

LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

July 3, 2020

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

By email to sbcob@co.santa-barbara.ca.us

LATE
DIST

RE: Carpinteria Valley Farms Helistop (19APL-00000-00029); 7/7/20 Agenda Item No. 5

Dear Chair Hart and Supervisors,

This letter is submitted on behalf of a number of individuals and community organizations, including the Carpinteria Valley Association and Padaro Lane Association, that are deeply concerned about the impacts of the proposed Helistop at 205 Lambert Road. Over the course of three public hearings, the Planning Commission received testimony from dozens of local residents, reviewed the evidence presented by Staff, the public, and Applicant, and carefully considered their ability to make and support required findings of approval. The Commission's denial is based on the Project's inconsistency with applicable General Plan policy, and thoroughly supported by substantial evidence in the record. The Appeal fails to demonstrate that the evidence supporting the Commission's denial is insufficient, or to identify any legally cognizable defect in the Commission's denial. Moreover, the Appeal fails to establish that the proposed use is compatible with the surrounding residential neighborhood, and articulates no convincing reason why a private helicopter landing facility should be approved on the property. Accordingly, **we urge the Board to follow the Staff's recommendation and deny the appeal, make required findings for denial, determine the Project denial is exempt from the California Environmental Quality Act (CEQA), and deny the Project de novo.**

1. Substantial Evidence Supports Administrative Findings for Denial

The County's Article II Coastal Zoning Ordinance (CZO) only allows helistops on the Project site with a Conditional Use Permit (CUP). "The decision to allow a conditional use permit is an issue of vital public interest. It affects the quality of life of everyone in the area of the proposed use." (*Penn-Co v. Board of Supervisors* (1984) 158 Cal.App.3d 1072, 1084.) "A conditional use may be permitted if it is shown that its use is essential or desirable to the public convenience or welfare and at the same time that it will not impair the integrity and character of the zoned district. It must also be shown that it is not detrimental to public health, public morals, or public welfare." (*Tustin Heights Assn. v. Board of Supervisors* (1959) 170 Cal.App. 2d 619, 626.) Consistent with these general requirements, the CZO provides that the County may only approve a CUP if the decisionmaker finds, based on substantial evidence in the record, that "the proposed project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be compatible with the surrounding area." (CZO § 35.172.8 (5).)

Moreover, all land use approvals must be consistent with the General Plan. (*Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806; *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1182-86.) The County's General Plan, called the Comprehensive Plan, includes the Coastal Land Use Plan (CLUP) and Summerland Community Plan (SCP). The CZO expressly provides that the County may only approve a CUP (and CDP) if the decisionmaker finds, based on substantial evidence in the record, that the proposed project will comply with all applicable requirements of the Comprehensive Plan and CZO. (CZO § 35-172.8.6 (CUP); 35-169.4.3 (CDP).)

During the hearing process, the Planning Commission received written and oral testimony from members of the community, including **approximately 200 letters submitted in opposition to the Project**. (Board Letter, p. 4.) This testimony included firsthand accounts from area residents who regularly see and hear helicopters landing on properties in the area including the subject property, and describes the many ways in which the Project is incompatible with the surrounding area and detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood. (Id.) Public testimony also includes relevant observations of area residents supporting the Project's incompatibility with CLUP and Summerland Community Plan policies. This testimony qualifies as substantial evidence. (*See e.g. The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928, citing *Ocean View Estates Homeowners Ass'n Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402.)

An appellant challenging the sufficiency of evidence to support an agency's findings must identify the evidence relied upon and explain why it is insufficient. (*Defend the Bay v. City of Irvine* (2004) 119 Cal. App. 4th 1261, 1266; *Markley v. City Council* (1982) 131 Cal. App. 3d 656, 673.) Here, the Appeal ignores the huge volume of evidence in the form of first-hand community and layperson testimony that support denial findings, instead creating the misimpression that only expert opinion counts. The Appeal also fails to acknowledge or respond to the additional substantial evidence identified in our September 2019 letter to the Planning Commission including substantial evidence (discussed in section 2.a, below) showing that the helicopter noise conflicts with safe equestrian use of trails that border the Project site.

The Planning Commission acted well within its discretion in denying the Project, and the Appeal fails to show that the evidence compels a different result. Ample evidence supports a conclusion that the Project is both detrimental to and incompatible with the surrounding neighborhood, that the Project conflicts with key policies, and that other findings required for approval cannot be made. Under these circumstances denial is not only defensible but is required to protect the Summerland community and fulfil the requirements of the Summerland Community Plan.

2. The Project Conflicts with the Summerland Community Plan

The Summerland Community Plan clearly articulates the importance of protecting recreational facilities and uses, including trail corridors such as those that border the Project site. Figure 15 of the SCP (see attached, showing Figure 15 with the Project location denoted) depicts the trail easements that exist in the vicinity of the Project site, including public trails that run along Lambert Road at the eastern property boundary, a bicycle path that runs along both sides of Via Real to the south of the parcel, and an equestrian trail that runs along the southern property boundary. (Id.; ND, p. 21.) The SCP articulates specific goals, policies, and action items to protect these trails and the recreational experience of their users. Relevant provisions include the following:

Policy PRT-S-5: New development shall not adversely impact existing recreational facilities and uses.

Action PRT-S-5.1: In approving new development, the County shall make a finding that the development will not adversely impact existing recreational facilities and uses.

Action PRT-S-2.3: Designated trail corridors shall be kept clear from encroachment by new uses or development, to the extent reasonably feasible.

As explained in the BOS Findings for Denial (Board Letter Attachment 1) and in the Planning Commission's findings, the loud, percussive noise caused by helicopter take-offs and landings is inconsistent with these SCP policies, as well as SCP Policy N-S-1 which protects residential uses from significant noise impacts and Policy BIO-S-3 which protects monarch butterfly roosting habitat. Where, as here, a project is inconsistent with an applicable community plan, it cannot be approved. (*Resource Defense Fund*, 133 Cal.App.3d 800, 806; *Neighborhood Action Group v. County of Calaveras*, 156 Cal.App.3d at 1182-86.)

3. The Negative Declaration Fails to Comply with CEQA

A Negative Declaration (ND) was prepared to evaluate the Project's impacts on the environment. While an adequate ND is not required for a project that is denied, the significant inadequacies in the Helistop ND provides further justification for Project denial.

"The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.'" (*The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 926.) CEQA "creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*League for Protection of Oakland's*

Architectural and Historic Resources v. City of Oakland (1997) 52 Cal. App. 4th 896, 904-905; Public Resources Code § 21151.) Reliance on a Negative Declaration is only allowed where “there is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.” (CEQA Guidelines 15070(b).)

If a lead agency is presented with substantial evidence supporting a fair argument that a project may have a significant effect on the environment, “the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.” (CEQA Guidelines § 15064 (f)(1).) Substantial evidence “means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (Guidelines § 15384 (a).) Substantial evidence includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. (Pub. Res. Code, § 21082.2 (c); Guidelines, § 15384.) “[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is a disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.” (Guidelines § 15064 (g).) Additionally, “Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence” (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735-736, quoting *Mejia v. City of Los Angeles* (2005) 130 Cal. App. 4th 322, 340-341.)

Discussed below and in our submittals to the Planning Commission, the ND is legally flawed in its analysis of noise impacts, impacts to biological resources including nearby Monarch butterfly roosts and other designated environmentally sensitive habitat areas (identified in the 2009 MND for the applicant’s recreational polo field, 08DVP-00000-00009/08CUP-00000-00016 as being proximate to the Project’s overflight and landing area), impacts to recreational resources (as identified in comments from the Montecito Trails Foundation and others), and cumulative impacts from other illegal helicopter landing areas near the Project site that the Applicant has claimed will step forward for permits.¹ Pursuant to the County’s thresholds, the Project will cause significant Project-specific and cumulative noise impacts, and accordingly the Project cannot be approved with a ND.

Moreover, discussed below, substantial evidence supports a fair argument that the Project may cause significant adverse impacts to recreational resources including impacts to established recreational uses, including impacts to the safety of equestrian trail users, and significant land use impacts arising from the inconsistency of the proposed use with established recreational uses, and the Project’s inconsistency with the Summerland Community Plan (SCP) Parks Recreation and Trails element.

¹ See Exhibit A, Applicant’s Map identifying other sites where owners purportedly land helicopters, or would like to.

a. Defective Noise Impact Analysis

The ND's noise impact analysis is badly flawed in several respects. First, pursuant to the thresholds of significance used in the ND, a project has a significant noise impact if it causes short-term exposure of people to noise levels exceeding the County threshold of 65 dB(A) CNEL maximum for exterior exposure. (ND p. 19; *see* County Environmental Thresholds Manual, p. 114.) The Sound Exposure Level (SEL) for the R44 Helicopter as measured by the Federal Aviation Regulation (FAR) is 81 dB(A), and the existing noise level at the southern and eastern property lines is already above 65 dB(A). (Id.) The ND and noise study reason that because of the existing highway noise, the additional sound exposure at the property lines would not be significant. This conclusion is inconsistent with the County's thresholds, and defies logic. Because of the logarithmic scale of decibels, an increase in 10 dB sounds like a doubling in loudness.² Even a slight increase in noise levels over the 65dB threshold would result in a significant impact under the County's thresholds, and yet the ND incomprehensibly finds no significant cumulative impact. Discussed in section d, below, the cumulative impact analysis throughout the ND is fundamentally contrary to CEQA.

b. Defective Biological Impact Analysis

There are two mapped Monarch butterfly aggregation sites on the Project site, approximately 100 from one landing zone and 250 feet from the other. The ND concludes summarily "[b]ecause no physical changes to the site are proposed and noise associated with the helicopter landings would be less than significant, the landing zones are not expected to significantly impact ESH on the subject property." (ND, p. 10.)

California Monarch populations are in a state of steep and alarming decline³, and the species is currently under consideration for listing as an endangered species⁴. Monarchs require specific micro-climatic conditions and are very sensitive to habitat changes at the aggregation sites.⁵ Considering this, it is incomprehensible that the ND undertook no actual analysis of whether the

² <https://www.nps.gov/grca/learn/nature/upload/GRCA-07-05-SoundLevels-Helicopters.pdf>, citing (Everest 2001).

³ <https://xerces.org/save-western-monarchs/>

⁴ <https://www.fws.gov/savethemonarch/ssa.html>

⁵ The Monarch Project's Conservation and Management Guidelines for Preserving the Monarch Butterfly Migration and Monarch Overwintering Habitat in California (1993), available at: https://www.westernmonarchcount.org/wp-content/uploads/2014/10/monarch_management_guidelines_1993.pdf; *see also* Microclimate parameters associated with overwintering monarch butterfly habitats in two State Parks on the central coast of California, 2007, Ventana Wildlife Society, available at http://www.ventanaws.org/pdf/about_research/Microclimate%20Report%202007.pdf

wind and vibrations generated by helicopter takeoff and landing may impact the Monarch aggregation sites. This deficiency “may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311.)

c. Defective Recreational Impact Analysis

A significant impact on the *quality* of an existing recreational opportunity is identified in the ND as one of the three thresholds for determining the significance of the Project’s impact to recreation. However, no actual analysis of how the heliport would affect the quality of existing recreational opportunities is included in the document. Rather, it summarily concludes “[t]he proposed project would not conflict with the ability of the public to use any of the existing hiking, biking, and equestrian trails bordering the subject parcel.” There is no substantial evidence to support this bare conclusion. Discussed above, public trail easements run along Lambert Road at the eastern property boundary, and a bicycle path runs along both sides of Via Real to the south of the parcel and an equestrian trail runs along the southern property boundary. (ND, p. 21.) Moreover, the ND fails to disclose that the Project site is immediately across the highway from Loon Point Beach, which would be impacted by the proposed ocean route flight path. Impacts to these recreational facilities from operation of the helipad may be significant, and must be disclosed and analyzed. The County further impermissibly failed to evaluate the Project’s consistency with the recreation policies of the CLUP and Coastal Act.

d. Defective Cumulative Impact Analysis

CEQA requires that negative declarations analyze the cumulative impacts of proposed projects. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 114). Cumulative impacts for purposes of CEQA analysis are defined as follows:

“Cumulative impacts” refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (a) The individual effects may be changes resulting from a single project or a number of separate projects. (b) The cumulative impact from several projects is the change in the environment which results from *the incremental impact of the project when added to other closely related past, present, and reasonable foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.*

(CEQA Guidelines § 15355 (emphasis added)). One court described the purpose of a cumulative impact analysis as follows:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental

lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

(*Communities for a Better Environment*, 103 Cal. App. 4th at 114). The ND's cumulative impact analysis wholly disregards the definition of cumulative impacts and the purpose for their analysis by entirely failing to identify and discuss other closely related past, present, and reasonably foreseeable probable future projects. Rather, the cumulative impact analysis in reflects a fundamental misunderstanding of what a cumulative impact entails, essentially providing that because there is no Project-specific impact, there is no cumulative impact. The following examples illustrate this approach:

Cumulative Impacts [to Biological Resources]: Because the project would not significantly impact biological resources onsite, it would not have a cumulatively considerable effect on the County's biological resources.

(ND, p. 10.)

Cumulative Impacts [to Noise]: The project would not be a substantial source of noise. Therefore, the project's noise impacts would not be cumulatively considerable and its cumulative impacts would be less than significant.

(ND, p. 20.)

There are reportedly a number of other properties in the Project vicinity that experience private helicopter activities which contribute to cumulative Project impacts that were not evaluated. A thorough revision of the ND's cumulative impact analysis is clearly required for the ND to comply with CEQA.

e. The Project May Significantly Impact the Safety of Equestrian Trail Users

A potentially significant impact to recreation occurs where the Project would:

conflict with established recreational uses of the area; conflict with biking, equestrian and hiking trails; and have a substantial impact on the quality or quantity of existing recreational opportunities (e.g., overuse of an area with constraints on numbers of people, vehicles, animals, etc. which might safely use the area)? (ND, p. 21.)

Here, substantial evidence supports a fair argument that the Project will conflict with and substantially degrade the quality of established recreational uses surrounding the Project site including the use of the trails and beaches surrounding the Project site.

One issue of particular concern that implicates each of these thresholds is that the percussive noise and vibrations associated with helicopter takeoffs and landings may spook horses using the equestrian trail, which could lead to injuries for horse and rider and potentially others.

It is acknowledged, including by the California Supreme Court, that horses are prone to be frightened by unaccustomed noises. (*See e.g. Parsons v. Crow* (1997) 15 Cal. 4th 456.) A safety leaflet published by the U.K. Royal Airforce Safety Center “as part of a sustained efforts to mitigate the problems caused when horses are spooked by aircraft” explains why horses spook from low-flying helicopters⁶:

As most experienced riders know, horses have a highly developed sense of hearing and extremely mobile ears that allow sound from all directions to be detected. Horses can also hear sounds that are inaudible to humans, and can detect faint noises up to 4 km away. The horse’s ears prick up and turn towards the sound, and this ‘Pryer Reflex’ can show where the horse’s attention is focused. If a sound is unusual, eye movement and head movement may follow to try and identify the sound, providing a good warning signal for rider.

Originally, horses were grazing herd animals, and their hearing was a primary defense against predators. Even today, the horse’s basic instinct has not changed, and in response to real or imagined danger, the horse will run away, particularly when faced by something unfamiliar. The horse is also very sensitive to any insecurity or lack of confidence in the rider, and will respond accordingly.

The horse is likely to hear an aircraft before the rider, and the ‘Pryer Reflex’ may indicate the horse senses danger, and where the danger is coming from.

Incidents where horses have been injured or killed as a result of low-flying helicopters are documented in public comments submitted to your Commission (*see* 9/25/19 Public Comments, pp. 69-77). Additionally, numerous local residents, including horse owners and trail users, have submitted testimony identifying potential safety impacts to equestrian trail users. (*See e.g.* 9/25/19 Public Comments, pp. 18, 64; 6/26/19 Public Comments, pp. 164, 165.) Under CEQA, this layperson testimony qualifies as substantial evidence supporting a fair argument that the Project may result in potentially significant impacts to equestrians and trail users.

(*Keep Our Mountains Quiet*, 236 Cal.App.4th 714, 735-736 (testimony of area residents as to traffic impacts); *Mejia v. City of Los Angeles* (2005) 130 Cal. App. 4th 322, 340-341 (layperson testimony as to impacts to wildlife).) Further, comments by Commissioner Parke based on his relevant

⁶ available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/496466/20160129-1614_14RD_Low_Flying_-_Advice_for_Horse_Riders_Trifold_150dp.pdf

experience as an equestrian also qualifies as additional substantial evidence. (*Pocket Protectors*, 124 Cal.App.4th at 932; *Stanislaus Audubon Society*, 33 Cal. App. 4th at 155.)

f. The Proposed Use Is Inconsistent with Adjoining Land Uses

A project results in potentially significant land use impacts where, among other things, the proposed land use is incompatible with existing land uses. (ND, p. 17.) SCP Figure 15 demonstrates (shown in the attached Exhibit B with the Project site demarcated), the Project site is surrounded by public trail easements, and the helicopter flight path goes over the public beach at Loon Point, travels on three sides of the trail to the beach, and directly over a public trail on Lambert Lane.⁷ Scores of public comments from area residents identify conflicts with numerous surrounding land uses including these recreational uses, as well as residential uses. Discussed above, this testimony of area residents on nontechnical subjects, based on their knowledge of local conditions, constitutes substantial evidence supporting a fair argument that the Project may significantly and adversely impact the environment such that an EIR is required. (*Keep Our Mountains Quiet*, 236 Cal.App.4th 714, 735-736, *Mejia v. City of Los Angeles* (2005) 130 Cal. App. 4th 322, 340-341.)

g. The Project Is Inconsistent with Environmentally Protective Policies

“[I]f substantial evidence supports a fair argument that the proposed project conflicts with policies [adopted for the purpose of avoiding or mitigating an environmental effect] this constitutes grounds for requiring an EIR.” (*Pocket Protectors*, 124 Cal.App.4th at 930; CEQA Guidelines, App. G, § IX (b).) Figure 15 of the SCP (see Exhibit B) depicts the trail easements that exist in the vicinity of the Project site, and the SCP articulates goals, policies, and action items to protect these trail easements, and the recreational experience of their users. Discussed in section 2, above, the Helistop Project conflicts with SCP’s PRT element policies that seek to avoid and mitigate environmental impacts to Summerland’s recreational facilities including *Policy PRT-S-5*, *Action PRT-S-5.1*, and *Action PRT-S-2.3*. Additionally, also discussed above, the Project conflicts with SPC policies protecting residential uses from noise impacts, and protecting Monarch butterfly roosts. These conflicts result in potentially significant impacts (*see Pocket Protectors*, 124 Cal.App.4th at 930; CEQA Guidelines, App. G, § IX (b).) The defective CEQA document is yet another reason to deny the project.

4. Conclusion

For the reasons stated herein, we respectfully request that you deny the Helistop Project.

⁷ See the Applicant’s “Approach Map”, attached as Exhibit C.

Chair Hart and Board of Supervisors
July 3, 2020
Page 10

Sincerely,

LAW OFFICE OF MARC CHYTILO, APC

A handwritten signature in black ink, appearing to read 'Marc Chytilo', with a long, sweeping horizontal stroke extending to the right.

Marc Chytilo
Ana Citrin

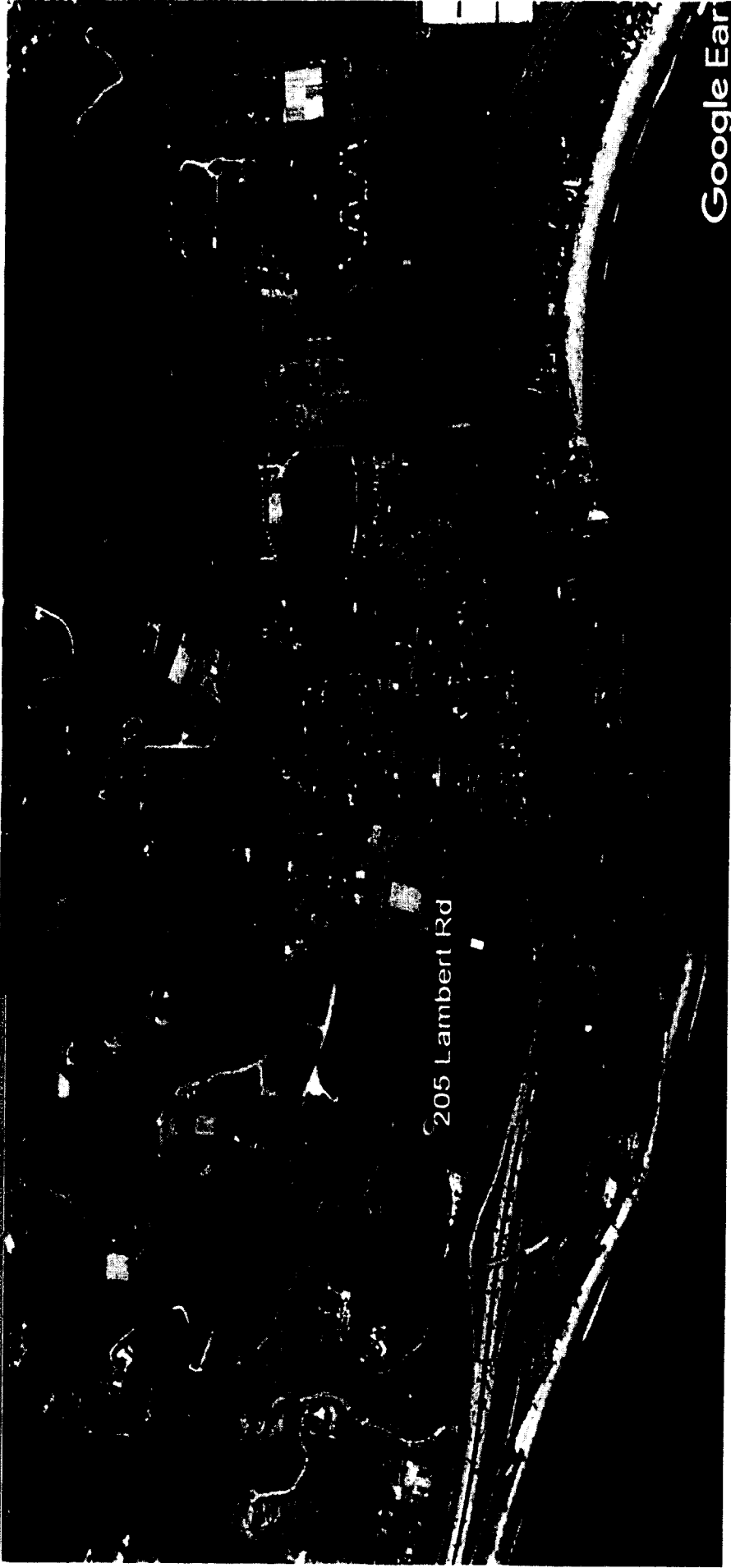
Exhibits:

- Exhibit A: Applicant's Map identifying other sites where owners purportedly land helicopters, or would like to.
- Exhibit B: SCP Figure 15, with the Project site demarcated.
- Exhibit C: Applicant's "Approach Map",

EXHIBIT A

https://www.google.com/maps/@42.8129811,-71.040944,300m/data=!3m1!1e3!1s0x89d179c602f62478b7:7d3f03d9a9x0e9b2h4lcs5MJDGacthxAl70zB8KIH-q8lMhSEm%26%3D11%26s%3D03%26a%3DcAoc0ll6x0z2BllXmVkgINSRIB_srl%26%26t%3D%26f%3D2656E719-61F-14323-8226-ABADF765412D-1%26kcs%3Dsom.apolle%26caat%26chz%3DFF50635E-663E-4A99-8CD1-4E2E2B3B45B%26c%3D58%26s%3D5_ccz4

Helicopter LZ Map
Exhibit A



SUMMERLAND COMMUNITY PLAN

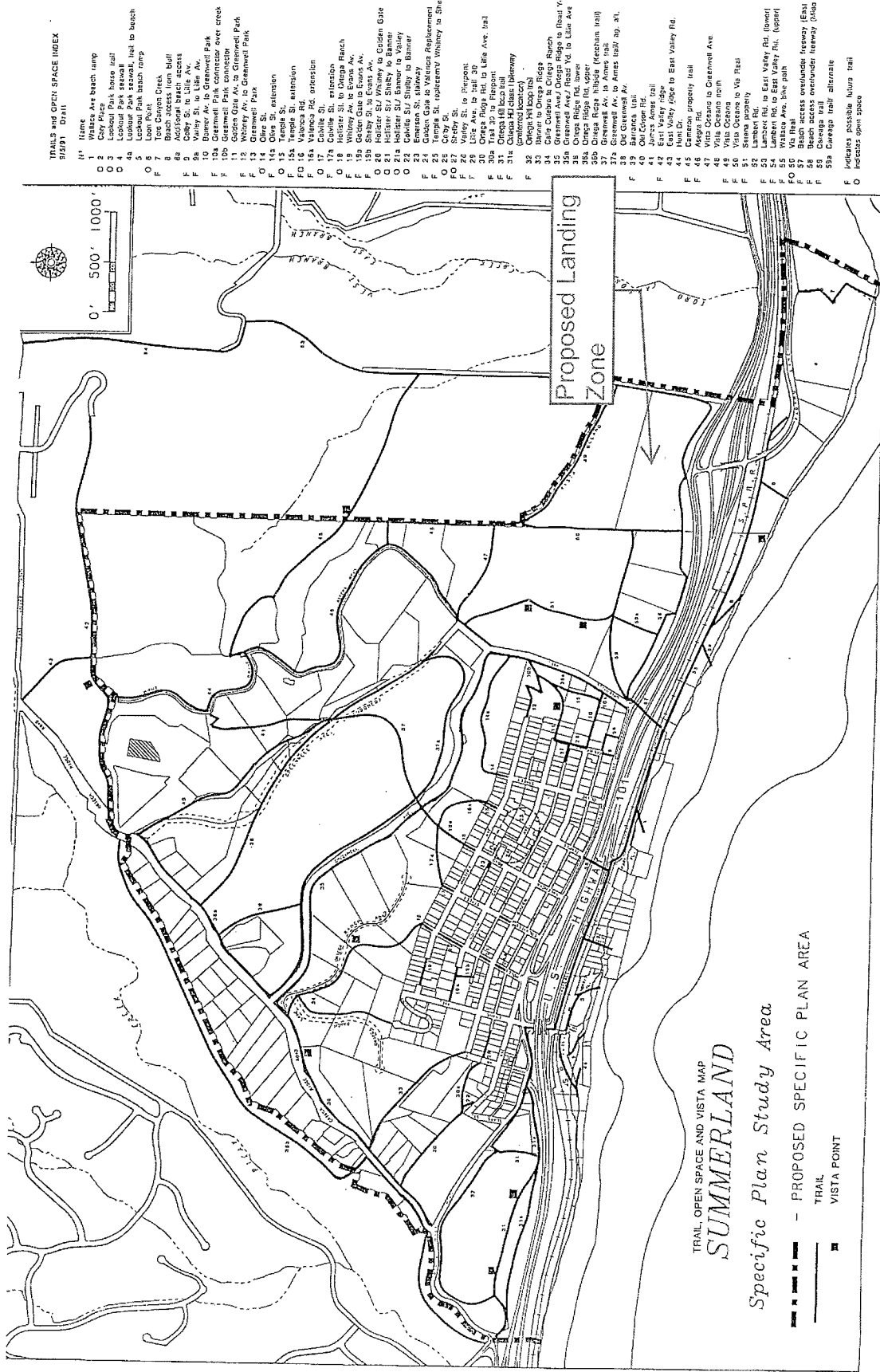


Figure 15

Figure 15: Parks, Recreation, & Trails

EXHIBIT B

Approach Map

Google Maps 2600 Via Real



EXHIBIT C