



PLANNING & DEVELOPMENT  
APPEAL FORM

SITE ADDRESS: SANTA ROSA ROAD, BUELLTON

ASSESSOR PARCEL NUMBER: 137-270-031, 033 & 137-280-017

Are there previous permits/applications?  no  yes numbers: 13 CUP-00000-00012  
(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents?  no  yes numbers: 15 NED-00000-00002

1. Appellant: Rick Oas, Pollyrich Farms Phone: 805-688-0220 FAX: \_\_\_\_\_

Mailing Address: 468 Ballard Cyn. Rd. Solvang, CA 93463 E-mail: showjumpers@me.com  
Street City State Zip

2. Owner: SAME Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Street City State Zip

3. Agent: SAME Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Street City State Zip

4. Attorney: J.E. Kirby, Hollister Phone: 805-688-6711 FAX: \_\_\_\_\_

Mailing Address: P.O. Box 206, Los Olivos, CA E-mail: sekirby@hbsb.com  
Street City State Zip 93441

Case Num: **16APL-00000-00005**  
Supervisor: POLLYRICH FARMS APPEAL OF SIERRA GR  
Applicable: 510 HWY 101 1/25/16  
Project Plan: BUELLTON  
Zoning Desi: 137-270-031

JNTY USE ONLY

RECEIVED

Companion Case Number: \_\_\_\_\_  
Submittal Date: \_\_\_\_\_  
Receipt Number: JAN 25 2015  
Accepted for Processing \_\_\_\_\_  
Comp. Plan Designation: S.B. COUNTY (NORTH)  
PLANNING & DEVELOPMENT

# COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION:  COUNTY  MONTECITO

RE: Project Title SIERRA GRANDE RURAL RECREATION PROJECT

Case No. 13CLUP-00000-00012

Date of Action JAN. 13, 2016

I hereby appeal the  approval  approval w/conditions  denial of the:

Board of Architectural Review – Which Board? \_\_\_\_\_

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? COUNTY

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

APPELLANT OWNS LANDS ADJACENT TO THE PROJECT  
AND THROUGH WHICH PRIMARY ACCESS TO THE PROJECT  
IS PROPOSED. APPELLANT SUBMITTED WRITTEN & ORAL  
COMMENTS IN PERSON AND THROUGH A REPRESENTATIVE  
AT THE PLANNING COMMISSION'S PUBLIC HEARING  
IN CONNECTION WITH THE DECISION APPEALED.



Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

SEE ATTACHED SUPPLEMENTAL STATEMENT

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Specific conditions imposed which I wish to appeal are (if applicable):

- a. PROJECT DESCRIPTION WHICH PROVIDES FOR
- b. PRIMARY ACCESS TO AND FROM THE PROJECT
- c. THROUGH APPELLANT'S PROPERTY. SEE ALSO
- d. Supplemental statement.

**APPELLANT'S SUPPLEMENTAL STATEMENT**

The Planning Commission erred and abused its discretion in approving the project for the following reasons:

1. **ACCESS.** The project was approved upon the premise and subject to the condition that primary access to and from the project site would be from Hwy. 246, south through appellant's 20 acre property (AP# 137-250-074). This would convert the existing private driveway through appellant's lands to a public thoroughfare. This would not be a lawful use of the easement, which is to be used only for ingress and egress to accommodate certain private residential and agricultural activities.

Under well-established California law, an easement holder (the project sponsor) must use his or her easement in such a way as to impose as slight a burden as possible on the property across which the easement runs (appellant's property). (*Locklin v. City of Lafayette* (1994) 7 Cal. 4th 327, 356, fn. 17.)

The holder of an easement may not convert the use allowed by the easement to either: (1) materially change the nature of the use; or (2) substantially increase the burden of the use. (*Atchison, Topeka & Santa Fe Ry. Co. v. Abar* (1969) 275 Cal. App.2d 456, 464; Civil Code § 807; *Jordan v. Worthen* (1977) 68 Cal.App.3d 310, 327.)

If the dominant tenement (the project sponsor) changes the use in a manner that unduly increases the burden on the servient tenement (appellant's property), the owner of the servient tenement is entitled to enjoin the increased burden. (*Wall v. Rudolph* (1961) 198 Cal.App.2d 684, 686, 689 [transforming quiet rural use into heavy commercial use supported injunction as a matter of law]; *Warren v. Atchison, T. & S.F. Ry. Co.* (1971) 19 Cal.App.3d 24, 37.)

In the present case, although there is an existing easement for ingress and egress and private road purposes through appellant's property, the uses contemplated were that the easement would serve parcels devoted to certain agricultural and residential purposes, as has been the case for many years. The proposed project would transform the use of the project sponsor's property into a commercial recreational facility. This would fundamentally change the use of the dominant tenement, substantially increase the number of trips over the easement on appellant's property, the servient tenement, and substantially increase the burden in a way that would violate basic principles of California easement law. Consequently, the existing easement cannot serve as primary access to the proposed project.

Conversion of the private driveway through appellant's lands to a public thoroughfare would significantly interfere with the value, use and enjoyment of appellant's lands through which project traffic would flow to and from the project site on a 10-hour per day, 7-day per week basis (summer months).

The traffic analysis and other conclusions reached in the MND are inadequate and based upon false premises. A critical assumption of the Planning Commission's approval is that primary access to the project site can lawfully be made via the private driveway through appellant's property. This is not true, since continued use of the easement is limited to private ingress and egress to accommodate certain residential and agricultural activities, not commercial activities open to the general public.

The traffic projections are speculative and unrealistically low. Staff estimates 84 average round trips (168 one way trips) per day by customers and employees of the commercial enterprise. Even if accurate, this does not account for round trips by substantial numbers of persons visiting the project site out of curiosity, or others delivering goods and services to the project.



There has been no actual traffic count with respect to existing use of the driveway and therefore a baseline for a proper CEQA analysis has not been established.

2. **AGRICULTURAL RESOURCES.** The MND did not consider the substantial adverse impacts to existing operations on the prime agricultural lands adjoining the private driveway if it is converted to a public thoroughfare.

Existing agricultural operations adjoining the private driveway include growing of grass feed and rehabilitating sick and injured horses. Many of these horses reside adjacent to the access road for only a relatively brief period of time and may not have time to habituate to the substantial increases in traffic and noise, an ultimately dust, that can reasonably be expected from conversion of the private driveway to a public thoroughfare. These horses can easily become frightened and injured as a result.

The proposed primary access to the project site is incompatible with the County's agricultural policies designed for the preservation of agriculture, and create the potential for interfering with or precluding altogether appellant's lands qualifying for a Williamson Act contract that appellant is pursuing.

3. **BIOLOGICAL RESOURCES.** The MND's analysis of impacts to the Santa Ynez River and adjacent riparian habitat is in part premised upon the existing Streambed Alteration Agreement (SBAA) for the "Arizona river crossing" as part of primary access to the project site. The SBAA did not consider the incremental increase in traffic resulting from approval of this project, as proposed. The traffic estimates made in the MND substantially understate the actual traffic flow to be generated by this project. An accurate baseline has not been established and a realistic assessment of the associated biological impacts has not been made.

The MND's finding of no significant impacts with respect to biological resources relies in part upon mitigation to be created in the future by Department of Fish & Wildlife upon expiration or renewal of the current SBAA. This is speculative and does not constitute proper mitigation under CEQA.

4. **NOISE.** The noise analysis of the MND is inadequate, as is its central premise that "There are no noise sensitive uses within 1,600 ft. of the proposed project." In fact, horses rehabilitate on appellant's lands much closer to the proposed primary access road. The associated increase in traffic and noise has not been evaluated as it must be due to the potential for significant adverse impacts resulting therefrom.

5. **TRANSPORTATION/CIRCULATION.** The MND premises its analysis upon conversion of the existing private driveway to a public thoroughfare, which is not a lawful use of the easement. In addition, the projected number of average daily trips is significantly understated as discussed above.

The traffic analysis does not consider the reasonable alternatives for access to the project site, which include a) potential use of an existing at-grade connection to U.S. Hwy. 101, south of the Santa Rosa Road interchange, b) potential use of Granite Construction's existing access from Santa Rosa Road, or c) potential shuttle transport to the project site from a central location in town via one of these alternative routes.

The proposed driveway "taper" or "flare" at the intersection of the access road and SR 246 should be properly surveyed and staked so decision makers and the public can understand its utility, if any, the necessity for oak tree removal, and its impacts on adjacent lands and view sheds.

6. **EIR REQUIRED.** It is our opinion that this project clearly has the potential for significant adverse environmental impacts and that an EIR must be prepared. The project

description and baseline (environmental setting) and project conditions rely upon the erroneous assumption that the primary access of the project can and will be made via the private driveway through appellant's land. The conversion of this private access to a public thoroughfare will not in our opinion be allowed. This central feature of the environmental document must be redrafted and the initial study redone.

The proposed project also conflicts with a number of County land use policies and development standards which require proper analysis of traffic impacts, access alternatives and impacts to agricultural and biological resources once proper baselines have been established and realistic use projections have been made.

Consequently, the County should revise its analytical methodologies for this project, starting with an accurate environmental setting, and then properly evaluate the individual and cumulative project impacts.

Appellant reserves the right to submit additional materials prior to the hearing on this appeal.



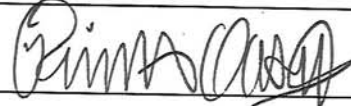

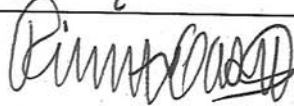


Please include any other information you feel is relevant to this application.

**CERTIFICATION OF ACCURACY AND COMPLETENESS** Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Print name and sign - Firm <i>Hollister &amp; Brace, APC</i>		Date <i>1/22/2016</i>
Print name and sign - Preparer of this form <i>STEVEN EVANS KIRBY, Attorney</i>		Date <i>1/22/2016</i>
Print name and sign - Applicant <i>Rick Oas, Pollyrich Farms, LLC</i>		Date <i>1/22/2016</i>
Print name and sign - Agent <i>STEVEN EVANS KIRBY, ATTORNEY</i>		Date <i>1/22/2016</i>
Print name and sign - Landowner <i>LLC</i> <i>Pollyrich Farms, Rick Oas, Manager</i>		Date <i>1/22/2016</i>