
11 text describes what the book calls, "Naples Beach" and
12 it says, "During smaller swells, good peaks break
13 along a mile of coastline located in shore from Naples
14 Reef." That mile of coastline includes the McCaw
15 Property, and the Coastal Estate would be located on
16 top of the circular dirt path just toward the right of
17 the center of the photo. And can we zoom out on this
18 now, Mr. Villalobos?

19 I'll go on. Oh, good. The seal rookery is
20 located on the beach directly below the estate site.
21 In the upper right corner of the photo is the mouth of
22 Eagle Canyon Creek and the surf spot named Driftwood.
23 The next surf spot moving west is Deadman's then Seals
24 and then Naples Point. Please note that the area that
25 has been proposed as the location of the floating

1 easement for the stairway consists mostly of sheer
2 cliffs, which makes it very difficult to build a
3 stairway there and at high tide the ocean reaches the
4 cliff and there is no lateral beach access.

5 Can we go to the next one? Great. This is
6 a photo taken at high tide from the bluff at the
7 eastern end of the property. In the distance you can
8 see the surf at Naples point, and because it's high
9 tide, there is no exposed beach.

10 Next. This is a map from the 2009
11 Environmental Impact Report. Please note on the
12 legend at the bottom the symbol for plugged and
13 abandoned oil wells. There are three of those symbols
14 around the circular dirt path, that is the location of
15 the Coastal Estate site, and, again, the beach
16 directly below the site is the seal haul-out.

17 Next. This is a map of oil facilities from
18 the Arco golf course EIR. Please note the three black
19 dots around the circular path. These are the same
20 three wells, and please note what appears to be a pipe
21 that would be directly under the Coastal Estate.

22 Okay, next. Here is an aerial photo of the
23 Coastal Estate site. This was taken in 1989. One can
24 see again the circular dirt path that is the proposed
25 location for the Coastal Estate. Please note the oil

1 well with a pump on it very close to the proposed
2 home. There is one up above and one below. Nearby is
3 what appears to be an abandoned well. Please note
4 also that this is the main beach access route on the
5 property. Starting at the road people walk past the
6 oil wells to the trail that leads down to the beach,
7 and in the photo one can see a portion of the beach
8 that is used by the seals.

9 Please note the close proximity of the
10 Coastal Estate site to the seal habitat. If the
11 Coastal Estate were built, it would prevent the public
12 from accessing the beach but would still allow
13 domestic animals from the estate, such as dogs, to use
14 the trail to the beach, and it's a well-known fact
15 that dogs will attack seals, and the seal pups that
16 are born here would be particularly vulnerable.

17 In conclusion, although the developer has
18 offered to dedicate easements for beach access, there
19 is currently no identified source of funding to pay
20 for the easements, and the total cost, including the
21 stairway to the beach, is approximately \$2 million.
22 Without an identified source of funds and without a
23 viable location for a stairway to the beach, if this
24 project were approved, there would be no public access
25 to the beach, a significant and unmitigatable impact.

1 Furthermore, the proximity of the proposed
2 estate to the seal rookery and haul-out would result
3 in an additional significant and unmitigatable impact.
4 And given the proximity of the abandoned wells, is it
5 safe to build a house so close to these abandoned oil
6 wells?

7 With all of these significant impacts and
8 issues, this site is too environmentally constrained
9 to be an appropriate location for the proposed estate.

10 Thank you.

11 CHAIRPERSON HARTMANN: Mr. Keats, I have a
12 question for you.

13 How could the conflict between surfers and
14 seals best be handled?

15 MR. KEATS: That's a good question.

16 At the moment, there isn't a conflict
17 between surfers and seals because the seals have
18 existed there for as many decades as surfers have been
19 going there, and the seals appear to be thriving. So
20 at the moment, there doesn't appear to be a conflict.

21 CHAIRPERSON HARTMANN: And can you speculate
22 about the future if there were more surfing pressure
23 or additional pressures on the seals there? How to
24 reduce any pressures that the surfers have?

25 MR. KEATS: You know, I think it's very difficult

1 to speculate, because so much depends on whether or
2 not this project gets approved. I think if the
3 project is not approved, it's going to stay the way it
4 is now.

5 CHAIRPERSON HARTMANN: Commissioner Brown.

6 COMMISSIONER BROWN: Thank you.

7 This is a -- a question I asked Mr.
8 Howorth, and I'm going to ask you, too.

9 Let's say the project is approved, and so
10 access would be restricted, or the unauthorized access
11 would be restricted, and let's say that the trai- --
12 the trails are in with the vertical access to the
13 beach. I presume that surfers would go to the parking
14 lot, park their car, take their surfboard, and walk
15 down to the beach, if it's not pupping season. Right?
16 Is that -- would they -- would they do that?

17 MR. KEATS: I think --

18 COMMISSIONER BROWN: Or would they go --

19 MR. KEATS: -- a lot would depend on what kind of
20 mitigations were imposed. And given Mr. Howorth's
21 discussion --

22 COMMISSIONER BROWN: Well, let's just say that
23 the seals aren't pupping, it's a good surf day, you
24 have access to the beach, anybody can walk down the
25 vertical -- the stairs down to the beach. Do you

1 think -- and do you think surfers -- there would be a
2 lot of surfers going there more than what now -- who
3 use the beach in -- in an unauthorized way?

4 Hard to say, I realize, but I'm trying to
5 get a sense --

6 MR. KEATS: To be honest with you, Commissioner
7 Brown, I think it's so unlikely that those access
8 components would ever be created if the project were
9 approved, because of the cost.

10 COMMISSIONER BROWN: Well that may be, but you --
11 we have to anticipate that that's one outcome or
12 eventuality, so --

13 MR. KEATS: I think it's really hard to
14 speculate.

15 COMMISSIONER BROWN: Okay.

16 MR. KEATS: I think it would depend a lot on what
17 kind of mitigations were added to deal with the seals.

18 COMMISSIONER BROWN: Okay. So can -- can you
19 describe to me the times you surfed there, are there a
20 lot of surfers? Are there one surfer? Is there a
21 hundred? What's -- what is --

22 MR. KEATS: My personal use?

23 COMMISSIONER BROWN: Yes.

24 MR. KEATS: And keep in mind, since 1984 I've
25 been disabled, so I haven't been there.

1 COMMISSIONER BROWN: So, that's fine. So when
2 you were there, I suspect that --

3 MR. KEATS: When I was there, I frequently surfed
4 alone. I was often the only person within view in
5 either direction.

6 COMMISSIONER BROWN: Okay.

7 And I presume that surfing -- your
8 Surfrider buddies, there's more surfers today than
9 there were then?

10 MR. KEATS: I think there are probably more
11 people surfing Naples Point.

12 COMMISSIONER BROWN: Okay.

13 MR. KEATS: I don't know if more people surf in
14 the area near the seal rookery.

15 COMMISSIONER BROWN: Okay. All right. Thank
16 you.

17 CHAIRPERSON HARTMANN: Thank you very much.

18 Mr. Calef gets six minutes. Kevin Snow
19 ceded his time, and then Mr. Cole will be next.

20 MR. CALEF: Good afternoon. My name is Otis
21 Calef. I'm representing the CRAHTAC, the County
22 Riding and Hiking Trails Advisory Committee.

23 This committee was founded about 40 years
24 ago. There are four appointees from each district,
25 and we give advice and counsel on trails.

1 Fortunately we had a meeting on Monday,
2 this past Monday.

3 The applicant's proposals were very
4 favorably -- or the applicant's offerings for
5 dedicated easements was very favorably looked upon by
6 -- by CRAHTAC. There's parking. There's the floating
7 easement of the California Coastal Trail along the
8 bluffs -- actually -- that's actually -- I think it's
9 probably intended to be an ambulatory easement that
10 allows for bluff-top retreat. And this is a wonderful
11 thing. And then there's the vertical easement from
12 the parking lot to the California Coastal Trail. And
13 finally, the floating vertical easement to the beach.

14 And CRAHTAC takes no position on the
15 development -- development itself. We're only
16 interested in trails. So let's look at the offers to
17 dedicate.

18 First the trail from the parking area to
19 the California Coastal Trail.

20 CHAIRPERSON HARTMANN: Ms. -- Ms. Lieu, could you
21 put up the map?

22 MR. CALEF: Okay.

23 CHAIRPERSON HARTMANN: Keep talking though,
24 you're time's going.

25 MR. CALEF: Okay. Okay.

1 We've gone over this before, so the -- it
2 necessarily crosses the railroad tracks, and it's well
3 established that I think there's going to have to be a
4 bridge, and is the bridge going to cost \$600,000 or is
5 it going to cost a million dollars, or 1.2? We're not
6 sure. Just permitting alone is going to be 2 or
7 \$300,000. The existing bridge clearly doesn't --
8 well, anyhow, yeah. We need a new bridge.

9 The easement may not be exercised because
10 of the expense for a long time, and CEQA -- the CEQA
11 standard is that a mitigation like this railroad
12 bridge must be reali- -- realized within the
13 reasonably foreseeable future. The mitigation of this
14 easement fails the test of a reasonably foreseeable
15 timeline.

16 Let's look at the floating easement to the
17 beach. What that means, I was told when we first went
18 out there and looked at it, anywhere you want. Okay.
19 It's well established there's a cliff along the entire
20 property. There are only two plausible gullies for
21 the trail at the west end. One of those goes through
22 the home site and the other is adjacent to that. Both
23 of them -- those come out in -- at the seal haul-out
24 area and obviously, for environmental reasons, they
25 can't -- they can't be used.

1 The proposed stairway that has been
2 proposed for many years at the east end, it's an
3 unacceptable visual impact, it's out of character with
4 the area, and I don't -- I can't imagine that such a
5 structure would ever be allowed to be built. It would
6 be extremely expensive. Now maybe we're getting this
7 whole project up to 2 or \$3 million for trail
8 advocates. There's no beach protection, and storm --
9 the first storm would probably just damage it.

10 So in short, there is no possibility of
11 beach access from this property, and we should drop
12 the fantasy of this as qualified mitigation. Furth- -
13 - and that's further grounds for rejection of the EIR.
14 This shoddy kind of analysis would make a horrible
15 precedent as we proceed in our efforts to acquire more
16 coastal trail out further west along the coast.

17 CRAHTAC recommends that the County work
18 with the applicant on an offsite replacement for this
19 beach access. Look at Tomate Canyon West, 1500 feet
20 west of the currently owned -- as a current popular
21 access point. That's on the applicant-owned Naples
22 lots. That is the preferred location in the Draft
23 Gaviota Plan. It was a preferred access and approved
24 by the County supervisors for the Arco Links Project.
25 Incidentally on that, the loss of historic beach

1 access was the defining impact for that project.

2 So last Monday, CRAHTAC was unanimous in
3 its recommendation to reject this EIR.

4 Thank you.

5 CHAIRPERSON HARTMANN: Thank you.

6 Mr. Cole and then Mr. Kram, and Mr. Kram,
7 Sandy Lejeune has ceded time for you.

8 MR. COLE: Madam Chair, Commissioners, I think I
9 have six minutes.

10 CHAIRPERSON HARTMANN: Oh, I'm sorry. Mr. Cole
11 first is -- Joe Cole is --

12 MR. COLE: This is Joe Cole.

13 CHAIRPERSON HARTMANN: Oh, I'm sorry. You are --

14 MR. COLE: Yeah, I'm saying I -- I think I have
15 six minutes.

16 CHAIRPERSON HARTMANN: You have three minutes
17 unless someone ceded their time. I don't have --
18 okay. You didn't -- would you turn in a speaker slip?

19 UNIDENTIFIED FEMALE: I did.

20 CHAIRPERSON HARTMANN: Okay. They aren't hooked
21 together. Just give me your name, please.

22 UNIDENTIFIED FEMALE: (Inaudible).

23 CHAIRPERSON HARTMANN: Thank you.

24 Okay. Six minutes.

25 MR. COLE: Yes. My name is Joe Cole. I am the

1 lawyer for the adjacent property that's between the
2 Bacara and the applicant's property.

3 The water line that we've been talking
4 about all afternoon is on our property. In 2009 an
5 easement was signed that's in your materials. When
6 you ask about maintenance, it's in the easement.
7 Forty-eight hours' notice, 8 to 5.

8 The -- in 2010 there were two meetings on
9 the property, and we weren't invited. We didn't know
10 about it. We didn't attend. It was the County,
11 Native Americans, applicant; and what they focused on
12 was what's called SBA 76, which is the Chumash-built
13 village.

14 The -- at that meeting is when the genesis
15 came to call it a Class 1 impact for the reasons that
16 the archaeologist, Gerber, pointed out.

17 The -- the problem that I've heard all
18 afternoon is they talk about the water line. You look
19 at the conditions. You look at the findings. You
20 look at the staff report. None of that is binding on
21 us.

22 You talk as if the water line was on their
23 property, and it might be, but I mean they have
24 partially the water line on their property, but the
25 Chumash village, SBA 76, that's on our property. So

1 it's Contracts 101 that -- everything we're talking
2 about here isn't going to bind us when Ms. Lieu, who I
3 -- has done a fantastic job, when she talks about
4 putting a -- a notation on the plan to warn, you know,
5 future applicants, that doesn't bind our property.

6 This issue that we talked about today, we
7 have this agreement to -- to start 200 feet out, test
8 through the water line until you get to where there's
9 arch- -- archaeological artifacts and then back out
10 100 feet. That's not in place.

11 We have a good relationship with the
12 applicant. We have a good relationship with the
13 County. Everybody's working hard, and they're working
14 cooperatively.

15 We met on July 5 with the County and with
16 the applicant, and we -- we -- we had a follow up
17 meeting on July 15 with the Native American community.
18 One person showed up, and we listened to him very
19 carefully. So we discussed this: it's never been put
20 into place. What we've always talked about legally is
21 having an amendment to the easement. This needs to be
22 amended before all of those pages that we've read
23 about are actually binding on us. So I wanted to make
24 that point.

25 The second point applies to the stairs that

1 we have been talking about. So -- this is really an
2 oversimplification, but we own half of Eagle Canyon,
3 half of the creek, Driftwood, the surf spot. We own
4 half of that basically. Because the property line
5 right there.

6 As you all know from everything you've
7 read, there are a lot of biological resources there--
8 red-legged frog, tidewater goby, pond turtle. We've
9 met with the applicant out there at the site. We've
10 written letters to you. We've talked to the staff.
11 We haven't made a lot of progress. What we would like
12 to propose is that instead -- instead of seven
13 floating easements, you have six, and you don't have
14 the stairs, which are along a sheer cliff anyway, drop
15 down into the sensitive habitat.

16 We're willing to work with whomever to try
17 to bypass that and to mitigate those problems, but the
18 -- the mitigations you have before you right now
19 aren't adequate. It talks about having an orange
20 fence during construction of the staircase. It talks
21 about after the staircase is in having something a
22 little bit more than an orange fence, but not much
23 more.

24 Thank you.

25 CHAIRPERSON HARTMANN: Thank you.

1 Commissioner Cooney has a question for you,
2 Mr. Cole, if you'd wait.

3 MR. COLE: Sure.

4 COMMISSIONER COONEY: So at the risk of
5 overstating it, you've rais- -- raised an issue that
6 at least I wasn't prepared to encounter today, but it
7 -- the easement that has been presented to us covers a
8 pipeline that goes from your client's property to the
9 location of these two new homes.

10 MR. COLE: No. It goes from the property line
11 between the Bacara and our property to the property
12 line between the applicant's property and our
13 property. So it goes just along our property. The
14 easement -- they wouldn't need an easement on their
15 land.

16 COMMISSIONER COONEY: Right.

17 So the part that's on your land, how is
18 that impacted by the project?

19 MR. COLE: Well, we have the -- it goes through a
20 cultural resource, and the -- it's a Class 1 resource,
21 and part of the line will have to be built above the
22 SBA 76. The easement is 20 feet wide. The testimony
23 earlier that it's 35 and now it's 20, well they -- it
24 couldn't go beyond 20 anyway. It's basically a
25 standard underground easement, and we're discussing

1 having part of it go above ground to protect the
2 archaeological resources.

3 CHAIRPERSON HARTMANN: So currently it's just
4 underground?

5 MR. COLE: It's -- well the easement speaks for
6 itself. It's in your materials, but --

7 CHAIRPERSON HARTMANN: Okay.

8 MR. COLE: -- it's primarily an underground
9 easement.

10 CHAIRPERSON HARTMANN: Could you just show us
11 where the site is. Do you have a pointer? You're not
12 allowed to leave, but is there a pointer -- can --
13 okay. Help -- help me understand.

14 MS. BLACK: Madam Chair. I would not recommend
15 that you ask to get Mr. Cole to point out the
16 archaeological site. Are you just asking for the
17 line? The location of the line through his property?

18 CHAIRPERSON HARTMANN: Yes. Yes.

19 MR. COLE: The property?

20 MS. BLACK: The -- the --

21 CHAIRPERSON HARTMANN: The -- the --

22 MS. BLACK: -- location of the easement --

23 CHAIRPERSON HARTMANN: -- easement.

24 MS. BLACK: -- through the property.

25 MR. COLE: Oh. It just goes right along the

1 railroad tracks on the south side.

2 CHAIRPERSON HARTMANN: Okay. Thank you.

3 MR. COLE: It's -- it's -- it's in your
4 materials. You have the easement and there's an
5 exhibit that shows exactly where it is. It
6 actually -- it's a little bit off of the property line
7 at each end. Off of the railroad tracks.

8 CHAIRPERSON HARTMANN: Commissioner Brown.

9 COMMISSIONER BROWN: Mr. Cole, you just said that
10 it goes along the railroad tracks. On the map I have,
11 it's -- I don't know, it's a little distance from the
12 railroad tracks. I'm not -- maybe that's what you
13 meant?

14 MR. COLE: Well --

15 COMMISSIONER BROWN: It's --

16 MR. COLE: -- if you look at --

17 COMMISSIONER BROWN: -- a hundred feet or so.

18 MR. COLE: I don't know about your map, but I
19 have Exhibit C-1 of the actual easement right here,
20 and it shows, with a dotted line, exactly where it
21 goes. So I can hand this to you.

22 COMMISSIONER BROWN: Okay.

23 MR. COLE: If I could approach the bench?

24 CHAIRPERSON HARTMANN: Sure.

25 Thank you very much for being here today

1 and informing us.

2 Dr. Kram. And you have six minutes. Sandy
3 Lejeune has ceded some time. And next will be Ben
4 Werner.

5 MR. KRAM: Thank you.

6 Your Honorable Commissioners, my name is
7 Mark Kram, and I'm a PhD hydro geologist, geochemist
8 with more than 30 years of professional experience.
9 I've developed technologies and written national
10 standards for high-resolution expedited site
11 assessment and remediation and am the recipient of the
12 National Groundwater Association's technology award.
13 I've also taught graduate-level university courses and
14 EPA-sponsored workshops on environmental site
15 characterization.

16 I've reviewed the SMU #297 report dated
17 July 13, 2013 and have several concerns, but in the
18 interest of time will address two that I deem most
19 important.

20 The field efforts performed were, in my
21 mind, insufficient. The applicant did not assess the
22 potential for dynamic vapor intrusion which has been
23 proven to be prevalent around oil and gas wells. In
24 fact, explosions in developments not far from here
25 have been attributed to vapors emitted through

1 abandoned oil wells. As such, the city of Los Angeles
2 established a specific high potential methane zone in
3 their building code whereby structures in the vicinity
4 of abandoned wells need to meet very specific
5 engineering requirements.

6 Secondly, the applicant did not collect any
7 groundwater samples, so how can conclusions about
8 related mitigation be drawn from this?

9 Perhaps most importantly, soil sampling
10 methods employed were not vertically continuous. The
11 applicant's representatives collected samples at five-
12 foot vertical intervals. This approach has been
13 demonstrated to be inadequate for site
14 characterization. EPA states, and I quote,
15 "Heterogeneities that control contaminant transport
16 are on the centimeter to meter scale, and these
17 heterogeneities occur at scales that are often too
18 small for conventional investigation strategies and
19 technologies to adequately characterize."

20 On August 2, 2013, in response to the
21 County's request, the consultant submitted revised
22 figures referred to as Figures 2 and 3, and I have
23 those with me if you want to see them, that included
24 cross sections depicting contaminated soil regions
25 with question marks, clearly demonstrating that the

1 consultants remain uncertain about the vertical and
2 lateral extent of contamination. As such, the depth
3 and distribution of contamination has not been
4 completely delineated. Contaminated groundwater may
5 be present that would require mitigation and potential
6 risks to inhabitants are possible. As such,
7 additional mitigation implications may need to be
8 considered in the EIR.

9 Number two, the setbacks. The question
10 remains: What is an appropriate development setback
11 relative to the abandoned wells? Ten-foot and even
12 thirty-foot setbacks have been proposed, but these are
13 far less than employed in comparable circumstances.
14 Santa Barbara County requires at least 300 feet of
15 setback for exploratory wells and in Ventura minimum
16 setback for existing wells is 500 feet.

17 In the Phase 1 assessment performed for the
18 Santa Barbara Ranch, the consultant states that well
19 abandoned procedures were far less stringent than
20 today and recommends a setback sufficient to allow for
21 emergency response crews to ensure no vertical
22 migration of gas.

23 If an emergency occurs, even 30 feet would
24 not be appropriate as crews need to be able to
25 maintain a safe distance from the well while actively

1 responding to an emergency. Furthermore, since the
2 wells are adjacent to steep slopes, response crews and
3 equipment will need to be positioned along the Mesa
4 side of the wells thereby requiring additional
5 clearance. The proposed 10 to 30 feet is inadequate
6 to separate people and structures from these hazardous
7 areas.

8 Thank you for your consideration.

9 CHAIRPERSON HARTMANN: Commissioner Cooney, your
10 light is on. Did you have a question?

11 COMMISSIONER COONEY: I didn't. Sorry.

12 CHAIRPERSON HARTMANN: You do or don't?

13 COMMISSIONER COONEY: I do not.

14 CHAIRPERSON HARTMANN: Okay.

15 I -- are you -- are you representing
16 yourself or are you representing someone -- another
17 organization today?

18 MR. KRAM: Today I'm representing myself.

19 CHAIRPERSON HARTMANN: Did you hear what
20 the -- what the applicant said about groundwater?
21 That there is none within an area that would be
22 relevant for testing?

23 MR. KRAM: I did hear what the applicant has
24 mentioned, but that's speculation because we don't
25 know the depth of the groundwater. We don't know the

1 depth of the contamination. We do know that we're --
2 the activities for oil drilling and those -- those
3 related activities occurred. They're adjacent to a
4 ravine that's very steep, so the groundwater in that
5 ravine is probably much less deep; but until you can
6 really go with continuous monitoring, continuous --
7 vertically continuous, and there are many technologies
8 that are available right now that have been
9 demonstrated to show that the technology that was
10 applied was inadequate, you can't tell how deep the --
11 the -- the vertical migration is.

12 In fact, the same tooling that was used to
13 collect the samples can be used to advance these tools
14 that have been in existence for more than 20 years.

15 CHAIRPERSON HARTMANN: And -- before Commissioner
16 Brown, I can see she's on her light, but -- the three-
17 cap method that is now a newer, more reliable --
18 you're not persuaded that that's adequate?

19 MR. KRAM: No I'm not. Those concrete -- you
20 have -- this is a tectonic region that's very active.
21 We had an earthquake just a couple of months ago here.
22 Those aren't monitored. The only way that you can
23 really tell is with empirical evidence.

24 I -- I've submitted in the past that we
25 should be doing some methane monitoring on a

1 continuous basis. In fact, I've demonstrated, and I
2 can send you some of my publications as well as EPA
3 recently validated this and they're revamping vapor
4 intrusion standards and guidance right now, because
5 we're finding that when you get a change in barometric
6 pressure you actually get the air -- the earth
7 essentially breathes in and out, and during a low
8 pressure like a storm coming in like today, you
9 actually have an exhalation, if you will, where you
10 can actually have this methane come into the
11 resident's place.

12 CHAIRPERSON HARTMANN: And then what, it -- the
13 risk is it would blow up or --

14 MR. KRAM: Well, it depends on the conditions,
15 but it's quite possible. I've worked on several sites
16 where homes have exploded.

17 COMMISSIONER BROWN: Well, this is a question for
18 you, Madam Chair. Are you going to have staff respond
19 now or later to public comment or --

20 CHAIRPERSON HARTMANN: I think we're going to
21 keep marching through --

22 COMMISSIONER BROWN: Okay --

23 CHAIRPERSON HARTMANN: -- public comment --

24 COMMISSIONER BROWN: -- all right.

25 CHAIRPERSON HARTMANN: -- and then we -- we

1 definitely will have staff respond, of course.

2 MR. KRAM: Okay.

3 CHAIRPERSON HARTMANN: And I -- I think that's
4 it. Thank you.

5 MR. KRAM: Okay. Thank you.

6 CHAIRPERSON HARTMANN: So, Mr. Werner and then
7 Mr. Ferry. Three minutes each.

8 MR. WERNER: Thank you. Thank you, Chair and
9 Commissioners.

10 I'm taking the context of this item and
11 project to bring to your attention a sustainable
12 living resource ordinance in draft form-- hopefully
13 it's been circulated to you-- and the purpose of the
14 sustainable living resource ordinance, and I'll
15 clarify a little more about the specific context of
16 this project at the end of my comment, is that it
17 could support the creation and demonstration of
18 projects with innovative ecological building materials
19 and methods.

20 It could support performance-based zoning
21 that may be more effective in achieving the intent of
22 our precious agricultural zones in the county, in the
23 community, and provide new research opportunities for
24 local faculty and students.

25 Thinking hypothetically about this

1 particular project, the ordinance, the Sustainable
2 Living Resource Ordinance, might support, for example,
3 instead of a very large estate it could support an
4 agricultural village of -- of small individual units
5 without increasing residential square footage and yet
6 support leading-edge agricultural functionality,
7 natural resources restoration, and public access and
8 education built into the core function of the project
9 rather than being at odds with the exclusive
10 residential function of the project.

11 Now obviously this would have a lot to do
12 with the demographic of people who would steward the
13 project, but it would also be a core requirement of
14 the ordinance. Significant research has gone into
15 this ordinance, and you'll see that, it's in version
16 11, which reflects a substantial amount of community
17 outreach and feedback, and there's a similar ordinance
18 as per the question of precedent for something like
19 this that was passed in Seattle, King County, in the
20 state of Washington to support what's known as the
21 Living Building Challenge specifically related to
22 building codes.

23 In my circulation of this ordinance in the
24 community, I found support from folks who -- who are
25 used to lobbing rocks at each other from across the

1 fence, environmental advocates, architects, and
2 builders and also students and faculty.

3 Currently, Goleta City Council is now
4 familiar with this and has directed their staff to
5 return with recommendations, and although the
6 discussion on this is farther ahead with Goleta, this
7 document was -- was drafted very much with the County
8 in mind and even this project and similar projects in
9 mind.

10 I just want to say something kind of in a
11 broader sense about the -- the -- the philosophical
12 intent of this. So much of the debate which we're
13 hear- -- hearing as in the context of development,
14 which has a negative impact on our natural resources
15 and preserving our natural resources, and quite
16 frankly, if these are our only two options, we're in
17 quite a bit of trouble as a -- as a society.

18 And so, what this stands for, this is a
19 third option which is re-establishing ourselves as,
20 practically speaking, an indigenous culture with --
21 which begins with recognizing the positive impacts
22 that we can have, and this ordinance would -- would
23 create some of the regulatory enablers for this to
24 happen.

25 So I hope this is just the beginning of a

1 discussion. I appreciate the context of this.

2 Thank you.

3 CHAIRPERSON HARTMANN: Thank you.

4 COMMISSIONER FERINI: Madam Chair?

5 CHAIRPERSON HARTMANN: Yes? Oh, yes. Sorry.

6 Commissioner Blough or -- Commissioner Ferini.

7 COMMISSIONER FERINI: Yeah, just a -- just a
8 little bit of a FYI. At ten minutes to 5:00, if this
9 meeting is still going, we need to take a small break
10 because they're throwing us out of this room into the
11 conference room, so I just need -- we need a break at
12 ten minutes to 5:00 if you continue on beyond that
13 time.

14 CHAIRPERSON HARTMANN: Thank you.

15 Mr. Ferry and then Mr. Morey. Three
16 minutes each.

17 MR. FERRY: Good aft- -- Good afternoon, Chair
18 Hartmann and Commissioners. I'm Steve Ferry, Co-
19 President of the Santa Barbara Audubon Society.

20 I'm here today to urge you to deny this
21 project primarily because of its impact on the white-
22 tailed kite.

23 Kites have used the property repeatedly for
24 many years. They have been present during the
25 breeding season for at least 8 years between 2002 and

1 2013. As recently as last weekend, four kites were
2 observed on the property.

3 As you know, the white-tailed kite is
4 protected by County policy. The County's Coastal Land
5 Use Plan Policy 926 states that there shall be no
6 development, including agricultural development, i.e.,
7 structures or roads within the area used for nesting
8 and roosting. This project would clearly violate that
9 policy. The project places a large house virtually on
10 top of a nest site. This is unacceptable.

11 This proj- -- project will definitely
12 negatively impact the white-tailed kite. I've
13 observed white-tailed kites many times in the wild.
14 These birds, especially those found far from suburban
15 areas, are sensitive to human disturbance. I have no
16 doubt that having a large house within 75 to 100 feet
17 of their nest will drive them away from the nesting
18 tree that they used this year.

19 There is no justification in the Draft EIR
20 for the small setbacks proposed. Other literature and
21 Santa Barbara Audubon field observations suggest that
22 setbacks should be several times what is proposed. In
23 fact, John Storrer, the biologist hired by the County,
24 stated in a letter to County staff on July 22 of this
25 year that on this specific site a setback less than

1 100 feet "in any serious discussion would be
2 indefensible."

3 Despite what it says in the Draft EIR,
4 white-tailed kites do sometimes use the same nest and
5 nesting areas in consecutive years. We have observed
6 this at various places including Lake Los Carneros.
7 Therefore, the nest site at the proposed location of
8 the large house is important to protect.

9 The Draft EIR proposed habitat restoration
10 on the site as mitigation. This is inadequate. It is
11 very uncertain whether habitat restor- -- restoration
12 would also restore the kite's prey base. Habitat in
13 an area in Goleta Slough that kites use for foraging
14 was restored in 2006. Kites have not used it since.

15 The very fact that habitat restoration is
16 being done will likely negatively impact the kites
17 small mammal prey base. This is almost certain to
18 happen in the short run due to human restoration and
19 maintenance activity. Kites cannot survive without
20 their food source.

21 In summary, this project violates County
22 policy regarding white-tailed kites, and the proposed
23 mitigations are inadequate. The project should be
24 denied.

25 Thank you.

1 CHAIRPERSON HARTMANN: Thank you.

2 COMMISSIONER BROWN: I just have one question for
3 Steve.

4 CHAIRPERSON HARTMANN: Yes.

5 COMMISSIONER BROWN: Do you know what -- what
6 failed at the airport in that restoration?

7 MR. FERRY: Well, I'd have to speculate that it
8 was lack of prey. I'm going to defer to Mike -- Mark
9 Holmgren --

10 COMMISSIONER BROWN: Okay. All right.

11 MR. FERRY: -- I'm sure he could answer that.

12 COMMISSIONER BROWN: Thank you.

13 CHAIRPERSON HARTMANN: Mr. Morey and then -- and
14 I thank you -- Deane Plaister. I thank you for
15 helping me pronounce this.

16 MR. MOREY: Hi. My name's Mark Morey. I'm the
17 current Chair of the Santa Barbara Surfrider Chapter
18 representing the interest of thousands of local beach
19 users.

20 I view this project as a target-rich
21 environment in that there are so many negative impacts
22 to address, from access restriction, biological marine
23 impacts, and general degradation of environmental,
24 cultural, and biological assets. But these aren't
25 just my opinion.

1 The National Park Service established that
2 this region, as part of the Gaviota Coast, qualifies
3 for inclusion in the National Park System as you're
4 surely aware. Any development, and this is the -- the
5 booklet of that -- that study. Any development of
6 this size on this coast thumbs its nose at this
7 designation, the public, and future generations.

8 I would like to focus, though, on access
9 because a lot of the other issues have been covered in
10 detail. I've been traversing this land unmolested for
11 22 years. I have -- thousands of others have been
12 doing the same, if not for longer which clearly sounds
13 like a case for prescriptive rights.

14 The proposed access points are laughable at
15 a minimum and at most a potential liability, okay --
16 and -- and you can pull up the map which shows the
17 different numbered access points. But as someone
18 who's intimately familiar with that stretch of coast,
19 the access -- the current popular trail, where it is -
20 - where it is it's there for a reason. It works at
21 any tide. It avoids the seals. It's easy and doesn't
22 require scaling a cliff, okay.

23 All proposed access dedications are just
24 that, proposed and dedicated, but not cheap, safe,
25 easy, and all negatively impact the seal haul-out.

1 And that's because if the place where you go down is
2 to the west and everywhere you surf is to the west of
3 that access point, so it's all essentially upstream.

4 The seals, where they haul out, are to the
5 east of you, and I've been going there at -- in super
6 early in the morning and to the evening, and it's
7 never been a problem. It's sort of like this
8 coexistence that we have, but all of the access points
9 either dump you directly onto the seals, which are
10 actually to the east about 75 feet from -- from the
11 main access to -- all the other points are to the
12 east, which then would force you -- if this is a
13 necessity, which we've seen it is, to walk up the
14 coast and walk right through the seal rookery, okay,
15 as opposed to around it.

16 And so -- and also, this is completely
17 impassable at high tide. You put a staircase down
18 there, we've seen stairs in IV, that's where I go at
19 high tide to watch the waves smash them to pieces,
20 okay, that's what will happen to that stair -- that
21 stairwell. All right. If it ever gets -- finds some
22 money to be built.

23 And so -- and also by restricting -- I see
24 this again to the pupping season, now all of a sudden
25 the applicant is caring about seals, and so the

1 loophole, obviously is, "Well, we'll just say -- we'll
2 close the access." And it happens to be essentially
3 the -- every month where there is a possibility of
4 waves on that beach, okay, so --

5 CHAIRPERSON HARTMANN: Okay.

6 MR. MOREY: -- you're (inaudible).

7 CHAIRPERSON HARTMANN: That is your time. Thank
8 you.

9 MR. MOREY: Okay. Thank you.

10 CHAIRPERSON HARTMANN: That was -- that was very
11 informative to understand where the surfers go.

12 And Mr. Plaister and then Mr. Palley is
13 next -- Pailey or Palley.

14 MR. PLAISTER: Members of the Commission. My
15 name is Deane Plaister, and I'm on the Executive Board
16 of Surfrider Santa Barbara.

17 Mark, our new Chair, pretty much stole my
18 thunder. He went over my concerns that this access is
19 contingent upon County funds which are slim at this
20 point and for the foreseeable future, so I don't see
21 any real public access happening, and the fact that
22 the house of all the places on the entire property to
23 be sited where it is, on top of the seal rookery is
24 just madness.

25 It's going to be -- there's going to be

1 disturbance throughout time. You can tell, though,
2 the purchasers, "Oh, be nice to the seals," but
3 they're going to have a dog, they're going to have
4 kids that go running down the trail making noise or
5 whatever. It's not -- nobody is going to be out there
6 policing it 24/7. So there's going to be too much
7 activity in the neighborhood of those seals.

8 I don't think that's a good place for
9 the -- for it at all, and, as Mark pointed out, this
10 is part of the Gaviota Coast. We shouldn't be
11 building houses out there at all.

12 Thank you.

13 CHAIRPERSON HARTMANN: Thank you.

14 Mr. Palley and then Mr. Cisneros.

15 MR. PALLEY: Chairwoman Hartmann, Commissioners,
16 I'm Ken Palley. I'm also on the Executive Committee
17 of Surfrider Foundation.

18 In the early 90s I was first introduced to
19 this property, and -- and -- and in support of what
20 Otis Calef has said, what we -- when I used to go
21 there -- when I first went there, it was at what I
22 think is now referred as Tomate Canyon West.

23 There was actually an old Caltrans sign, an
24 official Cal- -- I believe it was a Caltrans sign that
25 said, "Danger, strong currents," or "Danger high

1 surf." Affixed to it was a rope where we'd lower
2 ourselves down. So that is -- that's the history.

3 I went there for years and years and years,
4 and we were "trespassing." Nobody tried to stop us,
5 so I believe that there is a prescriptive right that
6 has accrued to us as a result.

7 So I guess my main point is that any
8 easement that -- that has -- that is granted, it
9 really should be at Tomate Canyon West.

10 Number two, I -- I haven't noticed that -- any
11 mention today made of red-legged frogs. That was one
12 of the key environmental impacts, one of the key hab-
13 -- habitat destruction of the red-legged frogs that
14 stopped the Arco golf course. So to -- to the extent
15 that the EIR has not adequately addressed that or if
16 it has then I apologize, but I -- you know, I would
17 urge that the commissioners review that very carefully
18 to make sure that the issue of red-legged frogs has
19 been addressed.

20 And the last thing I would like to say is
21 regarding the seals themselves. Tomate Canyon West is
22 far enough away from the seals. That all the -- a lot
23 of the concerns that have been raised would be --
24 would be ameliorated completely, in fact, eliminated.
25 The current location right below where the

1 house -- where the Coastal house is going to be built
2 does have some potential impacts on the seals, but
3 Tomate Canyon West does not.

4 So, thank you very much.

5 CHAIRPERSON HARTMANN: Thank you.

6 Mr. Cisneros.

7 Okay. Ana Citrin. And I believe that
8 Mariah Moon is ceding time to you, so you get six
9 minutes.

10 Ms. CITRIN: Good afternoon, Chair Hartmann and
11 Commissioners, Ana Citrin representing the Gaviota
12 Coast Conservancy.

13 A couple of preliminary things. Mariah,
14 since she was kind enough to donate her time to me,
15 which I really appreciate, wanted me to note her
16 concern about visibility from the ocean when the seals
17 are approaching the beach. And Mr. Howorth spoke
18 about that, and that's a real concern that she has,
19 particularly because the EIR has not simulated any
20 views from the ocean, and it is currently unknown what
21 types of impacts that would have.

22 Secondly, you received a letter from the
23 Coastal Commission, which I think helps clarify an
24 issue that's been sort of in the background with
25 respect to this project, and that is: Why is it that

1 we treat trails and homes differently? Why is it that
2 trails need to be accommodated and homes do not?

3 Now aside from the prescriptive easement
4 issue, which the Surfrider folks just covered, which
5 is certainly a consideration, there's also a provision
6 of the Coastal Act that applies here. And I'll quote
7 from the letter, "Section 30240 of the Coastal Act
8 restricts development within ESHA to only those uses
9 that are dependent on the resource. Public trails are
10 recognized by the Commission as a resource dependent
11 use, and as such, may be located within ESHA provided
12 they are sited and designed to prevent impacts which
13 would significantly degrade those areas and are
14 compatible with the continuance of those habitat
15 areas." Coastal Commission staff goes on to express
16 concern about trail closure.

17 So just -- now to dive into the specifics
18 with regard to this project. The applicant is asking
19 you to take a huge gamble. They're asking you to
20 approve a project located immediately above the Naples
21 Seal Rookery. When the EIR barely touched the issue
22 and a marine mammal expert determined that
23 construction and occupation of the Ocean Estate in
24 such close proximity to the rookery will present
25 impacts that could affect haul-out patterns.

1 They're asking you to approve a project,
2 and in the words of the County's own biological
3 consultant would sacrifice a white-tailed kite nesting
4 tree that supported an extraordinary six fledgling
5 nest with the hope that habitat restoration will
6 someday, somehow compensate for this loss, although a
7 local kite expert determined that restoration is
8 unlikely to help kites and may do more harm than good.

9 They're asking you to approve a project
10 that may expose future residents to health risks from
11 unknown -- from an unknown extent of hazardous soil
12 contamination where an ex- -- you just heard from an
13 expert that has identified gaps in the data, potential
14 risks to human health, potential explosions of
15 structures.

16 The applicant is asking you to approve a
17 project that would eliminate well established public
18 beach- -- beach access on the hope that maybe someday
19 access might be restored for part of the year further
20 down coast, and as you heard from Mr. Cole and as you
21 heard from -- from other folks, there are serious
22 issues with access at Eagle Canyon, and that is really
23 the only realistic option -- the most realistic option
24 included in this project.

25 To convince you that this gamble is worth

1 taking, the applicant has maintained that there is no
2 other location for the Ocean Estate that would reduce
3 impacts and that no feasible offsite alternative
4 exists.

5 The applicant has maintained that an
6 offsite alternative that is under its ownership and
7 control is infeasible because they have a right to
8 build ten additional homes there; but, in fact, as I
9 describe in our letter and is included in the easement
10 that Mr. Cole described earlier, the applicant signed
11 away any right to these additional ten homes when they
12 entered a covenant with their neighbor to the east
13 restricting development on their entire holding. And
14 this is made very clear by the easement agreement.

15 I listed all of the APN numbers that are
16 covered by this covenant in my letter, and it makes
17 abundantly clear that the -- the notion that ten homes
18 will be built on the Naples lots is pure fiction.

19 Accordingly, this offsite alternative is
20 feasible, and it offers significant environmental
21 advantages, including providing a less impactful
22 location for the Ocean Estate and a beach access point
23 that would allow the public to access the beach and
24 surf west of the seal rookery. This is the Tomate
25 West Canyon that Mr. Palley discussed that was

1 included in the Draft Gaviota Coast Plan, was
2 recognized by the Coastal Commission and the County as
3 the only other option besides Eagle Canyon, and it was
4 also granted as an easement for the golf course
5 project.

6 So where an alternative is feasible and
7 capable of substantially reducing the impacts of a
8 project, CEQA precludes the County from approving the
9 project as proposed.

10 So given these substantial flaws in this
11 project and its EIR that have been raised by numerous
12 experts here today, its recognized Class 1 impacts to
13 cultural resources and to visual resources and the
14 many impacts that should have been classified as Class
15 1, but inexplicably were not, the feasibility of the
16 offsite alternative all- -- for all of these reasons,
17 we are urging you to deny this project.

18 And I think it's worth noting, I have been
19 participating in every public hearing on this project,
20 including the EIR scoping, all the way back. I have
21 not heard one member of the public speak in support of
22 this project, and I think that speaks volumes. We
23 don't want this, so please deny this project.

24 Thank you.

25 CHAIRPERSON HARTMANN: Thank you.

1 As everyone heard, we need to take a little
2 break because of our commissioners in North County,
3 their current room is reserved for another purpose,
4 and they need to change location.

5 I have five more speaker slips, each at
6 three minutes, so what I'd like to do is take a -- you
7 know, come back at quarter till, a seven, eight
8 minutes break, and we'll certainly finish those --
9 those speakers when we come back.

10 Thank you.

11 (Pause in proceedings.)

12 CHAIRPERSON HARTMANN: If you would, please, take
13 your seats.

14 We're reconvening the special hearing of
15 the Santa Barbara County Planning Commission of
16 November 20, 2013. We're taking public comment on the
17 Paradiso Project. We have five three-minute comments
18 still to come, and then some people, at least one
19 commissioner has to leave, and so what we'd like to do
20 for today, I think, is go through public comment
21 and -- and take the time for the applicant to respond
22 to what they've heard, and then I think we're going to
23 have to continue the hearing.

24 So I'll let that sit there in people's
25 minds. We'll come back to that, but Commissioner

1 Brown has to -- I've -- I've twisted her arm to stay
2 beyond 5:00.

3 So with that, Mr. Chytilo and Mr. Martin.
4 All right, we're down to 12 minutes or so. Mr. Martin
5 and Ms. Hillyard. Mr. -- okay -- did --

6 (Inaudible talking)

7 And you are? Mr. Wilkinson? Oh, I'm
8 sorry, Mark Holmgren. Please, yes. Yes.

9 MR. HOLMGREN: Commissioners, thank you so much.
10 Nice to see you again, Mr. Cooney.

11 My name is Mark Holmgren, and I represent
12 Surfrider -- excuse me, Santa Barbara Audubon Society,
13 but I have been compensated for some of my efforts in
14 putting my comment letter together from Gaviota Coast
15 Conservancy and the Surfrider Foundation.

16 In my comments, I noticed that the first
17 things that were -- were stated by Ms. Winecki again
18 emphasized the -- the idea that there's plenty of
19 trees on the property, and I just kind of want to use
20 that as a starting point in a couple of comments.

21 It is still relevant that we focus on the
22 tree that was used in 2012 and the habitat area
23 surrounding that tree. The reason is that we're
24 compelled to do that by virtue of the policies in the
25 Santa Barbara County Land Use Plan and the guidance

1 that the -- the environmentally sensitive habitat
2 guidance that is given to us in the Coastal Act in the
3 LCP, and they continually point to the idea that we
4 need to take the greatest amount of respect to protect
5 the habitat value of the area where the -- the kites
6 are using currently.

7 And that -- benefit of that, and the --
8 either the mitiga- -- either the avoidance or the
9 mitigation has to be immediately accessible. And we
10 continually see these ideas of restoration that will
11 create new habitat, but these are not going to be
12 realized in the short -- in the short term. They're
13 not going to be realized in the midterm, and yet we
14 have this five-year monitoring program whereby we need
15 to see these benefits within five years.

16 It is the nature of ecological restoration
17 that we will -- that if it's designed for plant
18 communities, there's a wide range of things we can do,
19 but it's a very different beast when we try to design
20 mitigation for animal communities or animal species;
21 and what we've done here is take these mitigation
22 techniques and methods that we use to create plant
23 habitat and then -- and we're transferring them to a
24 totally different issue.

25 Despite the fact that I have a huge respect

1 for the biologists involved in this -- in this
2 process, some of the people Dudek hired and the County
3 biologist, these are top-notch people, in my opinion,
4 but I think they've missed the point and they've
5 fallen back into a little bit of a rut in terms of re-
6 -- relying on standard techniques that seem to be
7 methods that we can blow past -- you know, decision-
8 makers and -- and that everything will be all right.
9 And it just doesn't work.

10 And we can take some of those techniques
11 that we use for plant mitigation, modify them, and
12 based on studies of voles, which are the -- the thing
13 that we have to focus on for white-tailed kites and
14 other small mammals, but voles and other small mammals
15 are things we have to focus on for the white-tailed
16 kite. We can modify some of those mitigation -- some
17 of those restoration technologies and come up with
18 a -- a restoration package that is cheaper and more
19 effective that satisfies the requirement that these
20 policies and our ESHA guidelines compel us to pay
21 attention to.

22 When we think about animal survival we --

23 CHAIRPERSON HARTMANN: Has anyone ceded their time
24 to you?

25 MR. HOLMGREN: Oh, am I already over three

1 minutes? Wow.

2 CHAIRPERSON HARTMANN: Yes, but somebody could
3 quickly if they wanted to.

4 UNIDENTIFIED FEMALE: I can.

5 MR. HOLMGREN: Okay.

6 CHAIRPERSON HARTMANN: Go ahead.

7 MR. HOLMGREN: Ana Hillyard, thank you.

8 So when we think about animal survival,
9 we've got to think in terms of -- of the basic things
10 that drive -- that support any animal population, and
11 those are animals, including ourselves, need refuge,
12 we need food and water, we need reproductive
13 opportunities, and we need avenues to move in and
14 among other populations of our kind.

15 And -- so this -- this is the way that we
16 need to look at any kind of mitigation, any kind of
17 restoration, and -- and it also guides us on choosing
18 setbacks. And so what has happened here in this
19 recirculated EIR is that the consultants have looked
20 primarily at just the reproductive opportunities and
21 forgotten about the rest. We need to focus on the
22 prey of the predator and therefore restoration is done
23 not for the predator it's done for the prey. That
24 means we have to focus on California voles, house
25 mouse, and other small mammals that kites sometimes

1 take.

2 So in my comments I've always tried to use
3 these policies and -- and, of course, I won't -- I'll
4 try not to repeat anything in my letter, but we're
5 left with an array of Class 1 impacts that nothing is
6 done with the rodent population. We're losing a kite
7 site. We're not choosing setbacks that are
8 appropriate, and we're not justifying the setbacks
9 that we've chosen.

10 I at least tried to provide one framework
11 of choosing a setback, and it comes with a -- a value,
12 a foot setback that greatly exceeds a hundred feet.
13 We may not accept that, but it is the basis for
14 looking at what a kite would require for a setback.
15 There is no justification of the setbacks chosen
16 or -- or demonstrated in the recirculated EIR.

17 So I'm probably reaching the end of -- of
18 my time, so I just want to say that I think this
19 project really has got so many fundamental flaws and
20 lack of information wo- -- woven so deeply into the
21 fiber of the -- of the -- of the design- -- project
22 design and the recirculated EIR that I -- I think that
23 I would urge you to reject this thing.

24 Let's go back to an earlier point, let's
25 gather the correct data that we need to make good

1 decisions on this, let's design mitigation that works,
2 and let's have reasonable setbacks from -- from the
3 impacts to resources.

4 Thank you very much.

5 CHAIRPERSON HARTMANN: I just had a quick
6 question, if you don't mind.

7 MR. HOLMGREN: Mm-hm.

8 CHAIRPERSON HARTMANN: So are you telling us that
9 the -- that the revised EIR letter is not adequate?

10 MR. HOLMGREN: The revised EIR is not adequate.
11 It does not provide the kind of information we need to
12 design mitigations, and it provides no justifications
13 for the setbacks it advocates.

14 CHAIRPERSON HARTMANN: Thank you.

15 Mr. Wilkinson or -- are there other
16 questions, I'm sorry, from other commissioners? Okay.

17 MR. HOLMGREN: Thank you.

18 CHAIRPERSON HARTMANN: Thank you.

19 Mr. Mark Wilkinson, and that's -- your our
20 last speaker. If there's anybody else who hasn't put
21 in a speaker slip, now is the time, last call.

22 MR. WILKINSON: Madam Chair, fellow
23 Commissioners, my name is Mark Wilkinson, I'm with the
24 Santa Barbara County Trails Council. I'm the
25 Executive Director.

1 And as a way of background, we build
2 trails, we plan trails, we recently completed a mile
3 section of the County's Franklin Trail, which I hope
4 you'll all go out and check out. We're also working
5 with the City of Goleta on planning coastal trail and
6 coastal access at the Ellwood Mesa, and we're also in
7 the process of working with the Forest Service on an
8 extension of the Baron Ranch Trail which is a County
9 trail up to Camino Cielo.

10 With that said, I'd like to commend the
11 applicant for including offers to dedicate parking,
12 offers to dedicate access over the railroad tracks,
13 offers to dedicate a mile-long section of the
14 California Coastal Trail, and offers to dedicate
15 access to the beach; however, while offers to dedicate
16 are critical first steps, they no way mitigate the
17 loss of an existing coastal access trail.

18 The EIR analysis fails the fundamental test
19 for mitigation under the California Environmental
20 Quality Act that such measures must be feasible,
21 enforceable with a reasonable expectation of being
22 carried out in a timely manner to offset the impacts.

23 And I have to say is that when I first
24 learned about this idea of a floating easement to
25 access the beach, I was like, "Well, why would you

1 want a floating easement?" "Why not know exactly
2 where that easement is going to be?"

3 And you've seen examples in the
4 presentation that there's drawings for stairways that
5 go down the very eastern end of the project. There's
6 engineering drawings to access places in the middle of
7 the project. If those are viable, they would be in
8 the document and they'd be reviewed as part of the
9 environmental impact, but they're not viable, that's
10 why they're not in the document, they're just held out
11 as a possibility in the future. So I think it's kind
12 of a red herring to offer this floating easement when,
13 in fact, it floats to nowhere.

14 We would suggest that no funding -- with no
15 funding secured, no credible reasonable, foreseeable
16 schedule for completion, and major barriers to access
17 such as permitting a new bridge across the Union
18 Pacific Railroad, steep 80-foot-high vertical cliffs,
19 and an environmentally sensitive seal haul-out that
20 implementation of vertical access improvements is no
21 way assured.

22 Further, we note that the EIR wholly
23 overlooks the fact that the stairway on the eastern
24 half of the site would be located on an often rocky
25 inner tidal beach and be exposed to the near constant

1 pounding from surf leading to eventual damage and
2 destruction. The County would never accept such
3 substantial assurances for a mitigation that impacts
4 other public services such as roads, sewer line, or
5 park improvements and should not accept them for the
6 trail.

7 I thought my first statement would be,
8 "Hey, please return this EIR back to the planning
9 commiss- -- Planning Department for substantial
10 improvement," but so many other people have made that
11 comment, that I don't need to.

12 Thank you very much.

13 CHAIRPERSON HARTMANN: Thank you.

14 And that ends our public comment period,
15 and I think there are no other speaker slips, so we
16 will then turn to the applicant to respond.

17 MS. WINECKI: Thank you, Madam Chair, Members of
18 the Planning Commission. And I hope that my responses
19 are not too scattered. I'll do the best I can to keep
20 them intact, and I would also like to -- if I may,
21 call up Steve Kaufmann, our project attorney, as well
22 as Jonathan Leech to help address some of the
23 questions raised regarding hazardous materials.

24 Can we pull back up the presentation? Our
25 presentation? Please.

1 Okay. I'd like to first attempt to address
2 some of the comments and questions that were raised
3 regarding the seal haul-out, so I'm going to fast
4 forward to this slide here.

5 I just wanted to point out that we concur
6 that the seals' use of the beach is ambulatory. It
7 changes from year to year, and so what we did in terms
8 of our visual analysis is we identified the entire
9 extent of beach for which there have been observations
10 of seals hauling out, and so you can see down on the
11 site plan there and the numerous cross sections that
12 have been drawn, those cross sections are taken from
13 various locations, both the closest extent and the
14 furthest extent of the haul-out area that's been
15 observed way back in time we concur, probably prior to
16 the 1940s.

17 Those observations of the seals use- --
18 utilizing this portion of beach, they used the beach
19 when there was an oil and gas facility there, they've
20 been using the beach even in the context of
21 unauthorized public access occurring, and I think it's
22 debatable how intense that use is any -- during any
23 time of year. They have managed to persist.

24 We do think that there has been some
25 disturbance there, but we do believe that the Ocean

1 Lot is located and setback enough such that the Ocean
2 Lot residence will not have any longterm impacts on
3 the seal, and we believe that the additional analysis
4 we have done substantiates those findings in the EIR.

5 Also we understand that there are two
6 separate issues here. There's the potential impacts
7 that are of concern with respect to their residents
8 and construction, and then there -- there are
9 potential impacts associated with the beach access.

10 We have no stake in the vertical access
11 component here. It's an offer. It's in a gift. It's
12 going to be up to the County and the implementing
13 entity to decide whether or not those offers are
14 accepted, whether or not they justify the potential
15 impacts, whether or not there's an adequate management
16 plan in place. And so from the applicant's
17 perspective, we want to make the offer, provide the
18 opportunity, and then let the County and the public
19 determine what's best for this particular portion of
20 the Gaviota Coast.

21 With respect to construction noise, we did
22 conduct a noise study, and Jonathan Leech, who is a
23 jack of many trades, can address the technicality of
24 those -- of that noise study.

25 We understand that there's -- there's some

1 concern with respect to "How can we be sure that the
2 thresholds aren't being -- good thresholds that we've
3 identified that we projected aren't being exceeded?"
4 If it would help, we'd be willing to agree to an
5 additional condition that requires monitoring during
6 the construction period so that if -- should there be
7 some exceedance of those thresholds we'll be aware of
8 it, and we can implement mitigation accordingly.

9 I'm not going to spend too much time
10 talking about public access. I'm going to let Steve
11 Kaufmann address that, but I did want to make just a
12 few points.

13 First, I want to say that the Eagle Canyon
14 access is actually an existing easement that's
15 recorded. It's been approved by the County, it was
16 approved by the Coastal Commission, it's feasible.
17 Whether or not it's the preferred access point for
18 this particular property, again, that's to be
19 determined by you guys and the implementing entity and
20 the public in the future.

21 Red-legged frogs were analyzed.
22 They -- the issue about red-legged frog is actually
23 what drove the stairway to be located and designed the
24 way it is. Initially that access was going to be
25 provided along the existing road that goes down into

1 Eagle Canyon, but because of the concern of the
2 environmental constraints there, that drove the -- the
3 design of that particular sta- -- stairway as it's
4 been presented to the County.

5 Just really briefly I want to address the
6 issues that were raised with respect to the utility
7 easement on the adjacent property that was addressed
8 by Mr. Cole as well as Ms. Citrin. That is a private
9 agreement. None of the provisions in that agreement
10 are for the -- are for the benefit of the public, and
11 so essentially we totally disagree that the applicant
12 has given up their rights to pursue applications on
13 the Naples lots, and we -- we also would note that any
14 amendment to that agreement would be on -- on the --
15 the burden of the applicant and the property owner to
16 get that in place, although we don't think that an
17 amendment to the agreement is necessary.

18 The conditions that the County has
19 identified are not binding on the adjacent property
20 owner, but they certainly are binding on this project
21 and this applicant, and they would not be able to
22 pursue that construction without complying with all
23 those conditions of approval.

24 I want to go back to a slide that we shared
25 with you in March. With respect to the location of

1 the home sites, particularly the Ocean Lot. We're
2 hearing a lot about setbacks, we're hearing a lot
3 about avoiding sensitive resources, so I just wanted
4 to revisit with you, because it's very easy for us to
5 forget when we're talking about one or two resources
6 in particular, the other resources that were
7 considered when we were locating these home sites,
8 particularly on the Ocean Lot.

9 This is a constraints map that was developed
10 as part of the project planning and is included in the
11 EIR, and it -- it -- this is the figure in the EIR
12 that basically identifies the environmentally
13 preferred alternative. We have southern tar plant, we
14 have monarch butterflies, we have red-legged frogs, we
15 have purple needle grass, we have coastal sage scrub,
16 and we also have some pretty large cultural
17 resource- -- resources on the eastern portion of the
18 property.

19 We have also coordinated with Coastal
20 Commission staff early on, both during the settlement
21 negotiations and during the early planning stages of
22 this process, and identified the far western end as
23 the -- of the property as being the best location for
24 these home sites.

25 So while we are definitely concerned about

1 the white-tailed kite and we've addressed that in our
2 prior presentation, and I do believe we'll probably
3 have a lot of additional discussion about that, so I'm
4 not going to take a whole lot of time on it, please
5 keep in mind that we do have other very significant
6 resources that we are accommodating with the project
7 design.

8 And then, just really briefly on the -- on
9 the white-tailed kite issue, we concur that we need to
10 be consistent with LCP policies here, and we believe
11 that we are. The mitigation that's being imposed
12 through the -- through the EIR requires a redesign of
13 the Ocean Lot to avoid the ESHA that's been determined
14 for the 2013 nest tree. It also avoids all the other
15 ESHA that's been attributed to white-tailed kite
16 habitat as defined by the Coastal Commission during
17 the golf course project, so we believe that we're
18 wholly consistent with avoidance of ESHA as required
19 under the certified LCP.

20 I'd also just like to point out that we did
21 very much consider prey, the prey base, the necessary
22 prey base, in our restoration plan. Something that we
23 discussed in March did -- didn't necessarily focus on
24 it today, but the restoration design is based on the
25 types of vegetation communities that have been

1 observed at More Mesa supporting the prey base that's
2 necessary for white-tailed kites.

3 There's a lot of variation that's going to
4 come into play in terms of how the vole population and
5 even the kite populations function over time. What we
6 can do, though, is implement our restoration plan
7 within a project area that's dominated by invasive
8 mustard and provides zero habitat value right now and
9 focus our restoration effort there based on a -- a
10 design and mimicking a habitat that we know has been
11 successful for More Mesa.

12 And so with that, I'm going to go ahead and
13 turn it over to Jonathan Leech who is going to address
14 hazardous materials and the noise analysis conducted
15 for the seal haul-out.

16 MR. LEECH: Good afternoon. Jonathan Leech, once
17 again.

18 I wanted to just briefly go over the points
19 that Mark re-raised that are the same points that were
20 provided to you in his comment letter. He, again, has
21 concern over no groundwater sampling. It's not
22 conjectured the depth to groundwater in this area. It
23 was drawn from the recorded depth in groundwater wells
24 in this general area, so we know that it's not shallow
25 surface-type of water resource that we're dealing

1 with.

2 With respect to the sampling intervals,
3 those are based upon the adopted intervals by the
4 County and by the State, DTSC. Those are
5 standardized. We use them. We do not believe that
6 there is a tremendous potential for widespread
7 contamination that we did not or that the consultant
8 did not identify in their site characterization. It's
9 also with a petroleum-type of contamination, it's not
10 always the case that there is a warrant to go in and
11 chase after and remove contamination at depth because
12 there are limited pathways for exposure to that
13 contamination.

14 The health risk assessment evaluated all
15 the shallow contamination for which there are direct
16 pathways, determined that there was not an elevated
17 cancer or non-cancer health risk associated with it.
18 And with respect to these methane hazard zones, the
19 City of L.A. is rich with widespread dedicated oil
20 field activity, and as a result of that have gotten to
21 the point where there were a number of abandoned well
22 sites throughout the city at a very high density which
23 led them to establish this ordinance and these methane
24 zones.

25 We're dealing here on this site with, you

1 know, three wells. So I'm still confident that the
2 setback that is the minimum identified from DOGGRs
3 appropriate for the abandoned well that's on this
4 site.

5 Construction noise. If you have questions
6 about the noise analysis, I was the one that provided
7 that. As well as being a registered geologist, I'm
8 also a member of the Institute for Noise Control
9 Engineering, so in terms of the noise exposure, we did
10 the construction noise evaluation based on the federal
11 model that is used for construction noise impacts.

12 There is a substantial benefit that is
13 provided by the cliff top being between the home site,
14 the construction area, and the seals which acts as a
15 barrier to significantly attenuate the noise that is
16 at the construction zone versus down at the beach
17 level.

18 And if you're doing a comparison of
19 existing noise levels, the established ambient noise
20 environment from the trains which operate on the rail
21 line through that property night and day, that equates
22 to approximately an 18-decibel community noise
23 equivalent level on the beach.

24 Our construction activities short term were
25 modeled to result in an 8 decibel noise level on the

1 beach, 10 decibels below what is occurring from the
2 trains. And, again, the train is a 24-hour, daytime,
3 nighttime freight passenger type of situation.

4 Any other questions, I'd be happy --

5 CHAIRPERSON HARTMANN: Commissioner Brown.

6 COMMISSIONER BROWN: Mr. Leech, when Mr. Howorth
7 spoke about noise, he indicated that seals hear at
8 different frequencies than we do, and what you've
9 analyzed or what you've told us are the frequencies
10 that we hear.

11 So we would need to have an understanding
12 of how the noise affects them at the frequencies they
13 hear. Because if they're more sensitive to noise and
14 if this noise -- I'm not really sure, I don't -- you'd
15 have to explain that to us that -- that what you're
16 proposing isn't -- doesn't affect them at the
17 frequencies they hear.

18 MR. LEECH: And Mr. Howorth is correct. There is
19 a different range of --

20 COMMISSIONER BROWN: Right.

21 MR. LEECH: -- of frequencies that our hearing is
22 tuned to, as opposed to other wildlife, but I would
23 still make -- draw the comparison that train noise,
24 also expressed as an A-weighted noise level is no
25 different from the construction noise, and so the

1 range of frequencies that are represented by that
2 single value decibel, whether it's construction or
3 whether it's train noise, very, very similar, and the
4 train noise is occurring today and the seals have not
5 abandoned that beach today.

6 COMMISSIONER BROWN: Right. But that's not my
7 question. My question is: If they hear at different
8 frequencies or -- I don't know what they're range is,
9 then they be -- they may be more sensitive to other
10 kinds of noises.

11 You know, I'm out of my league here, I
12 don't really know, so you would need to provide us
13 that information, I would think --

14 MR. LEECH: Well, and what I'm saying is if you
15 look at the signature of noise from construction,
16 those frequencies they're going to experience from
17 construction are very similar --

18 COMMISSIONER BROWN: Oh, are the same --

19 MR. LEECH: -- to those frequencies which are
20 occurring now with the train activity.

21 COMMISSIONER BROWN: I see.

22 MR. LEECH: So, if the train activity is
23 tolerable to the seal population, then so should be
24 the short-term construction.

25 COMMISSIONER BROWN: I see. Okay. I get it.

1 CHAIRPERSON HARTMANN: Commissioner Cooney.

2 COMMISSIONER COONEY: Just a couple on the -- on
3 the contamination issues.

4 MR. LEECH: Mm-hm.

5 COMMISSIONER COONEY: I think you indicated that
6 your water sampling was from -- from wells that are on
7 the property.

8 MR. LEECH: We did not draw water samples. What
9 I'm saying is that the groundwater elevation below the
10 ground surface, that elevation was determined based
11 upon records of groundwater wells in the region. So
12 the average depth to groundwater comes from records
13 from other water wells. Not on the site.

14 COMMISSIONER COONEY: So the comment by one of
15 our witnesses that the groundwater level might be
16 different if you look at the bottom of a trough on
17 site, you really don't have any experience with the
18 specific water levels on this site?

19 MR. LEECH: The type of water that you might find
20 that would be related to a drainage or ravine is a
21 seasonal type of situation, and the lithology on this
22 particular site, that would be -- on a seasonal basis
23 would tend to be perched. Would tend to be trapped
24 closer to the ground surface, not really used for any
25 beneficial purpose if you go to the regs, so it -- do

1 we have specific records about isolated lenses of
2 water on this site? No, we don't because we didn't
3 experience any of those during the soil sampling,
4 which went down to depths of at least 25 feet.

5 COMMISSIONER COONEY: Okay, so I think what I
6 hear you saying is that you really don't know because
7 you're basing on generalities with other properties,
8 but -- but you could do well testing at various places
9 for the water. Even though it may be deep in some
10 places, it might be shallower in others. We're just
11 trying to -- to understand if there is any
12 contamination revealed by groundwater.

13 MR. LEECH: And I would allow your -- your own
14 staff to answer the question about whether or not the
15 methodology that was employed is adequate to meet
16 County regs.

17 COMMISSIONER COONEY: Okay. Thank you.

18 MR. LEECH: You're welcome.

19 COMMISSIONER BLOUGH: Madam Chair?

20 CHAIRPERSON HARTMANN: Commissioner Blough.

21 COMMISSIONER BLOUGH: Yeah, just a question for
22 your commenter.

23 Am I correct in assuming that when they
24 start the mitigation on this soil, you've got an
25 estimate of what you think that soil is and how much

1 there is, but actually when you actually do the
2 remediation, don't you keep -- continue taking
3 contaminated soil out and try to get to clean soil?

4 MR. LEECH: That depends on really the approach
5 that's outlined in the Remedial Action Plan. I mean
6 there are a number of different opportunities that are
7 available for dealing with contaminants in soil. Some
8 of them are -- include removal of that soil. Some of
9 them include treatment in place. So it would depend
10 upon the content of the Remedial Action Plan which,
11 again, County staff would need to review and approve
12 before any activity takes place.

13 COMMISSIONER BLOUGH: Okay. Well -- well, it's
14 been my -- I'll ask County staff then, the question
15 then. Thank you.

16 MR. LEECH: Certainly.

17 CHAIRPERSON HARTMANN: And does that conclude the
18 applicant's response.

19 MS. WINECKI: (Inaudible)

20 CHAIRPERSON HARTMANN: Okay. Come back.

21 Ms. WINECKI: Thank you, Madam Chair.

22 We just have one more -- but I did want to
23 point out with respect to the -- to the groundwater
24 issue. That issue was fully vetted during the prior
25 Remedial Action Plan that was implemented on the site

1 as part of the golf course project. It was evaluated
2 in the EIR. It basically confirmed that groundwater
3 was at significant depths underneath the site. It was
4 again vetted in front of the California Coastal
5 Commission and confirmed once again that there was no
6 potential to contamination risks associated with
7 groundwater, and so we could always go back to that --
8 to that documentation if we needed to.

9 So now I'd like to bring up Steve Kaufmann,
10 if I may, to talk about public access.

11 MR. KAUFMANN: Thank you. Madam Chair and
12 Commissioners, Steve Kaufmann for the applicant.

13 There was a lot of testimony about public
14 access, so I wanted to begin by addressing the legal
15 framework for the public access issue, and I hope that
16 will be helpful to you.

17 The question of other mitigation of any
18 kind, whether it's on site or offsite, can be required
19 for a loss or a temporal loss of public access turns
20 on whether the access is authorized or unauthorized.
21 If the access is legal, then the loss has to be
22 mitigated in some fashion. But if it's unauthorized,
23 which is the case here, then mitigation can't be
24 required.

25 Now, obviously the applicant is

1 volunteering public access, but it's not legally
2 required to do that. Your own EIR makes it clear that
3 the trail use across this property is unauthorized
4 access. This is not a new issue.

5 Ms. Winecki quoted from the Court of Appeal
6 opinion in Surfrider Foundation versus California
7 Coastal Commission. It was a case I litigated back in
8 the mid 90s involving the golf course project, and
9 it's there where the court pointed out that the
10 property is fenced, it's gated, it's patrolled by a
11 security guard, and there are signs posted against
12 trespass, and the record at that point included
13 detailed declarations from oil field personnel and
14 security personnel that were presented to the Coastal
15 Commission.

16 So the two houses here that are proposed
17 don't create environmental impacts on legal access,
18 and so, just in legal terms, there's no constitutional
19 basis, no nexus, no rough proportionality as you
20 probably heard in other proceedings, to require
21 access. There is no basis under CEQA or the CEQA
22 guidelines for doing so. They have the same
23 requirements.

24 But, again, in connection with this two-
25 house development, it's just two houses, the applicant

1 is providing offers to dedicate a 20-car public
2 parking lot, lateral access on the bluff, lateral
3 access on the beach, floating vertical access, and
4 overlook. So this applicant is more than doing its
5 part by volunteering valuable access. And at the same
6 time it's already shouldered a number of the
7 significant soft costs, the conceptual engineering,
8 the pre-mitigation in terms of habitat loss, this EIR,
9 which you'll be able to tier off of which will save
10 you time and money, and constructing 1600 feet of the
11 access.

12 Now there's been -- there's been no showing
13 the implementation of the public access dedications
14 would be infeasible. It's true. It will cost money,
15 but it seems to be a very worthy expenditure, whether
16 the funds are provided by the County or by grant --
17 grant money from say the Coastal Conservancy, or even
18 fundraising by interested parties. The cost of the
19 pedestrian bridge was detailed out by Penfield &
20 Smith, and it's in your record. It's \$686,000,
21 actually \$686,400, and that's a reliable estimate.

22 As to offsite, apart from the -- the legal
23 permissibility issue, I think it's important to
24 emphasize the Naples lots aren't before you. They
25 don't solve that -- that offsite proposal doesn't

1 solve the cost issues.

2 There were two points made by your staff in
3 response to comments. The first is: It's speculative
4 as to which of the Naples lots will be developed and
5 when. It's unknown whether or not development of the
6 Naples lots will include a vertical access. They
7 might. Just like this one has included access as
8 well.

9 And lastly, Ms. Citrin referenced the offer
10 to dedicate for the golf course. That was also
11 something that I drafted, so I know what's in it. It
12 dealt with the golf course proposed over the entirety
13 of this property, and that's why access was included
14 on the Naples lots, but it also was a volunteered
15 access, but it also -- it came in the context of a
16 golf course with 50 to 60,000 rounds of golf, which we
17 don't have here.

18 Happy to answer any questions you might
19 have.

20 CHAIRPERSON HARTMANN: Commissioner Cooney.

21 COMMISSIONER COONEY: Thank you. Thank you, Mr.
22 Kaufmann. Just a question.

23 You have a lot of experience with this
24 particular litigation involving the golf course. Is
25 it your statement or contention that the issue of

1 whether there's a prescriptive right to cross the
2 property has been already laid to rest? That there's
3 no opportunity for individuals harmed by that to -- to
4 raise the question in court?

5 MR. KAUFMANN: It hasn't been definitively ruled
6 on by a court. Case law involving the Commission says
7 it's not the Commission's job to adjudicate a public
8 prescriptive right. There's evidence on both sides,
9 but there's evidence that there is no prescriptive
10 right.

11 And, you know, we want you to know that
12 that evidence exists. It's just something that
13 nobody's mentioned up to this point, and you need to
14 know that there's evidence in the record that supports
15 that.

16 COMMISSIONER COONEY: As there is that -- that
17 there could be a prescriptive right based on what
18 we've heard today.

19 MR. KAUFMANN: Right. But since neither the
20 Coastal Commission nor this Commission or the Board of
21 Supervisors can adjudicate that, that's really just an
22 issue for the court to decide.

23 So you have to -- I think you have to take
24 it as it -- as it's presented to you today. It's
25 unauthorized access, as your EIR points out.

1 COMMISSIONER COONEY: I -- I think that's true.
2 And I -- I don't want to debate it much further, but
3 basically I thought you started out by saying it was
4 unauthorized, therefore the fact that access is being
5 granted here is purely voluntary.

6 MR. KAUFMANN: It hasn't been definitively
7 decided by a court, but based on the evidence and
8 based on the history of this case, I would say it's
9 unauthorized; and, therefore, this applicant doesn't
10 have to provide it.

11 This applicant, though, is stepping up to
12 the plate with access requirements that were imposed
13 on a substantial project, a golf course project. This
14 is just two houses. It's pretty unusual. I think you
15 will -- you will have to concede that just based on
16 what you see day to day before the planning
17 commission.

18 Two houses should not support a 20-car
19 parking lot, but it is going to solve a problem. It
20 solves the problem of people parking across the
21 highway, running across the highway, climbing over
22 that barbed-wire fence, and ignoring no-trespassing
23 signs, running past the security guard, crossing over
24 railroad tracks, and climbing down the bluff. I mean,
25 it's a good improvement, and that's why it's being

1 offered.

2 COMMISSIONER COONEY: Yeah, I think our decision
3 has to be based on whether this is the best project
4 for this property. So, we have that still before us.

5 Thank you.

6 MR. KAUFMANN: Thank you.

7 CHAIRPERSON HARTMANN: Thank you.

8 And are there any other comments you'd like
9 to make?

10 MS. WINECKI: That concludes our responses.

11 Thank you, Madam Chair.

12 CHAIRPERSON HARTMANN: Thank you.

13 That brings it back to the Commission then.
14 I think Commissioner Brown has to go. I believe we
15 have to continue the hearing.

16 MS. BLACK: Madam Chair. I'd really like the
17 opportunity to have staff --

18 CHAIRPERSON HARTMANN: Staff --

19 MS. BLACK: -- and our experts that have been on
20 hand -- be able to respond to some of the public
21 comments as well while people are still here. If
22 that's possible.

23 CHAIRPERSON HARTMANN: I'm -- let's poll the
24 Commission. I -- I -- Commissioner Brown could see
25 this on the tape later.

1 COMMISSIONER BROWN: Well, the issue for me is --

2 CHAIRPERSON HARTMANN: But you want to ask
3 questions, too.

4 COMMISSIONER BROWN: Yes, I do. And it's very
5 important to me that I ask of some of the experts, the
6 biologists who are here, and I just -- I really can't
7 stay. I'm now 25 minutes past when I thought I could
8 go.

9 So, if I don't have that opportunity, I
10 don't have that opportunity, but -- I don't know how
11 much longer you're going to go -- you know, we have a
12 hearing tomorrow. For those of you who know, we're
13 not camping out overnight here.

14 (Laughter)

15 COMMISSIONER BROWN: So, it's -- I appreciate
16 they've been here all day -- or all afternoon, and I'm
17 --

18 CHAIRPERSON HARTMANN: Ms. Black.

19 MS. BLACK: Madam Chair. Maybe you just want to
20 hear from the HAZMat -- HazMat people because they
21 came from Santa Maria --

22 CHAIRPERSON HARTMANN: Yes, indeed.

23 MS. BLACK: -- they are here.

24 CHAIRPERSON HARTMANN: Please, yes.

25 MS. BLACK: I'm sure Mr. --

1 CHAIRPERSON HARTMANN: I think we need --

2 MS. BLACK: -- (inaudible) can come --

3 CHAIRPERSON HARTMANN: -- to think in terms of
4 efficiency --

5 MS. BLACK: -- and then I -- I think before
6 Commissioner Brown leaves, I'd really like to talk
7 about when you want to continue.

8 CHAIRPERSON HARTMANN: Yes. Absolutely.

9 Which topic should --

10 MS. BLACK: Do you want to --

11 CHAIRPERSON HARTMANN: -- go first?

12 MS. BLACK: -- do continuance first so that you
13 can --

14 CHAIRPERSON HARTMANN: I -- I think we --

15 MS. BLACK: -- sneak out when you need to?

16 CHAIRPERSON HARTMANN: -- yeah.

17 MS. BLACK: Okay.

18 So I'm open for suggestions.

19 COMMISSIONER BLOUGH: I have a question if I
20 could.

21 CHAIRPERSON HARTMANN: Oh. Commissioner Blough.

22 COMMISSIONER BLOUGH: Yes. Are we going -- are
23 you going to close this to public com- -- are we going
24 to close this to the public comment as of tonight so
25 that all we have left is deliberation?

1 CHAIRPERSON HARTMANN: I need to ask County
2 counsel. I -- I'm not sure we're allowed to do that.

3 MS. BLACK: Well, Madam Chair. Let me answer
4 first, and then --

5 CHAIRPERSON HARTMANN: Sure.

6 MS. BLACK: -- I'm sure Rachel will add on.

7 If you're going to ask staff to do anything
8 in terms of providing additional information, I think
9 you'll need to reopen it for public comment at a
10 subsequent hearing.

11 If you're just going to ask questions of
12 the County experts and people that are on contract at
13 a -- at a subsequent hearing and then go into
14 deliberations, you probably can close, but -- I -- I
15 just don't know what your intention is and what kind
16 of direction you're going to give us at the end of
17 this hearing.

18 CHAIRPERSON HARTMANN: And -- and we haven't
19 really talked with one another, so I don't know. I'm
20 not a mind reader here.

21 MS. LIEU: Madam Chair, Members of the
22 Commission, I agree with Ms. Black's statement -- so,
23 I mean, it seems to me we're not quite at that point
24 yet, but I -- I haven't heard from the Commissioners
25 yet.

1 CHAIRPERSON HARTMANN: So I think, Commissioner
2 Blough, I can't make a decree at this point that
3 closes public comment because we don't know what
4 additional information might come back from
5 staff -- that we might --

6 COMMISSIONER BLOUGH: (Inaudible)

7 CHAIRPERSON HARTMANN: -- ask for.

8 COMMISSIONER BLOUGH: I'm not saying that you
9 need to do that, but it -- it makes a big difference
10 as to what date we continue it to.

11 I mean, if all we're going to be doing is
12 deliberation and making a decision, that's maybe an
13 hour. If you open it back up to public hearing, you
14 can be another whole day doing this again because you
15 could get all the same speakers to come up and talk
16 for the next three to six minutes.

17 And so I'm not -- I'm not -- I wasn't
18 suggesting that we do that, I was just suggesting we
19 make the determination before we figure out what day
20 to continue it to.

21 CHAIRPERSON HARTMANN: Ms. Black. Did you have
22 some suggestions for us?

23 MS. BLACK: Madam Chair, I'm sort of in the same
24 boat as, I think, the rest of the Commission, which
25 is, I don't know how much time you're going to need.

1 If you're really going to move into deliberations,
2 we've now freed up an hour on December 4. We can do
3 it that day to see where we get to. It's -- it's
4 really up to the Commission.

5 CHAIRPERSON HARTMANN: Would it be appropriate to
6 poll us and ask if we think we're ready for
7 deliberations that day? Is that premature?

8 MS. BLACK: Well --

9 CHAIRPERSON HARTMANN: It's up -- it's up to you.

10 MS. BLACK: -- I -- it may be premature. I don't
11 know. I -- it's kind of hard to say. We just really
12 had a chance to ask questions, and there may be other
13 questions that we need to ask to elicit information,
14 particularly when we hear from our biologists. Hard
15 to say. I don't know.

16 CHAIRPERSON HARTMANN: Commissioner Cooney, did
17 you have any insights into process and how we can move
18 forward here?

19 COMMISSIONER COONEY: Well, I think there's an
20 advantage in doing it sooner than later while it's
21 fresh in all our minds. I -- I think we can get our
22 questions answered of staff. The applicants finished
23 their -- their presentation, so I don't see we'd need
24 much more than an hour to determine where we are.

25 That's not to say we're going to be ready for an up

1 and down vote, but -- but we'll at least know on the
2 4th.

3 MS. BLACK: Madam Chair, I also noticed that
4 there is a briefing on December 4 that I don't think
5 has to happen on December 4. It's been on your
6 calendar for a while, but I don't see any reason why
7 it can't be in January because the regulations don't
8 go into effect until March.

9 So that's an opportunity to --

10 CHAIRPERSON HARTMANN: So it sounds like --

11 MS. BLACK: -- give it more time.

12 CHAIRPERSON HARTMANN: -- December 4 would be --
13 we'll get as far as we can. We don't know exactly
14 where we're going, and -- and I guess -- the applicant
15 is nodding their head. I'd think you'd rather go
16 sooner rather than later, and -- and -- I strongly
17 feel that way. I kind of lose context and lose facts
18 if there's too long a time between.

19 So -- is that agreeable to you,
20 Commissioner Blough and Commissioner Ferini, that we
21 would continue to the 4th?

22 COMMISSIONER BLOUGH: Yeah, we're okay with it.

23 COMMISSIONER FERINI: That's fine.

24 COMMISSIONER FERINI: I'll move that we
25 continue- -- we're going to ask questions of -- of

1 one our witnesses --

2 MS. BLACK: Madam Chair, I think we should wait
3 to continue the item until we actually --

4 CHAIRPERSON HARTMANN: The end?

5 MS. BLACK: -- are ready to continue --

6 CHAIRPERSON HARTMANN: Okay. So we don't need
7 Commissioner Brown's vote.

8 MS. BLACK: No.

9 CHAIRPERSON HARTMANN: Okay.

10 All right. So we'll hold off on --

11 MS. BLACK: And if -- if you could turn your
12 mi- -- thank you.

13 CHAIRPERSON HARTMANN: So. We will at least now
14 continue with having County staff answer questions and
15 respond to what they heard about the hazardous
16 materials and the oil wells on site.

17 MR. MCCAWE: Again, my name is Paul McCaw. I'm
18 the supervisor for the Hazardous Materials Unit Site
19 Mitigation Program.

20 Madam Commissioner and -- or Madam Chair
21 and Commissioners, I wanted to provide a prief- --
22 brief introduction to the extent of our oil field
23 restoration program.

24 We have operated this program since the
25 late 90s, have over 200 sites, including literally

1 several thousand wells and other sources of oil field
2 contamination that we have addressed or are
3 addressing.

4 That experience has shown us that with the
5 current abandonment standards we have not seen
6 problems with leaking wells as of this date. The
7 wells, for instance, that we know -- we have problems
8 within the County, say down in the Summerland area and
9 some in the Carpinteria bluffs, were abandoned in the
10 early 1900s when there were no standards.

11 We have on the Santa Barbara Mesa a couple
12 of hundred plugged and abandoned oil wells in amongst
13 all of those homes, and I think we're all aware that
14 we haven't had problems with methane or oil leaks from
15 those. We have a similar situation in Santa Maria,
16 and while there have been problems with sumps and
17 residual contamination left behind, leaking of the
18 wells has not been a problem.

19 With that introduction, I'd like to turn it
20 over to our professional geologist, Tom Rejzek, to
21 address some specific comments from Dr. Kram.

22 MR. REJZEK: Madam Chair, Commissioners. Just a
23 brief introduction for myself. My name is Tom Rejzek,
24 I am -- I've got 25 years of experience in the
25 hazardous materials field and oil field experience.

1 I've been a professional geologist for 18 years and a
2 certified hydro geologist for 15 years, and I've
3 worked for the County for the last 13 years.

4 Going through a few of the points that Mr.
5 Kram made, in addition to what Mr. McCaw said, when
6 this well was abandoned, it was rechecked -- these
7 three wells that were on the lower development site
8 were rechecked.

9 The well heads were exposed, and in July or
10 June of 1996 and the DOGGR personnel came out in July
11 of 1997 and verified that those wells were not
12 leaking. They do methane checks. They have a methane
13 meter checking that those wells are properly
14 abandoned, and based on that information, it was
15 determined that those wells were, in fact, properly
16 abandoned and were not leaking methane.

17 In terms of explosive issues, we have had
18 one which was an oil field development -- over an oil
19 field development, that was at the Bacara Resort.
20 When they were excavating for that, there was some
21 high levels of methane there that was mitigated, and
22 they put a methane monitoring system underneath the
23 hotel, and since it has opened in 2001 or 2000, they
24 have not had an issue with methane there, so I think
25 that also shows that we do know that where there was

1 methane problems when they -- if it was properly
2 mitigated, we have not had any other problems since
3 then.

4 And I believe also it was mentioned that
5 there was explosive areas down in the Los Angeles
6 area. My understanding is those may have been in
7 areas which were abandoned that included wells that
8 were may- -- that may not have been properly abandoned
9 where they had those methane issues.

10 In terms of groundwater samples, that seems
11 to be a very good topic that people have asked about.
12 Typically our standard is to find out what the depth
13 of contamination is and then go 50 feet below that, so
14 in looking at the data that we have, it looks like the
15 deepest contamination that we saw is near the surface.
16 There is some contamination that is deeper, but those
17 levels were below our cleanup levels. So there is
18 contamination there, but they're at a level that was
19 -- is not something that we would do active
20 remediation for.

21 There were borings that were drilled 75
22 feet below that -- below the surface, so we know that
23 at this area there is no groundwater within 75 feet.

24 As other people have stated before,
25 groundwater is believed to be at 180 to 300 feet, 360

1 feet in this area. If we do have groundwater in this
2 -- at this depth, that would put us in the Monterey
3 formation, which is an oil-bearing formation, and if
4 you did have water in there in the fractures, the
5 water would be of poor quality and potentially would
6 have oil in it from the naturally occurring oils, And
7 that's why you do not see along the terrace deposits
8 in the Gaviota Coast -- why in this area you do not
9 see a lot of oil -- water wells because production,
10 one, is going to have very poor water quality and,
11 two, the yield or the amount of water that you can
12 produce is actually going to be very low.

13 If you did have a high yield area you would
14 have seen historical -- historically you would have
15 seen a lot more oil- -- water wells there for
16 production purposes.

17 Third point, Mr. Kram states that they
18 should use continuously core -- they should
19 continuously core the samples when doing the
20 investigation.

21 In looking over the boring logs, they did
22 use a geoprobe which is a continuous corer system, so
23 what they will do with that is drive a tube about five
24 feet long, which has an acetate liner in that. They
25 then pull the acetate liner out, and they see where

1 the -- where the contamination is, if there is a
2 contamination. If there is not contamination or there
3 is no phys- -- visual contamination that you can see,
4 the standard practice is to sample every five feet,
5 which is what the applicant did and what Arco has
6 done.

7 CHAIRPERSON HARTMANN: Vertically?

8 MR. REJZEK: There -- there is contamination
9 in -- in these -- some of these soil samples. The
10 contamination is -- tends to be more towards the top
11 five to ten feet, which is what we would expect,
12 because this is an oil contamination, and if you
13 consider like the light in, like gas link
14 contamination, that's more like water, so that's going
15 to travel very quickly and very far versus an oil
16 contamination which is more like a syrup, so it's not
17 going to move.

18 So that's why you don't have that vertical
19 migration. And, again, which leaves us to believe
20 that there's no contamination of the groundwater.
21 It's just too thick to go down that far.

22 Did I answer your questions there?

23 CHAIRPERSON HARTMANN: I think so.

24 MR. REJZEK: Okay.

25 And then last, one more thing where -- I

1 haven't taken a look at the cross section, but I
2 believe they do -- they may draw question marks, but
3 that's because it hasn't been delineated to non-
4 detect, so they'll put a -- they'll typically put a
5 question mark or a query mark in cross sections, but
6 that doesn't necessarily mean that that requires
7 further investigation, because we do know there's
8 contamination there, but it's at such a low -- it's at
9 a low -- a level below our threshold where we would
10 actually do anything about it.

11 So as the deeper you go, you can have a
12 little bit higher levels of contamination that are
13 going to be left -- that can be left in place based on
14 the risk based cleanup levels that we would be
15 applying at this site.

16 Last thing is in terms of setback, Mr. Kram
17 mentions 300 feet for exploratory wells. Drilling a
18 well is completely different from actually operating a
19 well or dealing with a plugged or abandoned well.

20 If we were to apply this 300-foot setback
21 to all wells in the State of -- in the County of Santa
22 Barbara, we would basically have to get rid of all the
23 houses on the Mesa and most of Santa Maria would be
24 gone. So DOGGR is -- does recommend that they have a
25 10-foot setback, and that's so they can get a drill

1 rig in there in case they need to work over the rig in
2 case they find out that there is a problem, but it's
3 more of access, and they have found that a 10-foot
4 radius from that well is sufficient for them to then
5 get the rig in there to work over that rig and
6 properly abandon it, if that's needed.

7 And I think those are my comments. Do you
8 have any questions for me?

9 CHAIRPERSON HARTMANN: Commissioners? Are -- do
10 you have any questions?

11 COMMISSIONER FERINI: Madam Chair, I have a few
12 questions.

13 CHAIRPERSON HARTMANN: Commissioner Ferini.

14 COMMISSIONER FERINI: Mr. Rejzek's (inaudible)
15 has been very helpful.

16 One of the questions was, is there -- is
17 there a drilling log that would help us determine
18 where the groundwater was from when they drilled the
19 oil well?

20 MR. REJZEK: I believe there would be -- for the
21 oil wells?

22 COMMISSIONER FERINI: Yes.

23 MR. REJZEK: I believe there are. The DOGGR
24 would have those records. I don't have them off the
25 top of my head right now, but DOGGR should have

1 drilling logs.

2 COMMISSIONER FERINI: And then one other question
3 was on -- on the -- the triple concreting of the well.
4 Have there been any failures of -- of capping a well
5 that way in our area? In the subject area?

6 MR. REJZEK: Madam Chairwoman, we have not had
7 any experience with any of those wells -- well seals
8 failing that were done to that triple-seal standard.

9 COMMISSIONER FERINI: Okay. Thank you very much.

10 CHAIRPERSON HARTMANN: And that's it?

11 I had a question. If in the future there's
12 an earthquake, a small earth- -- things move, is there
13 monitoring ongoing? Or what -- what do you do to make
14 sure there's -- that everything's holding there?

15 MR. REJZEK: Madam Chair, it's my understanding
16 that this -- these wells were probably in the Monterey
17 formation, and that Monterey formation has sour gas,
18 which is hydrogen sulfide, so if there was a break in
19 that -- methane is a colorless, odorless gas --

20 CHAIRPERSON HARTMANN: Right.

21 MR. REJZEK: -- you typically wouldn't smell
22 that, but you potentially could start smelling a -- a
23 hydrogen-sulfide-type odor, a rotten eggs odor, and
24 the applicant certainly would be aware that there are
25 these wells there, and they would know that if there

1 was this hydrogen sulfide odor that there could be a
2 problem, and they could certainly call -- you know, on
3 something like this, they could call 911 and we could
4 have the HazMat team come out there and investigate
5 that.

6 I know that there is the hydrogen sulfide
7 monitors and the methane monitors around the Bacara,
8 and the -- to this date, I -- the only time the
9 hydrogen sulfide monitor went off at the Bacara was
10 when they first opened it, and it turns out that their
11 grease trap was too large, and it was actually --
12 wasn't digesting properly, and it was burping out this
13 hydrogen sulfide.

14 So it was actually not related to the oil
15 field issues as we originally thought. It took us
16 about four months to figure that out, but eventually
17 it was solved, but it turns out that it was not
18 related to oil field activities.

19 CHAIRPERSON HARTMANN: And is methane a -- a
20 problem or a potential problem here in the future?

21 MR. REJZEK: If the wells are properly abandoned,
22 I don't --

23 CHAIRPERSON HARTMANN: I mean, again, if
24 there's -- if --

25 MR. REJZEK: Yeah.

1 CHAIRPERSON HARTMANN: -- if the earth shifts a
2 little bit, is that -- or are these -- is the
3 abandonment meant to --

4 MR. REJZEK: The abandonment --

5 CHAIRPERSON HARTMANN: -- designed to --

6 MR. REJZEK: -- was designed to --

7 CHAIRPERSON HARTMANN: -- withstand --

8 MR. REJZEK: -- withstand.

9 CHAIRPERSON HARTMANN: To what level?

10 MR. REJZEK: I don't know what -- you know, I
11 couldn't tell you what it's -- what level it's
12 designed to withstand, but certainly the way the well
13 is put in, there's casing upon casing which is
14 cemented into each other; so, yes it could break free,
15 but you would have to have a fairly large earthquake,
16 and I think this would be the least of our problems.
17 If this well was to break, we would probably have
18 quite a bit of infrastructure damage.

19 MR. MCCAWE: Madam Chair, if I might.

20 There are methane monitoring methods that
21 could be employed. Not something that is a standard.
22 The wells do not, during the current abandonment
23 standards automatically have those, so these don't
24 have continuous monitoring, but they -- methods can be
25 put in place, and they do have -- we would have the

1 ability if necessary to -- to do monitoring like we do
2 at Bacara.

3 MR. REJZEK: But, again, that does set a
4 precedence that we now have a thousand other wells in
5 neighborhoods. What's to say -- what makes this pro-
6 -- process different from another -- another site?

7 CHAIRPERSON HARTMANN: Commissioner Cooney.

8 COMMISSIONER COONEY: I'll answer that one first.
9 I think this is a discretionary permit that the
10 applicant is asking for, and it gives us the
11 opportunity to be super safe, so if it's the judgment
12 of you two that that would add to the -- to the
13 potential safety from a health standpoint of the
14 future applicants of that resident -- we're only
15 talking about one resident and a guesthouse, I
16 certainly think it has merit.

17 And I -- I'm not sure, I don't want to put
18 words in your -- in your mouth, Mr. McCaw, but you're
19 suggesting that it could be safer to have the methane
20 monitoring and hydrogen sulfide monitoring on the
21 wells around the development envelope.

22 MR. MCCAWE: Madam Chair, Commissioner Cooney,
23 that is correct. It would add an additional level of
24 protection, but, again, I think it's -- it is worth
25 noting that we haven't seen a need for that elsewhere,

1 even with all of the huge number of wells we have
2 within city limits. But it's certainly something that
3 could be considered.

4 COMMISSIONER COONEY: Okay. Thank you.

5 CHAIRPERSON HARTMANN: I had one final question.

6 I believe Dr. Kram mentioned something
7 about new EPA regulations. Does that ring any bells
8 with you? Either that he talked about that or what
9 those might be?

10 MR. MCCAWE: Madam Chair, there is in the world of
11 environmental, there is the latest -- new thing that's
12 going out there is vapor intrusion, and this is
13 typically from gas stations and chlorinated solvent
14 sites where you have like dry cleaners, and there is
15 one level of thought that says that the earth could
16 be, as Mr. Kram was say- -- stating, breathing,
17 depending on the barometric pressure.

18 I've -- it's -- the jury's still out on
19 this, but there are certain investigations and papers
20 that people are bringing out saying that -- doing a
21 one-time sampling event is not necessarily correct,
22 and doing several sampling events may not be correct
23 whereas having a continuous monitoring may show that
24 you do have spikes in vapor intrusion at certain parts
25 of the day; however, I will point out that at this

1 site, those chemicals have not been found at this
2 site, so --

3 CHAIRPERSON HARTMANN: The chemicals that would
4 create the vapors, that would --

5 MR. MCCAWE: Yes.

6 CHAIRPERSON HARTMANN: Okay.

7 MR. MCCAWE: Yeah. The only -- Mr. Kram and his
8 document referenced TCE, trichloroethylene. They have
9 tested for that at this site. Probably about a
10 hundred samples or so were tested for that chemical in
11 the soil. We did not see that chemical in the soil,
12 therefore we do not anticipate that it would be in the
13 vapors because there's just no source for it.

14 CHAIRPERSON HARTMANN: Any other questions?

15 I realize -- I think that's the questions
16 then related to hazardous materials.

17 I realize we haven't gotten to the
18 biological and the kites, and I -- I just anticipate
19 there will be a lot of questions, and I know
20 Commissioner Brown would -- I know, for a fact, that
21 she has a lot of questions. So I hope you can come
22 back.

23 So I think we're at the point now where we
24 would continue the hearing and adjourn.

25 MS. BLACK: Madam Chair, I think that would be

1 appropriate. If there's anything you would like us to
2 do between now and the hearing that you can tell us
3 about, that would be helpful, otherwise I think we can
4 just adjourn, and we'll take it up again on the 4th.

5 CHAIRPERSON HARTMANN: Commissioner Cooney.

6 COMMISSIONER COONEY: Madam Chair, I -- Ms.
7 Black, I -- we haven't heard from Ms. Lieu either, and
8 she's done a tremendous amount of work on this, so I
9 would anticipate that she would be able to go back
10 over the testimony today and at least, as it relates
11 to her staff report, indicate anything that we should
12 know about it before deliberations, so --

13 But other than that, I -- I think we've had
14 a tremendous amount of testimony in our record before
15 we started the hearing was voluminous, so -- I think
16 we're good.

17 Maybe we'll have a couple of questions for
18 legal staff about the environmental review documents.

19 CHAIRPERSON HARTMANN: All right. We need a
20 motion and a second.

21 COMMISSIONER BLOUGH: But before we do that, I --

22 CHAIRPERSON HARTMANN: Commissioner Blough.

23 COMMISSIONER BLOUGH: Yeah, I -- I just -- I want
24 to hear from County counsel at least at the next
25 hearing to address the issues should we -- well, for

1 example, should we deny the project entirely? How is
2 that going to not be a taking, if you want to call it
3 that, so I -- I'm interested in that analysis to tell
4 you the truth.

5 Because I'm concerned if we were to just
6 deny the project and not allow anything to be built on
7 the property, is that actually a taking or is it not a
8 taking? So I just would like to have that well
9 thought out and presented to us at the -- at the next
10 hearing.

11 CHAIRPERSON HARTMANN: Commissioner Ferini, you
12 would like to flag?

13 COMMISSIONER FERINI: No, I don't at this time.

14 CHAIRPERSON HARTMANN: I'm sure I would, but I'm
15 -- I'm kind of overwhelmed, and I appreciate
16 everything that Ms. Lieu has done and the staff and
17 the County experts and the applicant and all the
18 people who were here today and sharing their
19 expertise.

20 I think it was a -- people came with
21 credentials and raised lots of issues, and it's given
22 me, at least, a lot to think about.

23 So, we do need our motion.

24 COMMISSIONER COONEY: I'll move to continue the
25 matter to the 4th of December in Santa Barbara.

1 CHAIRPERSON HARTMANN: And a second?

2 COMMISSIONER BLOUGH: Yeah, I'll second it.

3 CHAIRPERSON HARTMANN: We need a voice -- a roll
4 call vote for that.

5 MR. VILLALOBOS: Commissioner Cooney.

6 COMMISSIONER COONEY: Aye.

7 MR. VILLALOBOS: Commissioner Ferini.

8 COMMISSIONER FERINI: Aye.

9 MR. VILLALOBOS: Commissioner Blough.

10 COMMISSIONER BLOUGH: Aye.

11 MR. VILLALOBOS: And Commissioner Hartmann.

12 CHAIRPERSON HARTMANN: Aye.

13 MR. VILLALOBOS: Motion passes four to zero.

14 CHAIRPERSON HARTMANN: And could -- could the
15 website reflect something about this for people who
16 are interested? Okay.

17 MS. BLACK: Madam Chair, just for the few people
18 who are left in the room, I think what we'll probably
19 do for the 4th is we'll have Mosby first, because we
20 have findings to adopt, then the Van Wingerden matter
21 because the applicant can't come back after lunch, and
22 then Paradiso. So it will probably be late morning
23 and may spill into the afternoon.

24 CHAIRPERSON HARTMANN: Okay. I think then
25 there's no further business for today. So this

1 meeting is adjourned.

2 (End of requested transcription.)

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C E R T I F I C A T E

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
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SUSAN MORALES