

Richard C. Monk  
Steven Evans Kirby  
Bradford F. Ginder  
Paul A. Roberts  
Peter Susi  
John G. Busby  
Susan H. McCollum  
Marcus S. Bird  
Peter L. Candy  
Michael P. Denver  
Kevin R. Nimmons  
Sarah Berkus Gower  
Lauren E. Joyce

# Hollister & Brace

a professional corporation

Since 1966

ATTORNEYS AT LAW

June 15, 2016

SANTA BARBARA OFFICE  
1126 Santa Barbara St.  
P.O. Box 630  
Santa Barbara, CA 93102  
TEL (805) 963-6711  
FAX (805) 965-0329

SANTA YNEZ VALLEY OFFICE  
2933 San Marcos Ave, Suite 201  
P.O. Box 206  
Los Olivos, CA 93441  
TEL (805) 688-6711  
FAX (805) 688-3587

www.hbsb.com

## HAND DELIVERED

Clerk of the Board  
County of Santa Barbara  
105 East Anapamu Street  
Santa Barbara, CA 93101

**Re: Appellant's Submission  
Pollyrich Farms Appeal of CUP for Sierra Grande  
Rural Recreation Project (3d Sup. Dist.)  
Hearing Date: June 21, 2016**

2016 JUN 15 PM 1:35  
COUNTY OF SANTA BARBARA  
CLERK OF THE  
BOARD OF SUPERVISORS

Dear Clerk,

This office represents appellant Pollyrich Farms. Please see our submission to the Board of original and eight copies enclosed for the June 21, 2016 meeting.

An electronic version will also be sent by email later in the afternoon of this date. Thank you.

Sincerely,

HOLLISTER & BRACE

By 

Barbara Walsh for Steven Evans Kirby

:bew

Attachment

2016 JUN 15 PM 1:35

COUNTY OF SANTA BARBARA  
CLERK OF THE  
BOARD OF SUPERVISORS

Sierra Grande Project  
Board of Supervisors  
Hr'g Date: June 21, 2016

## **There is No Legal Access Through Appellant's Property for the Intended Use**

**(Note: This document supplement's Appellant's  
April 29, 2016 Letter to the Board of Supervisors)**

Submitted on behalf of Appellant by:

Hebda Property Title Solutions  
and  
Hollister & Brace, Attorneys at Law

**THERE IS NO SUBSTANTIAL EVIDENCE THAT SIERRA GRANDE  
PROJECT PARCELS 31 & 17 HAVE LEGAL ACCESS THRU  
POLLYRICH PARCEL 74**

1. Substantial evidence is defined as evidence of “ponderable legal significance... reasonable in nature, credible, and of solid value,” and as “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *County of San Diego v. Assessment Appeals Board* (1983) 148 Cal. App. 3<sup>rd</sup> 548, 555 (Citations omitted.)
2. The project proposes primary access via a driveway on our client’s property (Pollyrich, APN 137-250-74). A fundamental principle of California real estate law is that an appurtenant easement, such as Pollyrich’s private driveway, cannot be used for the benefit of any property other than the dominant tenement. *Wall v. Rudolph* (1961) 198 Cal.App.2d 684, 695 (“Use of an appurtenant easement for the benefit of any property other than the dominant tenement is a violation of the easement because it is an excessive use.”).
3. There is no substantial evidence of an access easement across the Pollyrich property in favor of Hartman project Parcels 137-270-31 or 137-280-17. In other words, there is no such evidence that either of these parcels is a dominant tenement as to Parcel 74.

Let’s examine the County record:

4. Relevant parcels include the following: APN 137-250-074 (Pollyrich), APN 137-270-032 (Granite); APN 137-270-033 (River Oaks, Sierra Grande); APN 137-270-034 (Novatt); and APNs 137-270-031 & 137-280-017 (Hartman, Sierra Grande). See attached AP Map. All of these parcels were held in common ownership by Gardner Ranch Company in 1991. Under the law of merger, there were at this time no access easements across any of these properties in favor of the Hartman parcels. Civil Code section 811. Everyone agrees with this.

5. The project's land consultant, L&P, cites a May 1991 Agreement between Gardner and the County as one of two documents that established access to Hwy. 246 over the Pollyrich property. L&P infers, but does not expressly claim, that this document (No. 91-35506) required access over Pollyrich Parcel 74 as a condition of approval of recording Book 143, Page 8, Records of Surveys. However, in identifying the parcels constituting the subject properties, the Agreement **does not** include any reference whatsoever to Pollyrich Parcel 74. In short, the Agreement contains no requirement that the Pollyrich property provide such access.
6. By deeds recorded July 23, 1991 (Nos. 91-047392 & 91-047393) Gardner-Starker conveyed Parcel 32 to Granite Construction, together with a 60' wide access easement across Pollyrich Parcel 74 **in favor of Parcel 32 alone**. Thus, as of this date, there was no such easement across Parcel 74 in favor of any of the other parcels.
7. Jelmax then took title to Parcels 74, 31, 17, 2, 33 & 34. There could have been no easement over Parcel 74 in favor of Parcels 31 or 17 at this time because all of those parcels were owned by the same entity, Jelmax. Thus, we believe all parties must agree that in order for such an easement to exist, it must have been created after Jelmax took title.
8. On April 6, 2005, Jelmax granted Parcels 31, 17 and 74 to Ruoslahti and Engvall ("R&E") (No. 2005-31251). In this deed, Jelmax did reserve a 60' access easement over Parcel 74 **in favor of Parcels 33 & 34**, which Jelmax retained. As before, there was not and could not have been an easement over Parcel 74 **for the benefit of Parcels 31 or 17**, because ownership of each of those parcels was in the same entity, R&E. And, as explained in paragraph 2 above, the 60' easement Jelmax reserved in favor of Parcels 33 & 34 could **not** as a matter of law be used for the benefit of Parcels 31 or 17.

Now, the parties part company again:

9. The developer's land consultant claims that an instrument recorded after the Jelmax deed to R&E (but recorded the same day) created an easement across Parcel 74 in favor of Parcels 31 & 17. There is absolutely no recorded evidence of this.
10. The instrument L&P relies upon is entitled "Declaration of Reciprocal Easement Rights and Covenants Running with the Land" ("Dec.") No. 2005-31252. In order for an instrument to provide constructive notice, it must contain a description of the properties to be benefitted and burdened by the covenant running with the land. Civil Code section 1468(a). Moreover, proper recording provides only constructive notice of the "contents" of the recorded instrument. Civil Code section 1213.
  - Nowhere in the Dec. is there a description of Parcel 74 or any statement whatsoever that Parcel 74 is burdened by an easement in favor of Parcels 31 or 17.
  - To the contrary, paragraph 2 of the Dec. describes the area subject to the "Easements" in the document as (i) Easements for water and utility lines per Dec. paragraph 8; and (ii) a **40' wide** easement in favor of the R&E property through property described in Exhibit C. However, neither Exhibit C, nor Exhibit D, describes any portion of Parcel 74. The **only** reference in the Dec. to Parcel 74 is a single reference in paragraph 5 to "APN 137-250-74" in the context of erection of a sign.
  - The four corners of such instruments govern the rights and obligations of the parties. *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4<sup>th</sup> 345, 358 ("This whole discussion may in fact be summed up in the simple statement that *if the parties desire to create mutual rights in real property . . . they must say so, and must say it in the only place where it*

*can be given legal effect, namely, in the written instruments exchanged between them which constitute the final expression of their understanding.” Citations omitted; emphasis in original).*

\* \* \*

“Every material term of an agreement within the statute of frauds must be reduced to writing. No essential element of a writing so required can be supplied by parol evidence.”

\* \* \*

“As a matter of policy, the understanding of parties should be definite and clear, and should not be left up to mere conjecture.” (Ibid.)

Nowhere in the Dec. is there a description of or any reference at all to an access easement thru Parcel 74 in favor of Parcels 31 or 17.

11. Subsequent recorded instruments lend strong support to the conclusion that the parties also never intended to create an easement thru Parcel 74 for the benefit of Parcels 31 or 17.
  - On April 26, 2005 (No. 2005 – 38280) Jelmax conveyed Parcels 33 (River Oaks, Sierra Grande) and 34 (Novatt) to Vista Del Lado, expressly including the existing 60’ access easement thru Parcel 74 **for the benefit of those parcels alone.**
  - On August 30, 2005 (No. 2005-83665) R&E granted Parcel 74 to Logue (Pollyrich’s predecessor-in-interest). **R&E retained Parcels 31 and 17, but did not reserve an access easement through Parcel 74 to serve Parcels 31 or 17.**
  - On January 13, 2006 (No. 2006-3165), Logue granted Parcel 74 to Pollyrich. Neither that deed, nor Chicago Title’s policy of title insurance issued to Pollyrich for the transaction, shows an easement across Parcel

74 for the benefit of Parcels 31 or 17. This is consistent with all relevant documents recorded earlier.

- On June 11, 2014 (No. 2014-26330) R&E granted Parcels 31 and 17 to Hartman (Sierra Grande), including a large number of easements, **but none thru Parcel 74.**
12. In the April 6, 2005 deed, the parties demonstrated they knew how to create an easement over Parcel 74 for the benefit of other parcels. This was never done with respect to Parcels 31 and 17.
  13. We believe all parties also agree that R&E was the owner in fee of Parcels 74, 31 & 17 before the August 2005 deed of Parcel 74 to Logue. The fact that in the deed to Logue R&E **did not** reserve an easement in favor of Parcels 31 and 17, which R&E retained, becomes all the more significant.
  14. The constructive notice provided by the deed from R&E to Logue informs us of two important facts: First, R&E did not reserve easements from the Logue property (Parcel 74) for the benefit of Hartman Parcels 31 or 17. Second, R&E did not grant any of the Easements described in Exhibit C or D of the 2005 Dec. to Logue as appurtenant easements. These two facts show that R&E (who was a party to the Dec.) did not believe that the Pollyrich property should be a servient tenement for any of the Easements described in Exhibits C or D of the Dec.
  15. In short, neither the 1991 Agreement, nor the 2005 Dec., describes the Pollyrich property as a subject property of any of the easements referred to therein. These instruments provide constructive notice only of that which appears in the instruments themselves. The subject properties identified in the Dec. are Parcels 32, 33, 34, 31 and 17, not Pollyrich Parcel 74. The only reference to Parcel 74 is in paragraph 5 of the Dec. which is solely with respect to a sign.

**Conclusion**

As of today, the private driveway easement over Pollyrich Parcel 74 is appurtenant to Granite Parcel 32, Novatt Parcel 34 and River Oaks Parcel 33. These alone are the dominant tenements. No such easement exists in favor of Hartman's Parcels 31 or 17, and Parcel 74 cannot therefore legally be used for the benefit of Parcels 31 or 17 without Pollyrich's consent. Nothing in the 1991 Agreement or 2005 Dec. obligates Pollyrich to convey an easement in favor of either of the two Hartman properties. There is no substantial evidence to the contrary.

**Final Note**

**Parcels 31 and 17 are not landlocked.** Each has access to and from U.S. Hwy 101. We also understand the project sponsors have been pursuing alternate primary access to the project location in apparent recognition of the fact that the Pollyrich property is not available for their use.

Dated: June 6, 2016

Respectfully submitted,

HEBDA PROPERTY & TITLE SOLUTIONS

By  \_\_\_\_\_  
John Hebda

HOLLISTER & BRACE,

By  \_\_\_\_\_  
Steven Evans Kirby



Access Easement Title  
Chronology Summary  
Sierra Grande Project

- 1991 Gardner-Starker grant Parcel 32 to Granite, plus a road easement through Parcel 74 to serve **Parcel 32 alone** (Gardner owned Parcel 74 at the time).
- 1996 Jelmax takes title to Parcels 74, 2, 31, 33, 34 & 17.
- April 6, 2005  
(2005 – 31251)** Jelmax grants Parcels 31, 17 & 74 to R&E, with Jelmax reserving 60' easement over Parcel 74 in favor of Parcels 33 & 34, which Jelmax retains. **This is creation of the access easement thru Parcel 74 for Parcels 33 & 34: "... a non-exclusive easement 60 feet in width for ingress and egress..."**.
- April 6, 2005  
(2005-31252) Jelmax and R&E record Declaration, which **does not** mention any easement thru Parcel 74 for Parcels 31 or 17.
- April 26, 2005  
(2005 - 38280) Jelmax grants Parcels 33 & 34 to Vista del Lado (including the 60' easement in favor of those parcels **only**).
- Aug. 30, 2005  
(2005-83665) R&E grant Parcel 74 to Logue. R&E retain Parcels 31 & 17, but **do not** reserve an easement thru Parcel 74 to serve Parcels 31 or 17.
- Jan. 13, 2006  
(2006-3165) Logue grants Parcel 74 to Pollyrich. Neither the deed nor Chicago Title Insurance Company's title policy shows any easement across Parcel 74 for the benefit of Parcels 31 or 17.
- June 11, 2014  
(2014-26330) R&E grant Parcels 31 & 17 to Hartman. Deed contains **no easement** through Parcel 74.

Parcels 31 and 17 are **not landlocked**. Each has deeded access to U.S. Hwy 101, which is the proposed "secondary access" for the project.

