

# LAS VARAS RANCH PROJECT

## PLANNING COMMISSION HEARINGS

38566.3

Las Varas Ranch Project  
38566.3

Planning Commission Hearings

Index

No.	Hearing Date
1.	04/29/15
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4.	02/08/12
5.	01/18/12



April 27, 2015

Susan F. Petrovich  
Attorney at Law  
805.882.1405 tel  
805.965.4333 fax  
SPetrovich@bhfs.com

**VIA EMAIL TO ATUTTLE@CO.SANTA-BARBARA.CA.US AND  
AMCCURDY@CO.SANTA-BARBARA.CA.US**

Mr. Alex Tuttle  
Ms. Alice McCurdy  
County of Santa Barbara  
Planning & Development  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Proposed Findings for Las Varas Project -- Planning Commission hearing April  
29, 2015

Dear Alex and Alice:

I am addressing this letter to you both because Alex has been the lead planner on this project from the outset, but Alice authored the April 9, 2015 Memorandum to the Planning Commission. I wanted to be certain that the "right" person received this in time to complete your preparations for the Planning Commission hearing.

**Revised Policy Consistency Analysis included in the Memorandum**

This section is very thorough overall, but I would like to suggest in light of past public testimony that indicated that the speakers didn't fully grasp the fact that the sections of the proposed CC&Rs pertaining to preservation of the existing agricultural operation also were incorporated into the conditions.

I suggest that the words "and project conditions" be inserted on Page 10, in the second line of the DISCUSSION, after "CC&Rs." On Page 11, in the second paragraph under DISCUSSION, the same insertion should be made at line 11.

**Attachment A: Findings**

Page A-27, Finding #4 – I suggest that the following language be added to the end of this finding: "The project approval includes conditions on siting, height, bulk, scale and design to avoid public view obstruction." I suggest this additional language because the required finding focuses on public view obstruction.

1020 State Street  
Santa Barbara, CA 93101-2711  
main 805.963.7000

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Mr. Alex Tuttle  
Ms. Alice McCurdy  
April 27, 2015  
Page 2

Page A-28, Finding #2.6.3 – I suggest that the following language be inserted after the last new insertion in this paragraph (starting 6 lines from the bottom): “The development envelopes have been configured and sited to avoid impacts to ESH. The existing homesite on Parcel 5 abuts ESH, but the development envelope for any expansion of the existing residential footprint has been sited to avoid intrusion into the ESH and to avoid further intrusion in the ESH buffer.”

I make this suggestion just to fortify and clarify that the staff-recommended conditions already incorporate mitigation measures to support the required finding.

Thank

Sincerely,



Susan F. Petrovich

April 27, 2015

Susan F. Petrovich  
Attorney at Law  
805.882.1405 tel  
805.965.4333 fax  
SPetrovich@bhfs.com

Planning Commission  
County of Santa Barbara  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas Ranch Project – for April 29, 2015 Hearing – 05TPM-00000-00002,  
05LLA-00000-00005, -00006, 07RZN-00000-00006, -00007, 07CUP-00000-  
00057, 11COC-00000-00001, 11CDP-00000-0078, 15CDP-00000-00026, -  
00027, -00028

Dear Chair Brown and Honorable Planning Commissioners:

Brownstein Hyatt Farber Schreck represents the owner of the Las Varas and Edwards Ranches (Ranch). On her behalf, we submit this letter for your consideration in preparation for the April 29, 2015 hearing before your Commission.

We again thank your staff for all of their hard work and consideration of this project. They have produced a legally complete and accurate environmental document, a comprehensive and legally defensible set of findings and, except for those conditions that we address below, reasonable conditions that the applicant can accept.

Per the Board of Supervisors hearing on February 17, 2015, aside from a few minor clarifications to concerns, raised by your Commission on September 23, 2014 and addressed by County staff in its report to the Board, the Board determined that no additional environmental review is required for the project. The project has been returned to your Commission for a recommendation on all elements of the project, after which the project will return to the Board for final action. We urge your Commission to make a swift decision on the project at the conclusion of your April 29, 2015 hearing, so that the Board can hear this matter as quickly as possible.

To reintroduce you to the project, we thought that it would be helpful to consider a summary of the procedural history of the project followed by a description of the Compromise Proposal and explanation of the conditions that the owner cannot accept.

1020 State Street  
Santa Barbara, CA 93101-2711  
main 805.963.7000

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### **Procedural History of Project**

The Project application was deemed complete for processing by the County on April 9, 2008. As you can see from the 2005 TPM date, the applicant and consultants worked with the staff for approximately two years between application submittal and the date that staff deemed the application(s) complete.

The Project has undergone significant environmental review and analysis, including a Draft Environmental Impact Report (10EIR-00000-00005) dated January 2011, a Final Environmental Impact Report dated December 2011, a Recirculated Draft Environmental Impact Report dated December 2013, a Final Recirculated Environmental Impact Report dated July 2014, and an EIR Revision Letter. The environmental documents were subjected to substantial public scrutiny before being finalized by a knowledgeable Planning & Development staff guided by your County Counsel.

The Planning Commission conducted two (2) public hearings on the Project in January-February 2012, culminating on February 8, 2012 with no substantive vote on the Project and a referral of the Project to your Board with the request that they respond to three requests:

- a. Whether the burden imposed by the project warrants exaction of an east-west coastal trail alignment south of Highway 101 [i.e., the exaction being the requirement that the applicant dedicate a trail other than the 3 trails that the applicant had offered as part of the Project description].
- b. If the exaction is warranted, direct staff to prepare additional environmental review of potential trail alignments, recirculate a document as necessary, and return to the Planning Commission for a full recommendation on the project applications.
- c. If the exaction is not warranted, refer the project back to the Planning Commission for a full recommendation on the Project.

The Board of Supervisors conducted a public hearing on the Project on April 17, 2012 and determined that it required further environmental information on a broad range of topics, including analysis of an alternative east-west public trail route south of Highway 101.<sup>1</sup> The Board did not respond to your request for clarification of the legal issue pertaining to the proportionality of the project burdens as related to trail exaction.

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<sup>1</sup> The topics cited in the Board's motion included visual impacts and aesthetics, development footprints and building size; mapping of biological resources; hazardous materials/remediation issues; fire access; agricultural resources and viability of continued agricultural operations; historic and cultural resources; water systems, water availability and growth inducing impacts; and recreation (including trail alignments

Following the Recirculated EIR, the Project returned to the Planning Commission on July 30, 2014 and September 23, 2014 for additional review, but came to no final resolution regarding the project merits. The Board of Supervisors then conducted its February 17, 2015 hearing.

During each of these six (6) public hearings, the County provided ample public notice of the proceedings and received extensive public comment. The environmental review was conducted in-house and County staff wrote all draft and final EIRs -- County Planning & Development staff certainly considers the environmental review to be complete and legally adequate for the purposes of CEQA. On February 17, 2015, the Board of Supervisors concurred and found that no additional environmental review is required for the project.

**The Time Has Come for Your Commission to Make its Recommendation to the Board Regarding this Project**

The first time around, the applicant accepted your Commission's decision to ask the Board for direction regarding the trail issue and additional environmental review. After great expectation that the Board would settle this issue, the applicant was disappointed that the Board did not directly address the issue of exaction of whether your Commission could include a condition of approval that exacted a new trail route, not acceptable to the applicant and not part of the three trails already on offer in the Project description.

Following the Board's initial decision, the applicant and her representatives worked with staff to provide accurate and updated studies, to provide detailed project information, and to make adjustments to the project to respond to staff concerns. The applicant even offered an enormous and final concession on the trails issue -- as a compromise only -- to accept an east-west trail route that uses the existing ranch road and that will allow the public to share the Highway 101 underpass with the cattle operation. This was the trail route recommended by the Gaviota Plan Advisory Committee (GPAC) but is not the preferred route from the owner's perspective because it interferes with an existing productive agricultural operation. It will require additional fencing to secure the orchard from the public and will require construction of a new ranch circulation road, both of which are substantial investments and don't completely maintain the security now enjoyed by the Ranch.

With this major change to the proposed trail, the applicant anticipated that her showing of good faith would be reciprocated with a final decision to approve the Project as revised and based upon the extensive environmental review. When your Commission again deferred action and sent the project to the Board without a decision on the merits, it put a

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proposed by the public and applicant), costs and safety issues including siting adjacent to 101, connectivity, multi-use and Caltrans issues.



heavy burden on the applicant. The Commission's deferral resulted in yet another year wasted and over \$100,000 of additional cost to the applicant.

After ten (10) years in this process, the applicant simply will not suffer further delay and unnecessary expense.

Based upon the Board's direction that no additional environmental review is required for the project, the time has come for your Commission to make a comprehensive recommendation to the Board so the Supervisors can take final action.

We request that, whether for approval or denial, you make your recommendation during a single hearing. The staff report is comprehensive and well-balanced. You have heard hours of testimony, have read multiple staff reports, and have received ample letters from the public. You've been lobbied from all sides.

Nothing has changed since your last hearing, except that the applicant has made it clear to the Board that there are three (3) options: (a) approval with conditions acceptable to the applicant; or, (b) denial or imposition of unacceptable conditions (which is tantamount to denial from the applicant's perspective), or (c) the applicant deciding to either file litigation or simply use the existing legal parcels for future build-out whenever she decides that the build-out is appropriate. Only option (a) will result in the County receiving the offer of dedication that the applicant is willing to make. Only option (a) will result in designated, modestly-sized development envelopes and CC&Rs enforceable by the County.

If the applicant decides to build out the existing legal lots, without condemnation there will never be a public trail across the Property. Existing U.S. Supreme Court decisions make it very clear that the County could not exact a trail as a permit condition for a single family residence.

If your Commission's decision is to recommend denial of the project, the applicant requests that the Commission make findings to support such a denial because this is an exemplary project. Granted, it doesn't satisfy the strident demands of a few members of the public for a trail right through the middle of productive agricultural land. If the Commission chooses to placate these few short-sighted people, it will deny the opportunity to all members of the public to enjoy the three trails now being offered by the applicant as part of Project approval.

***The Staff Recommendation v. the Applicant's Compromise Proposal***

Thanks to your staff's further analysis of the law, the parties are closer together than ever before.

We thank your staff for recommending that the mandatory Agricultural Conservation Easement and the requirements pertaining to installation of acceleration/deceleration lanes on Highway 101 be deleted from the conditions. Those two conditions would not be legally sustainable and would never be acceptable to the applicant. We concur with the staff recommendation that these be deleted.

On one issue of supreme importance to the applicant, staff and the applicant continue to disagree – the fencing condition discussed on Page 3 of the staff memorandum included in your packet for this hearing, dated April 9, 2015. The staff's proposed wording requires the applicant to use a less protective fencing first and, if security is breached, to replace the fencing (at the applicant's expense, of course) with fencing that is approved by P&D, Community Services, and Parks, none of whom have staff whose focus is agricultural preservation or whose knowledge base includes the requirements for a safe and economically viable agricultural operation. In other words, the applicant has no assurance regarding how many different fencing types will be part of this experiment or that she ultimately will have the fencing that she proposes. Unlike the Baron Ranch, the Property is privately owned. Unlike the Baron Ranch, the taxpayers are not subsidizing the orchard – losses to her orchard production and damage to her trees, and the cost of erecting and demolishing fencing with no assurances that it will meet her needs -- are solely her costs. In short, there is no comparison between the Baron Ranch trail and the proposed trail through the Ranch. The applicant and the public are better protected with the fencing that the applicant proposes in the condition set forth on Page 3. Only in this way are the most significant impacts of the trail on continued agricultural viability mitigated. One clarification may be helpful to your Commission – the applicant proposes the chain link fencing only between the trail and orchards, not between the trail and grazing lands. In conclusion, the Applicant's Compromise Proposal includes, for Condition #6, the applicant-proposed wording on Page 3 of the April 9 memorandum; the applicant will not accept the open-ended language proposed by staff.

Staff proposes deleting from this condition the reference to closing the trails and parking lot from dusk to dawn. If this language is deleted from the condition, the language in the project description must be modified. It currently reads, "The applicant has proposed to restrict use of the public easements from dawn to dusk . . . ." It must be clear that the County concurs with the applicant's proposal that the parking lot and the trails will be closed from dusk to dawn, whether in the project description or in Condition #6. There is no room for ambiguity in project descriptions and conditions.

Another issue raised in the April 9 staff memorandum (on Page 2) is the development envelope for Parcel 4. Staff concedes that Alternative 3C recommended by the applicant, will have far less visual and historic impact. Staff contends that Alternative 3C will have greater biological impact but doesn't explain why. Both envelopes will result in some grassland being removed, a minor impact when looking at the big picture. The parcel provides to the viewing public, both from Highway 101 and the railroad, an iconic

rural panorama, with broad open grazing land and historic agricultural buildings and the Pacific Ocean as the backdrop. Tim Doheny wanted the Ranch to continue to look as it currently does when one drives Highway 101 or rides the rails. This is precisely why the applicant favors Alternative 3C. With 3C, that broad open view to the ocean would not include a new house. With the staff recommendation, it will.

In the spirit of compromise, the applicant has deleted the Lot 2 cabana from the proposal.

The Applicant's Compromise Proposal is as follows:

1. The sole trails to be included in this project are the eastern trail with parking lot, between the parking lot and the railroad tunnel, then onto the sandy beach; the trail along the sandy beach with NO extension into the upland area of the Property; and the GavPAC-recommended east-west trail along the ranch road, which would connect with the vertical trail to the east and connect with the existing Zacara bike path and trail to the west, by passing under Highway 101 at the existing tunnel. This is a generous package that far exceeds anything that the County could legally exact as a condition. The only other way for the County to obtain any trail on this Property would be through condemnation, which is economically infeasible in light of the extremely high value of this land.
2. Replace Condition #6 with applicant's proposed language.
3. Condition #19 – delete from the parenthesis in the first paragraph the words “in the event of a natural disaster.” A reconstruction of the existing residence would occur for a variety of reasons, not just a natural disaster. Even a major repair can include rebuilding all or a part of the structure. The owner is entitled to keep her existing home where it is, even it needs rebuilding because of a structural problem or other damage.
4. Delete subsection a. from Condition #25. The key to long-term agricultural viability is flexibility. The Ranch orchards are a valuable component of the profitability of the agricultural operation. This has been amply demonstrated during the drought, when the herd size has been pared down to the bare minimum to avoid over-grazing and the cost of supplemental feed. This condition violates County policy favoring agricultural preservation and viability, particularly prime soils, by prohibiting rangeland from being converted to row crops, vineyards and orchards. As can be seen from historical photographs of the Ranch, during the World War II period, large areas of what is now grazing land were devoted to food crops, so there is precedence for that use on the Property. If livestock grazing becomes unviable, the economic viability of the Ranch would be at risk. If another war effort or other exigent circumstance were to demand conversion of grazing land to crops, this condition would prevent that. In short, this condition is not appropriate

on a working ranch where changing farming types have been incorporated into the operation for decades.

5. Condition #26 -- as acknowledged by staff in Condition #83, with relocation of the Parcel 2 building envelope, the envelope size should be 2.5 acres, not 1 acre. The smaller size is unnecessarily restrictive and is unjustified. The applicant feels very strongly that, having foregone the cabana, she is entitled to have the Parcel 2 building envelope be 2.5 acres in size. Likewise, there is no justification for reducing the Lot 1 building envelope below the applicant-proposed 5 acres. The ultimate size for each development cannot exceed 2 acres pursuant to the project description, but the property owner selects that 2 acres, working within the constraints of the designated envelope. Having the flexibility to design and site a future house is extremely important to the applicant, particularly in light of the many constraints imposed by other conditions. This is an important deal point.
6. Condition #29 – the butterfly protection time frame is backwards – it is stated as March to October when it should be October to March. The condition also should state that no Monarch Protection Plan is required unless construction is proposed in or adjacent to eucalyptus trees and the Plan need apply only to the portion of the tree grove impacted by the construction. These windrows are long and narrow – work conducted to replace the existing ranch road will not impact trees located by the railroad tracks.
7. Condition #30 – The new insertion in this condition creates a potentially devastating (for the property owner) ambiguity – “Any rebuild or expansion” could apply to repair of major damage or destruction of all or part of the existing house. The word “rebuild” should be deleted and the remainder of the wording should be consistent with Condition #19, which states that expansion of the existing residence will not extend further into the buffer than the existing footprint of the residence.
8. Condition #31 – the requirement that water line trenching shall be avoided under oak tree canopies, and near riparian vegetation and sensitive plants is unreasonably restrictive, given the large number of oak trees and the scattering of sensitive plants all over the Ranch. The words “to the extent feasible” must be added to the avoidance language to allow for a reasonable route for the water pipelines. Additional language would address potential disturbances to oaks, riparian vegetation and sensitive plants: “Where an oak tree or sensitive plant species or riparian vegetation cannot be avoided, disturbance of same shall be mitigated at a ratio of 2:1.”

9. Modify Condition #35 slightly – change the new language inserted by staff “, septic systems and driveways” to allow for construction of the septic system outside the building envelope but to still avoid sensitive cultural deposits.
10. Modify Condition #40 to include septic systems in the new language inserted by staff. Septic systems are not really “utilities” but they serve the same role as a utility when sewer service is not available, and sometimes they must be located outside the development envelope.
11. Condition #45 should be modified to apply solely to new residential development, not to existing houses or to agricultural structures. Agricultural structures are placed where they make the operation most efficient and don't have the permanency or high dollar value that a residence has.
12. Conditions #52&53 – the applicant appreciates the clarification at the end of the section on Plan Requirements and Timing, but the language lacks the additional clarity regarding finality of a permit, to wit, “prior to final approval of the first Coastal Development, without the filing of a timely appeal, or upon final resolution of an appeal and/or litigation resulting in approval of a permit on conditions acceptable to the applicant, for future residential development within a designated residential development envelope south of the highway.”
13. Modify the first sentence of Condition #60 to begin, “To reduce storm water runoff, allow for infiltration, reduce pollutants and minimize degradation from new non-agricultural improvements (including residences, driveways, residential parking areas, and other paved surfaces), . . .” This condition was never intended to apply to agricultural development or existing residences on the Ranch, but this language is ambiguous without the proposed modification.
14. Condition #61 -- for the same reason, a similar change is required to Condition #61. Change to “”To reduce runoff from impervious areas and allow for infiltration, the applicant for new non-agricultural development shall incorporate . . .”
15. Condition #62 – this condition, too, was intended to apply only to new residential development, not to agricultural structures or existing residences on the Ranch.. Change to commence with, “All outdoor trash container areas for new residential development within designated development envelopes . . .”
16. Modify Condition #82 to eliminate the following language at the end of the sentence: . . . shall be modified to ensure access around Edwards Point during periods of high tide.” The applicant will not agree to the public being moved upland of the beach area – this is a sensitive pasture area where calves often are grazed. The presence of the public in this area could cause calves to run away and fall over the cliff. There is no justification for the public using the area north of

Edwards Point. It is a sensitive biological area, includes the mouth and lagoon at the foot of Gato Creek, and, if the tide is that high, it will be high on either side of Edwards Point, making it difficult to even reach this area. This language provides a spot for beach users to "hang out" in the upland area where the cattle graze. This is completely unacceptable to the applicant and contrary to the County's own biological policies.

17. Modify Condition #85 to provide that the development envelope will be sited per Alternative 3C, avoiding visual and historical impacts that would be a certainty if sited as staff recommends, in the middle of the historical building site.
18. Condition #90 requires that the Offer to Dedicate the various public access easements proposed by applicant be submitted within 30 calendar days after Board of Supervisors approval of the project. This timing is unprecedented and inappropriate. The Offer to Dedicate should be required to be submitted before recordation of the parcel maps and reviewed as part of the map clearance process. An applicant is always entitled to change his or her mind. No conditions may be imposed until the applicant has accepted all conditions. More to the point, if the project is appealed to the Coastal Commission, all approvals are frozen and the applicant is NOT going to deliver an Offer to Dedicate into the County's hands until all appeals are resolved to the applicant's satisfaction.

**The Compromise Proposal Specifically Excludes the Following:**

- Any condition that imposes an exaction or easement not already accepted by the applicant.
- Exaction of a coastal bluff top trail as a condition of approval. The GavPAC-recommended Ranch Road trail location and the sandy beach trail (with no upland extension) are the only two lateral trails that the applicant will provide as part of this project.
- Any requirement for fencing design that is not approved by the landowner. Specifically, Condition #6 would leave the property owner at the mercy of County Planning, Community Development and Parks Department staff to determine the final fence design between the public trails and the agricultural operations. This is unworkable and unacceptable. The applicant will not dedicate a trail if the long-term integrity of the agricultural operation is not adequately protected and preserved. Food safety, employee safety, public safety, and avoidance of theft and vandalism are essential to the continued growing of food on this property, while allowing public access. The applicant-proposed wording provides the necessary wording to protect agriculture and trail users, and clarifies that the

public trails will be closed during the evening and nighttime hours to preserve the security of the Ranch and the families living there.

- Any requirement that the applicant deliver an Offer to Dedicate the parking lot and trails prior to final map approval, or to allow the parking lot to be developed and opened and the trails constructed before the first new residence is constructed south of Highway 101. It must be entirely clear in the conditions that the acceptance and development of the trails and public parking lot offer of dedication cannot occur unless and until approval of the first Coastal Development Permit is final with the building permit issued to allow the first proposed development in a Residential Development Envelope (RDE) south of Highway 101.
- Any constraints on agricultural flexibility, including expansion of cultivated agriculture into grazing lands

### **Conclusion**

The applicant has made compromise after compromise to gain approval of this project. The project conditions total 90. These conditions reflect the results of two rounds of environmental review and six (6) public hearings before the Planning Commission and Board of Supervisors. They also reflect the thorough and serious attention paid by County staff to legitimate concerns voiced by the public.

The Board has directed the Commission to stop the “ping pong” and make a swift decision on the project so that it can return to the Board for final decision as quickly as possible.

The simple fact is that the applicant is under no legal compulsion to offer to dedicate **any trail** for a project that comprises lotline adjustments, lot mergers, and a single lot split, because, as a result of the project, there will be **no additional legal, buildable lots on the Property.** The applicant’s offer of dedication ultimately will result in a new parking lot off Highway 101, a trail to and along the beach, and a trail that traverses through scenic agricultural land from the parking lot to the east to a connector trail on the neighboring property to the west – miles of new Gaviota Coast trails on a private ranch and at no expense to the County other than periodic maintenance. The nearest existing legal vertical access points to the beach in this stretch of the coast are the Bacara Resort project and El Capitan State Beach Park. Although the Paradiso del Mare development project proposes a public access point, this property is adjacent to the Bacara and is not on agriculturally productive land. The Las Varas project is the only one that proposes to provide beach access through productive agricultural land on the Gaviota Coast.

For some members of the public, either due to ego or through a sincere but erroneous belief that the County can do better, these trails are not enough. This is not their land. It is not the County’s land. But it could be available for the public to use if the project is

approved. It may be the only opportunity for public access in this area of the Gaviota Coast for decades.

If the Commission disapproves or conditions the Project in a manner not acceptable to the applicant, the opportunity for the public to enjoy the trail dedications will be lost. Once lost, it will not be regained except through the remote possibility of eminent domain.

Without an acceptably conditioned project approval, the applicant can still pursue residential development on each of the existing lots independently. In that event, there will be no trail and no parking lot site dedication.

Residential development will occur on this property with or without the project because of the existing parcels. New residential construction either can occur in the manner that the County staff envisions, subject to extensive conditions applicable to all of the parcels, or it can occur on an ad hoc basis, parcel by parcel, with no global conditioning being available to the County. Non-decision, denial, or unacceptable conditioning will be a vote in favor of ad hoc land development. The parcels exist and the applicant or her successors are entitled to develop them in conformity with the law.

Because of the rational nexus and rough proportionality test imposed by the Supreme Court, the County will see no new trails with ad hoc development of the Ranch. A single family home doesn't justify a trail exaction, as the Coastal Commission discovered in the Nolan case.

The applicant will, at her discretion, continue to allow friends of her family to have access to the property, but reserves her legal right to implement heightened security measures to nip in the bud future trespassing. She will work with Union Pacific to curtail trespassing on the railroad right of way as well.

Photographs submitted into the public record during the September 23, 2014 hearing by trail advocates display a shocking disregard for personal safety and for the safety of small children by some members of the public – the photos depict families with small children standing and walking on the railroad tracks. Perhaps these photographs were staged for effect, but what they showed was a group of very foolish people putting lives and safety at risk, supposedly to reach the beach. The photos also show young children climbing fences next to "No Trespassing" signs, yet the trail advocates argue that the public acts responsibly and can be trusted to not climb over fences or otherwise interfere with adjacent agriculture as they use trails. The trails proposed by this applicant will provide a safe beach route with adequate and safe parking and will provide strong fences between the public and the agricultural operations. The fencing proposed by County staff not only can be climbed, but provides easy access for dogs to go through.

The Project, as reflected in the Compromise Proposal, best serves the needs and objectives of the applicant, the County and the public. With this Compromise Proposal,



the citizens of the County will be able to enjoy a new Gaviota Coast trail to and along the beach consistent with the California Coastal Trail Act, a public parking lot site off Highway 101, and a lateral trail that connects two coastal trail segments. Without the Compromise Proposal, the citizens of the County will not receive any of these benefits. The Project represents the only realistic opportunity for the public ever to enjoy the incredibly generous trail system proposed by this applicant.

Sincerely,

A handwritten signature in cursive script that reads "Susan F. Petrovich". The signature is written in black ink and is positioned above the printed name.

Susan F. Petrovich

April 27, 2015

RECEIVED  
APR 27 2015  
RECEIVED

Russell M. McGlothlin  
Attorney at Law  
805.882.1418 tel  
805.965.4333 fax  
RMcglathlin@bhfs.com

VIA ELECTRONIC MAIL AND HAND DELIVERY

Planning Commission  
County of Santa Barbara  
105 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas Ranch Project  
SUBJ: Briarcliff Trust's Support for Approval of Staff Recommended Trail

S.B. COUNTY  
PLANNING AND DEVELOPMENT  
105 EAST ANAPAMU STREET

**AGENDA ITEMS**

ITEM #: 1

MEETING  
DATE: 4-29-15

Dear Chair Brown and Members of the Planning Commission:

On behalf of the Briarcliff Trust ("Trust"), owner of an 11.5-acre parcel ("Property") adjoining the western boundary of the Las Varas Ranch, we respectfully urge you to include, as a condition of project approval, the dedication of a public trail with the alignment recommended by County staff on the north and south sides of Highway 101 (Alternative 4-A in the Recirculated FEIR) ("Staff Recommended Trail") rather than the alignment along the coastal bluffs (Alternative 4-B in the Recirculated FEIR) ("Bluff Trail"). In prior letters to the Board of Supervisors and the Planning Commission we have explained the reasons why the Bluff Trail is impractical, illegal, and contravenes multiple state policies, and why the Staff Recommended Trail is a more practical and viable option. (See our letters on behalf of the Trust, dated November 27, 2013 and July 28, 2014.) These reasons include the following:

- 1. Staff Recommended Trail Will Likely be Implemented; Bluff Trail Will Not.** The applicant has indicated that it would accept the Staff Recommended Trail in conjunction with project approval and has repeatedly stated that it will not accept the Bluff Trail. Moreover, an exaction of the Bluff Trail would exceed the nexus and proportionality limits on exactions established by the U.S. Supreme Court. (*Dolan v. City of Tigard* (1994) 512 U.S. 374, 391; *Nolan v. California Coastal Commission* (1987) 483 U.S. 825, 836-37.) Thus, this Board is presented with a choice between a viable and acceptable trail that is likely to be constructed and an impractical trail and illegal exaction that has little chance of being implemented.
- 2. Privacy and Trespass.** The Bluff Trail would intrude on the privacy of the Trust's Property and facilitate trespassing in contravention of state policy. (Sen. Bill No. 908 (2001-2002 Reg. Sess.) § 1, subd. (b); see also Cal. Coastal Act, Pub. Res. Code §§ 3001.5(c), 30210.) The Staff Recommended Trail avoids such intrusions.
- 3. Sensitive Biological Habitat.** The Bluff Trail would traverse sensitive biological habitat in violation of state policy. (Sen. Bill No. 908 (2001-2002 Reg. Sess.) § 1, subd. (a)(3); see also Cal. Coastal Act, Pub. Res. Code §§ 30210, 30212(a).) The Staff Recommended Trail would result in far fewer biological impacts. (Las Varas Ranch Revised Final EIR, pp. 6-51 to 6-57.)
- 4. Native American Archeological Site.** The Bluff Trail would pass directly through a significant Native American archeological site in disregard for County regulations. (County of Santa

1020 State Street  
Santa Barbara, CA 93101-2711  
main 805.963.7000

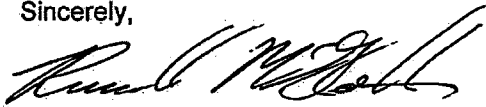
Barbara Land Use and Development Code, § 35.60.040; County of Santa Barbara Zoning Ordinance, Art. II, § 35-65.) The Staff Recommended Trail avoids disruption of these areas. (Las Varas Ranch Revised Final EIR, p. 6-58.)

5. **Public Safety.** The Bluff Trail would present public safety risks because of the steep cliffs, a highly active railroad track, and a stream culvert adjacent to the proposed trail. The Staff Recommended Trail involves effectively none of these risks, and thus better aligns with state policy requiring consideration of public safety in the siting of coastal trails. (See Pub. Res. Code § 30212(a).)
6. **Trail Construction.** The Bluff Trail would require technical and expensive construction of bridges to span the railroad tracks and wetland areas on the north side of the tracks, as well as the construction of retaining walls and other barriers for public safety. The Staff Recommended Trail would not require construction of such expensive, technically challenging and visually intrusive facilities.

For these reasons, we urge you to approve the Staff Recommended Trail. Doing so would provide the public with the opportunity for significant new recreation on the Gaviota coast while still respecting the privacy of neighboring property owners and preserving the area's unique biological and historical resources. Insisting on the Bluff Trail, on the other hand, will surely result in no trail being constructed.

Thank you for considering the Trust's views on this matter.

Sincerely,



Russell M. McGlothlin

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not accepted into  
the record by  
4/29/15



Ksen' SKu' Mu' Chumash

Ksen~Sku~Mu  
Frank Arredondo ~Chumash MLD  
Po Box 161  
Santa Barbara Ca, 93102

April 28, 2015

Santa Barbara County  
123 E Anapamu St.  
Santa Barbara Ca, 93101

Re: Las Varas Ranch Project

Honorable Chair and Commissioners

I thank you for the opportunity to comment on the above referenced project. My name is Frank Arredondo. I am Chumash/Coastanoan. I am a member of the Native American Heritage commission Most Likely Descendants List (MLD) for the Chumash Territory and listed on the Native American Contact list for Santa Barbara County. My comments today are of my own.

Being of Native American descendant, from the Chumash territory, I have a strong vested interest in the project. I currently provide comment on several Planning and Development projects in the surrounding areas that have cultural resources impacts. I have been an advocate for the preservation of those Cultural Resources within my community and for several years now as well as placing an emphasis on local governments adhering to policies and procedures. I thank you for taking the time to review my comments.

I have been working on this project for several years and have been the only Chumash who has participated consistently with the planning and mitigations. Previously in 2012 I submitted a comment letter (January 6<sup>th</sup>, 2012) that supported the proposed building footprint alternative 3C. During my review at that time the only trails suggested had to do with the eastern side of the proposed project parcel. The alternative 3C offered avoidance of the known archaeological site on parcel 3 & 2.

Recently I was made aware of additional review of the cultural resource section as well as others. My first reaction was the confusion of why I a Native American on the Native American Heritage commission list was never sent a notice that properly identified my as a Native American for the purpose of consultation as in accordance of establishing and maintaining confidentiality requirements with regards to Archaeological Resources Act and the Public Records Act. What I have been sent is public notices of

**AGENDA ITEMS**  
**ITEM #:** 1  
**MEETING DATE:** 4-29-15



*Ksen' SKu' Mu' Chumash*

hearings taking place and or announcements. Unfortunately neither public notices nor announcements meet the criteria required for Native Americans and privacy and consultation laws. In two months the County will be required to send notices that specifically identify the reason for notice such as "a Native American and purpose for consultation". This is due to the approval of Assembly bill 52.

As far as the Alternate 3C is concerned I still support the efforts established by developer and the mitigation measures proposed under that alternative. I do have some great concern as to the proposal of a Coastal Trail that extends further than what I was witness too back in 2012.

As the current staff report dated 4-29-15, page 6, it states;

"Condition No. 82 remains as previously recommended by staff". The recommendation includes "granting of a lateral easement across the coastal properties (Parcels 1 and 2) to allow for public access along the shoreline, to include on the sandy beach area located seaward of the base of the coastal bluffs". (pg B-3, revised conditions of approval Attachment B)

Condition 82 states:

**82. Shoreline Trail Easement.** The alignment of the proposed shoreline trail easement being dedicated to the County by the owner/applicant along the sandy beach above the mean high tide shall be modified to ensure access around Edwards Point during periods of high tide. (pg B-34, revised conditions of approval Attachment B)

The issue I see with this request is that given the high cliff face along parcel 1, it would suggest that if high tide was up, a person would be stranded behind Edwards Point. The shore line leading up too and after Edwards Point has high cliff walls. The request is not rational.

In the vicinity of the proposed shoreline trail easement has been classified as part of the boundaries of a site. I have had the chance to review the most recent field survey conducted by Applied Earthworks (AE) Oct, 2013. That survey followed a proposed coastal trail along the bluff of parcels 1 and 2. During the surface survey along Edwards Point, no resources were visible on the surface and noted in the report. AE also qualified the lack of visible resources due to the abundance of brush that prohibited the view. In the conclusion section of the AE report it strongly stated that the proposed coastal trail through the sites will directly and indirectly impact these sites and is contrary to the County's coastal land-use policies.

The only information that supports staffs recommendation to keep condition 82 is the surface survey did not identify any resources. A surface survey is not enough to



qualify the implementation of an easement access for beach goes during high tide. For such easement to take place would require additional subsurface studies to determine site boundaries. As it currently stands your proposing to place beach access on a registered site.

On a lesser point, it is not quite clear why the County would ask for an easement along parcel 1 above the mean high tide when there is no place for a beach goes to go if the tide comes in. The nature of the request is founded under no logical rational based on the material presented. Only parcel 2 maintains an inlet bluff that is above the mean high tide offering some shelter during high tide.

Condition 82 Shoreline Trails Easement lacks standing under CEQA since no conclusive assessment of impacts can be derived from just a surface survey. The only aspect of review along the coastal parcels has been with the proposals of the development envelope. This is a significant failure of the review process and exposes the County to possible litigation.

In my review it appears that all five (5) Policies have been completely ignored by the staff recommendation.

**CLUP Policy 10-1:** All available measures shall be explored to avoid development on significant historic, prehistoric, archaeological, and other classes of cultural sites.

**CLUP Policy 10-2:** When developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids impacts to such cultural sites if possible.

**CLUP Policy 10-3:** When sufficient planning flexibility does not permit avoiding construction on archaeological or other types of cultural sites, adequate mitigation shall be required. Mitigation shall be designed in accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.

**CLUP Policy 10-4:** Off-road vehicle use, unauthorized collecting of artifacts, and other activities other than development which could destroy or damage archaeological or cultural sites shall be prohibited.

**CLUP Policy 10-5:** Native Americans shall be consulted when development proposals are submitted which impact significant archaeological or cultural sites.

There is no indication that any mitigation measures have been explored, or design avoidance, nor mitigation measures offered with regards to the coastal trail easement proposal. Given the potential for direct and indirect impacts to take place by way of the impacts listed with CLUP Policy 10-4 specifically contradicts the policy prohibition.



*Ksen' SKu' Mu' Chumash*

Under condition 32,CULT 1-1, I strongly suggest the wording be modified to include Native American Monitor. Any place you require a P&D-qualified archaeologist should include a Native American monitor so the monitor can monitor the archaeologist. See Condition 37 wording for reference.

Lastly, any trail located along the Coastal Bluff that proposed to cross either of the archaeological sites identified in the AE Oct. 2013 report will be met with strong opposition. All sites along the Gaviota Coast line are extremely significant mostly due to the intactness of the sites. Almost little to no disturbances has taken place. Very little surveys have taken place along the Gaviota coast and should be treated much different than what you find in urban settlements.

*Best wishes, Frank Arredondo  
Ksen~Sku~Mu  
Chumash MLD  
Po Box 161  
Santa Barbara, Ca 93102  
Email [Ksen\\_Sku\\_Mu@yahoo.com](mailto:Ksen_Sku_Mu@yahoo.com)*

Cc:

Paul Van Leer  
NAHC  
SY Chumash Elders, Freddie Romero  
SY Business Council, Sam Coen





September 19, 2014

Susan F. Petrovich  
Attorney at Law  
805.882.1405 tel  
805.965.4333 fax  
SPetrovich@bhfs.com

**VIA EMAIL TO DVILLALO@CO.SANTA-BARBARA.CA.US**

Santa Barbara County Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas Ranch Project -- September 23, 2014 Hearing Date -- Response to  
Staff Report

Dear Honorable Commissioners:

Brownstein Hyatt Farber Schreck represents the owners of the Las Varas and Edwards Ranches (Ranches). We submit this letter in response to the recently published staff report, which we obtained mid-day on Thursday, September 19, 2014. Like the prior staff report, the proximity of the public distribution date to the hearing makes it extremely hard to digest the contents and respond timely. We apologize for having to deliver this letter to the Commissioners over the weekend, but we wanted to be certain that our response to the conditions was comprehensive.

**Introduction**

In reviewing the current staff report, we request that you re-read our July 25, 2014 letter and the attached Applicant's Compromise Proposal. We incorporate that letter and attachment by reference herein because those two documents set forth the applicant's position regarding further conditioning of this project, and state the basis for the applicant's position.

Despite your Commission's earlier urging, neither the Board of Supervisors nor representatives of the County Counsel's Office have answered a pivotal question regarding this project -- is there sufficient nexus and proportionality between the project impacts upon recreational resources and the exaction of any public trail through the property, let alone a trail that would go through the heart of this thriving agricultural operation? From the outset of this County process, the applicant's position, supported by a string of U.S. Supreme Court cases, has been that there are no legal grounds upon which such an exaction could be based. In a gesture of good faith and accommodation, the applicant will not challenge a mutually agreeable trail condition if the project is

1020 State Street  
Santa Barbara, CA 93101-2711  
main 805.963.7000

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conditioned solely in the manner described below. Simply stated, the project has no significant adverse impacts upon recreational resources. Instead, it includes dedication of three (3) public trails and a parking lot to serve them.

Although your Commission and the Board of Supervisors have discretion in approving, conditioning, or disapproving these three (3) projects, that discretion must be exercised reasonably based upon substantive evidence in the record – the decision cannot be arbitrary or capricious or lacking in an evidentiary basis.

Prior to the Commission's last hearing, the applicant presented a Compromise Proposal. From the current staff report, we see that staff has concurred with and adopted some of the changes requested. We thank them for making those changes. Some serious disagreements remain and we address those below.

#### **No Imposition of an Agricultural Conservation Easement**

The Page 2 staff report discussing the limited examples of projects having included an agricultural conservation easement demonstrates why such a condition has no place in this project. Imposition of a requirement of an Agricultural Conservation Easement on this property, which has never been subject to the Williamson Act (Agricultural Preserve Program), would be unprecedented in this County. It also would be without legal basis.

The staff report cites the "closest example" of this condition – Santa Barbara Ranch, but in that example, the basis for the condition was the removal of agricultural property from the Agricultural Preserve Program. A similar condition was imposed upon the Cuyama Solar Project, but that project involved removing agricultural land, half of which was subject to a Williamson Act contract, from agricultural production. In short, neither example is comparable to the Las Varas Ranch project.

The owners of Rancho Monte Alegre voluntarily created their own Agricultural Conservation Easement after project approval. Voluntary creation of an Agricultural Conservation Easement provides the landowner with tax benefits that are forfeited if the easement is a project condition.

As described in more detail on Page 2 of our July 25, 2014 letter, Section 4.2 of the Revised DEIR classifies the project's direct impact on agricultural resources as Class III and indirect impact as Class II, the mitigation measure for which is the combination of the successful existing agricultural operation, the restricted designated development envelopes that would make most of the resulting parcels eligible for the Agricultural Preserve Program, and the proposed cooperative grazing operation.

We ask that the Commission reject any condition that requires the applicant to submit the Ranches, or any portion thereof, to an Agricultural Conservation Easement and remove all references to an Agricultural Conservation Easement from the findings and conditions.

In response to the financial incentives that accompany such a voluntary dedication, the applicant may decide to create such an easement voluntarily in the future, but there is no legal basis for such an easement being a condition of the approval of these projects.

**Confine the Beach Trail to the Sandy Beach – No Upland Extensions**

The applicant has offered to dedicate a public trail along the beach. The current staff report is internally consistent on this subject. On Page 13, the staff report appears to concur with the applicant that the shoreline trail easement should remain on the sandy beach. The project description in the Conditions of Approval (Page B-3) concurs, yet Condition 82 on Page B-34 again requires that the beach easement be modified to "ensure access around Edwards Point during periods of high tide." During periods of high tide, beach walkers are not likely to be able to reach Edwards Point without getting their legs wet, yet Edwards Point itself provides a rocky shelf that they could use to crawl around the point if they were able to reach the spot. The applicant will not accept an upland extension of the sandy beach trail. Any such extension would allow the public into the grazing lands and would allow trampling of sensitive plant communities. The applicant's offer of dedication is strictly limited to the sandy beach.

**Clarification of Timing of the Offer to Dedicate and Timing for Highway 101 Improvements**

The applicant has always made it clear in this application that the offer of dedication for the trails and the parking lot cannot be accepted by the County prior to **final approval** (i.e., County approval and the exhaustion of all appeals and litigation) **and the property owner's acceptance of a CDP for a residence within a designated development envelope on the portion of the property located south of Highway 101.**<sup>1</sup> The project description, as stated in the current staff report, reflects that requirement. The ultimate construction of a residence within the designated development envelopes is the only activity that compensates the property owner for allowing the public to use any portion of this property. The applicant concurs with the statement on Page 9 of the staff report that it was never contemplated that the County could open the trail before the first residential development on a Residential Development Envelope (RDE) south of Highway 101.

The applicant also doesn't agree to being required to widen Highway 101 to add acceleration and deceleration lanes that *might be desirable* to accommodate traffic linked to the public trail parking lot. As noted in the staff report, there will be no situation in which the County constructs the parking lot and opens the trail of its own accord anytime it wants. That is accurate – the applicant will not agree to record an offer of dedication

<sup>1</sup> *This bolded phrase is of utmost importance in determining the trigger for the dedications – application conditions might be so burdensome that the applicant declines to accept it so it is not truly final until the applicant signs the acceptance of the permit, including all conditions.*

except as a condition for final approval of the first permit for a residence located within a Residential Development Envelope south of Highway 101. The applicant also cannot agree to accept a condition that requires the applicant to fund improvements that the County should make, if they are required at all. Caltrans has not imposed a condition requiring highway widening for acceleration and deceleration related to parking-lot related vehicles. The staff report suggests that the County has the discretion to determine whether these lanes are necessary. The applicant concurs. Any such requirement would not result from the applicant's project, but from the County's recreational traffic.

In hearing after hearing, the applicant has given more and more and more. The trails and parking lot are enormous concessions that this applicant is not legally required to give. They will be enjoyed for generations to come. By agreeing to the Ranch Road trail route for the Coastal Trail, in lieu of the applicant-proposed location, this applicant has relieved the County of the expense of building a bridge over Gato Canyon. In exchange, it is appropriate that the County give here and assume responsibility, if it deems necessary, to install the acceleration/deceleration lanes.

For the reasons stated above, the proposed new Condition 90 is completely unacceptable and inappropriate.

**Retain a 2.55-Acre Area for the Relocated Residential Development Envelope for Parcel 2 that Includes an Area for a Beach Cabana**

The Applicant's Compromise Proposal includes the retention of a 2.55-acre RDE for Parcel 2 because the RDE is proposed to be relocated; a portion of the RDE would be a modest area where the property owner could build a beach cabana because the development envelope has been moved so far from the ocean. The project description includes the 2.55-acre RDE but doesn't mention that this area includes a small area for the cabana. During the July 30, 2014 hearing, an issue was raised as to the potential environmental impact of the cabana.

We attach a letter report from Dr. Rosemary Thompson of CardnoENTRIX, describing the ideal location for the beach cabana on Parcel 2 – well away from the sensitive Gato Creek corridor and at least 200 feet from the edge of the beach and bluff where it will not impact sensitive native grasslands. The site would be under 0.10 acre and the maximum cabana size would be 800 square feet.

We urge the Commission to approve a small extension of the Parcel 2 RDE to include a defined area for a cabana, and we propose the following language, incorporating the suggestions made by CardnoENTRIX in the attached report:

The designated development envelope for Parcel 2 shall include a 4,356 square-foot area in the location noted on the parcel map, that is more than 200 feet from

the beach and bluff, to accommodate a beach cabana that is no larger than 800 square feet in size. The beach cabana shall be subject to the following conditions:

- The owner of Parcel 2 shall implement the Resident Education Program prepared by the applicant's biologist pursuant to mitigation measure BIO 8 of the FEIR and, in addition, shall restrict pet and human access to Gato Creek, and prohibit harassment, killing, or handling any frogs, snakes, turtles, and newts whether in the creek or in adjacent areas, including the cabana portion of the designated development envelope.
- Access to the cabana from the Parcel 2 residence shall be by unpaved path suitable for light vehicles such as a golf cart.
- The access path shall follow the currently existing, already disturbed ranch road in this area to avoid impacts on adjacent native vegetation.
- The path shall have no curbs or gutters but could have low "water bars" to distribute runoff so that it does not concentrate runoff and cause erosion.
- Any utility connections to the cabana shall be buried under the path.
- The exact location of the portion of the designated development envelope boundaries for the cabana shall be marked in the field by a qualified biologist immediately prior to construction, and appropriate exclusionary construction fencing shall be installed and maintained throughout cabana construction to avoid native grass plants to the extent feasible.
- No grading or filling, other than minor "finish grading" would be allowed for construction of the cabana.
- Parking for the cabana will be limited to within the designated development envelope and the access path. No vegetation clearing shall be allowed outside the designated development envelope, even for fire protection.

**Sufficient Fencing between the Proposed Trails and the Agricultural Operation Is Mandatory to Completely Exclude the Public and their Dogs from the Orchard and Cattle Grazing Operations**

The staff report quotes Claude Garciacelay (as a representative of County Parks) as saying that, as a result of the "minimally fenced" public trail on the Baron Ranch, "There have been only a few instances of people wandering off the trail with negligible impacts to the agricultural operation." Based on that statement, the staff report suggests that a lower standard of fencing at the Ranches should be acceptable. It is not. The Baron Ranch is County-owned. It is not private property, nor does the agricultural operation

support the property. The taxpayers do that. The Baron Ranch agricultural operation is leased to a third party who accepted the lease knowing that the public would be allowed to wander the property. Presumably, the rental rate reflects the degree of risk of crop loss and other damage that the lessee assumed before signing.

It's interesting that the staff report would point to "a few instances of people wandering off the trail" in regard to fencing. Jumping a fence isn't wandering – it's intentional trespass. Why would hikers jump a fence to get into an avocado orchard when the public trail offers them miles of hiking opportunity? Like any other poacher sneaking into an orchard when they think they are unobserved – they are there for the fruit.

Ironically, during past hearings on the Las Varas project, public speakers have pointed to the then newly-opened Baron Ranch trail as providing proof that the public can be trusted to stay out of the orchard by simply provide posting appropriate signage at the trailhead. Now, less than 4 years after the Baron Ranch trail opening, it is clear that the public can't be trusted to stay on the trail and out of the orchard.

Adequate fencing is absolutely mandatory to ensure co-existence between the public trails and the viable agriculture. The applicant cannot accept anything less. In lieu of Condition 6 in the staff report, applicant proposes the following Fencing Condition, backed up by the attached biological report from CardnoENTRIX:

To balance minimization of the impacts of the trail fencing on the visual character of the site with preserving agricultural resources by preventing trespassing, cattle and worker harassment, vandalism and theft within the adjacent agricultural areas, the fencing between any public trail and any orchard shall be chain link approximately six feet high with three (3) strands of barbed wire on top, and the fencing between any public trail and the grazing land shall be hog wire of a height not exceeding 48 inches plus 2 strands of barbed wire above, with the height and construction of fencing being subject to further fortification if trespassers, poachers, thieves, vandals or others gain entry through the fencing. Wildlife accessible passageways or culverts will be incorporated into the fence design to avoid impeding wildlife corridors as follows: culverts under the fences between the trail and the agricultural operations should have an 18-inch diameter and placed at 1,000- to 1,500-foot intervals between where trail bridges over natural drainages provide access under the fencing, or where no fencing occurs across a drainage, except that two culverts will be required under the fencing at the east end of the property between the Las Varas Creek riparian corridor and the orchard (between the parking lot and the railroad undercrossing).

The trails through the property, and the parking lot at the trailhead, shall be closed from dusk to dawn to protect the existing agricultural operation and the security and privacy of existing and future residents.

**PLAN REQUIREMENTS AND TIMING:** The trail fencing shall be installed prior to opening of the public trails by the Community Services Department, Parks Division. In the event that the installed fencing is deemed ineffective in excluding the public and their dogs from the orchards and/or grazing land, the applicant may install an alternative form of fencing that provides the necessary security upon review and approval by P&D and Community Services Department, Parks Division.

**MONITORING:** The County Parks Department shall confirm that the fencing is in place prior to opening the trails for public use.

Following the July 30, 2014 hearing, representatives of the applicant met with Anne Almy and Alex Tuttle to work through the areas remaining in dispute, particularly condition wording. We appreciate the time and attention that Ms. Almy and Mr. Tuttle gave to consideration of the applicant's concerns.

**Tighten Up Set-Back Requirements for Bat Roosting Areas to Reflect the Potential Impact**

As the CardnoENTRIX letter notes at the bottom Page 2, the inclusion of bat roosting areas in the conditions intended to protect bird roosting areas has no support in the Revised FEIR. Bats potentially roost in many locations on the Ranches, but the only time that they are sensitive to human presence is during the "maternity period" when the young are being raised. CardnoENTRIX provides an expert's opinion for reduction of the buffer for bat roosting areas to 100 feet from the 500 feet and only from April through August when the maternity period is occurring. As currently worded, the setback from bat roosting areas applies year round. That is incorrect and results in an unwarranted constraint on all future construction, residential or agricultural.

Because the excessive setback is unjustified and overly restrictive, we propose that the finding on Page A-3 of the September 16, 2014 staff report be changed to reference a 100-foot buffer during the maternity period for bat roosts and that the same change be made to Condition 15, including the title to that condition that refers to Bat Breeding Season rather than the Bat Maternity Period. This will make the condition consistent with the Revised FEIR and with the evidence in the record provided by CardnoENTRIX.

**Delete Any Restrictions on Future Conversion of Grazing Land to Other Agricultural Uses**

Although the applicant appreciates the staff's attempt to compromise on the wording in the second bullet of Condition 11, any language that purports to limit future agricultural viability by depriving the farmer of flexibility as to agricultural production is unacceptable. As written, this condition applies to some soils that have been designated as prime. Whether prime or non-prime, if soils are capable of greater productivity and the rancher

wishes to plant a crop that increases the viability of the operation, any attempt to squelch that decision is contrary to Coastal Act and County agricultural policies. The second bullet in Condition 11 should be removed. Condition 25(a) also much be modified to read: "Areas outside of development envelopes on Parcels 1 and 2 that contain native vegetation shall remain as open space and agricultural land." The remainder of the sentence must be removed because it prohibits conversion to cropland.

Staff has incorporated some of the applicant's requested changes, but the applicant requests that the following additional changes be made in order to meld the Applicant's Compromise Proposal with the recommendations in the staff report:

**Proposed Additional Condition Modifications**

Condition 28 – as noted in the CardnoENTRIX report attached, the only known monarch butterfly roosting area is along the drainage on Parcel 5. There is another grove on Parcel 4, but it is not known to be used by monarchs for roosting. With the passage of time, the roosting sites chosen by the monarchs could change. The applicant proposes that Condition 28 be deleted and that Condition 29 be revised to apply to any grove where monarchs roost. This change anticipates potential changes in habitat that could result in monarchs deserting this site or in the butterflies extending their roosting to other groves within the Ranches. Either way, as noted in the attached report, Condition 28, if retained, should allow for dead tree removal during February through November if the removal does not damage live trees. The Doheny residence nestles right up to a eucalyptus grove that has been identified in the past as a monarch roosting site. Leaving dead eucalyptus trees standing so close to their home is unreasonable when they can be removed without disturbing the monarchs between from the beginning to February through the end of November. If not deleted, the condition should be revised to allow for this fire-prevention activity.

Condition 29 – this condition continues to be worded to suggest that the applicant must prepare a Monarch Butterfly Protection Plan for Parcels 1,2, 4, and 5, regardless of the fact that no structural construction may occur on this property for many years. Parcel 5 is the only known monarch roosting area. This condition should be reworded to read as follows:

29. BIO 15-2: Monarch Protection Plan. For any grove where monarch butterflies roost, future applicants for structural development within 50 feet of the grove shall prepare and implement a Monarch Butterfly Protection Plan. The Plan shall include:

- Timing restrictions on grading and construction of access roads and future residential development that require use of heavy equipment, including backhoes, to avoid noise, dust, and increased human activity impacts to overwintering



monarch butterflies (i.e., construction activities should not occur between October and March if monarchs are roosting);

- If grading or other heavy equipment work must occur between October and March, a qualified biologist shall survey all eucalyptus trees within 50 feet of the development area prior to the start of work to determine use by monarchs. If butterfly aggregations are found within 50 feet of the work area, work activities shall be delayed until monarchs have left the site.

**Plan Requirements and Timing:** The Plan shall be reviewed and approved prior to issuance of Grading Permits for access roads, and prior to approval of Coastal Development Permits or Land Use Permits for future dwellings located within 50 feet of a grove where monarch butterflies are known to roost. The results of any pre-construction surveys shall be reviewed and approved by P&D prior to construction.

**MONITORING:** P&D permit compliance staff shall monitor implementation of the Protection Plan in association with each future permit and shall confirm results of any pre-construction surveys prior to construction.

Condition 31 – staff declined to insert language that acknowledges that it may not be possible to completely avoid oak tree canopies or sensitive plants entirely. This ranch has extensive oak tree groves and wide expanses of native grasses and other sensitive plant species. The proposed new Gaviota Coast Plan designates an incredibly wide range of plants and plant communities as “sensitive” even when no biological ranking system concurs that they are sensitive. To be fair and reasonable, as well as consistent with permit conditions imposed on other projects, the condition should be reworded as follows:

The water line locations shall utilize existing roads and disturbed areas to the maximum extent feasible. Trenching shall be avoided under oak tree canopies and near sensitive plants to the extent feasible. Prior to construction, the applicant shall survey and flag the alignment of the water lines along Gato Creek. A County-qualified biologist shall be retained to participate in the survey and realign the water line where necessary to avoid or reduce potential impacts to sensitive plant species or riparian vegetation. Where an oak tree or sensitive plant species or riparian vegetation cannot be avoided, disturbance of same shall be mitigated at a ratio of 2:1. Any field revisions shall be plotted on a revised site plan submitted to P&D for review and approval. **Plan Requirements and Timing:** The revised plans showing relocated water lines shall be submitted to P&D for review and approval prior to Land Use Permit or Coastal Development Permit issuance. Individual oaks trees and all sensitive habitats and species along and adjacent to the pipeline route shall be shown on the site plan and on grading plans.

**MONITORING:** P&D shall review and approve the final water line alignments prior to Land Use Permit and/or Coastal Development Permit issuance, and shall ensure that the required sensitive areas identified for avoidance are avoided during construction.

Condition 45 – this condition should be modified to apply solely to new residential development, not to existing houses or to agricultural structures. Agricultural structures are placed where they make the operation most efficient and don't have the permanency that a residence has.

Condition 51 – the words "(if approved)" should be removed from the last sentence of this condition.

Condition 54 – as described in more detail above, this condition must be removed. Installation of acceleration and deceleration lanes is the County's responsibility if the County considers them to be necessary to accommodate public use of the parking lot. These lanes are unrelated to future residential development on the Ranches.

Conditions 60 & 61 – these conditions each should commence with the words "For all future residential development within a Residential Development Envelope and for new road construction." As worded, the conditions sound like they apply to existing structures and roads on the Ranches.

Condition 62 – this condition should commence with the words "For all future residential development within a Residential Development Envelope." As worded, the condition would apply to all existing residences on the Ranches.

Condition 80 – DELETE ENTIRELY as described above.

Condition 82 – DELETE ENTIRELY. The offer of dedication is for the sandy beach only, as the Project Description states.

Condition 83 – the actual size of the Parcel 2 RDE should be stated as 2.55 acres, not 2.5 and the condition should reference incorporation of the area for the beach cabana.

Condition 90 – DELETE ENTIRELY. In addition to being completely unacceptable as to timing, this condition would require that an offer of dedication be recorded before the first permit for a residence within an RDE south of Highway 101 has been finally approved and accepted by the applicant and, in fact, would require a recorded offer of dedication even before the final parcel map has been recorded.

**Conclusion**

The applicant greatly appreciates the Planning Commission's attention and patience regarding this project and hopes that the Commission and the citizens of Santa Barbara County appreciate the many compromises the applicant has made to this point.

Please make the changes listed in this letter so the project can proceed to completion. This project represents the only realistic opportunity for the public ever to enjoy the incredibly generous trail system proposed.

Sincerely,



Susan F. Petrovich

Attachments:

CardnoENTRIX Technical Memorandum dated 18 September 2014

Exhibit Depicting Proposed Cabana Site



Shaping the Future

# Technical Memorandum

**Date** 18 September 2014

**To:** Alicia Harrison, Susan Petrovich  
Brownstein Hyatt Farber Schreck, LLP

**From:** Rosie Thompson

**RE:** Questions Regarding Las Varas Ranch FEIR

Cardno ENTRIX

201 N. Calle Cesar Chavez  
Suite 203  
Santa Barbara, CA 93103  
USA

Phone 805 962 7679  
Toll-free 800 368 7511  
Fax 805 963 0412  
www.cardno.com

www.cardnoentrix.com

The following are our responses to the questions recently posed to us via e-mail regarding clarifying and explaining project conditions.

## Fencing

The purpose of fencing along the trails is to keep trail users and their dogs on the trail and to prevent poaching of fruit and harassment of cattle. These fences can also interfere with natural wildlife movements on the ranch. Small animals such as lizards, snakes, amphibians, and small mammals (e.g., mice, gophers) can go through a chain link or hog wire fence and would not need passage culverts. Larger animals, however, may not be able to pass through the fences. These include striped skunk, coyote, raccoon, opossum, bobcat, rabbit, badger, ringtail, mountain lion, and deer. A 6-foot chain link fence would be a deterrent but would not preclude movement by deer as they can jump a fence of 8 feet. Mountain lions can jump fences at least 10 feet tall (Knight 1994a, Mountain Lion Foundation 2014). Table 1 summarizes animal abilities to go through, under, or over 4-foot high fences with 4-inch mesh

**Table 1. Wildlife and 4-foot with 4-inch mesh fences.**

	Dig under fence	Climb fence	Jump fence	Go through fence	Issue with fence?
Skunk	maybe	No	No	maybe	maybe
Coyote	maybe	Yes	Yes	No	No
Raccoon	maybe	Yes	No	maybe	No
Opossum	No	maybe	No	maybe	maybe
Bobcat	No	Yes	Yes	No	No
Rabbit	maybe	No	No	maybe	maybe
Ringtail	?	Yes	No	maybe	No
Mountain lion	No	Yes	Yes	No	No
Badger	maybe	No	No	No	maybe

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Skunks usually do not climb but could dig under a fence and can squeeze through 4-6-inch openings (Knight 1994b, County of Santa Barbara 2014). Coyotes can dig under, climb, or jump fences to about 5 feet (Timm et al. 2007). Raccoons will dig under or climb fences (Baldwin and Salmon 2014), while opossums may be able to climb over them (Salmon et al. 2005). Bobcats can climb fences and have the ability to jump fences at least 6 feet in height (Virchow and Hogeland 1994). Rabbits may be able to squeeze through 4-inch mesh fences (Vantassel et al. 2010) while ringtail can climb fences (Texas Tech University 1997). Badger can dig under fences (Wildlife Fencing 2014, Lindzey 1994)

Placement of culverts through the fences could allow wildlife to pass while keeping dogs out. Most of the areas where culverts would be needed are relatively flat, so that the culverts would have to be laid on the ground surface or in a shallow trench so that the ends are open and visible for wildlife. It is assumed that domestic dogs would be unlikely to use these culverts as they generally use spanned bridge underpasses or square culverts approximately 15 feet in height and width (Ng et al. 2004). For the intermediate sized animals, installation of culverts through the fence along the orchard could provide wildlife access between the Las Varas Creek riparian corridor and the orchard and lands to the west. Culverts through the coastal trail 4-foot hog wire fences would also be needed to ensure passage of skunk, opossum, rabbit, and badger, although all of these species may dig under fences (other species can climb or jump the 4-foot fence), and these animals are expected to pass through short culverts (assumed to be approximately 3 to 4 feet for the project). Therefore, the recommended culvert size is 18 inches in diameter. For the 6-foot chain link fence, similar sized culverts should be used for the smaller animals but may not allow coyote and fox to pass. Coyote or fox could either dig under the fence or move along the fence to where the 4-foot fence begins and then cross by climbing or jumping.

At least two culverts would be needed along the chain link fence on the east side of the orchard. Culverts would also be needed at three (3) locations on the Ranch Road Trail: at or adjacent to drainages D1 and D2 and just before the underpass. For the 4-foot fencing, culverts should be placed at 1,000- to 1,500-foot intervals between where trail bridges over natural drainages provide access under the fencing, or where no fencing occurs across a drainage (e.g., Gato Creek near the ocean).

### **Buffers for Bats**

Impact BIO-2 only discusses that project lighting could benefit bat foraging. No other impacts on bats are described. Yet, the mitigation measure BIO 2 includes surveys for bat roosts, nests, and foraging activity within 500 feet of the development. The mitigation measure requires that if bat roosts (day, night, or maternity) are found, they are to be monitored and must be avoided by a 500-foot buffer. Impact BIO-3 discusses briefly the potential for impacts on bats. Appendix E to the FEIR provides considerably more information about the bats that could be present at Las Varas Ranch. Based on that information, pallid bat, fringed myotis, Yuma myotis, and Townsend's big ear bat could forage over habitats on the ranch. In addition, the pallid bat and red bat have the potential to roost on the ranch. Pallid bats could use cavities in trees or buildings while the red bat generally roosts individually under leaves on riparian or orchard trees. Thus, the potential for bat roosting on the ranch is limited to existing buildings, cavities in trees (in riparian corridors or eucalyptus groves), and riparian or orchard areas. Bat foraging would not be adversely affected by project activities due to the limited size of the disturbance areas and availability of extensive foraging areas on the property that would not be affected by the project.

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The proposed development envelopes (DEs) in lots 3 and 6 (a and b) are adjacent to orchards where red bats could roost when the young are born. Small portions of the DEs in lots 2 and 4 are near riparian corridors where pallid bat and red bat could roost, and the DE in Lot 5 is adjacent to a eucalyptus woodland along Drainage #1 where pallid bats could roost in tree cavities. Existing buildings in lots 4 and 5 also have a low potential for pallid bat roosting. Table 2 summarizes the potential for bat roosting adjacent to each DE for each alternative. The trail alternatives could pass through potential roosting habitat for pallid bats where trees with cavities are present and for red bats where riparian trees are present (i.e., drainage crossings). Pallid bats are very sensitive to disturbance, even to people hiking on trails (IUCN 2014). Thus, pallid bat roosts near the proposed trails could be adversely affected by trail use.

**Table 2. Potential for bat roosting adjacent to each DE by alternative.**

Lot	Proposed Action	Alt. 2A	Alt. 2B	Alt. 3A	Alt. 3B	Alt 3C
1						
2	X	X				
3	X	X	X	X	X	X
4	X				X	
5	X	X	X	X	X	X
6	X	X	X	X	X	X
7						

The period when red bats are sensitive to disturbance is from when the young are born until they are able to fly (April through August). If pallid bats or red bats are found to be roosting near the proposed DEs or trail, prohibiting construction near these sites (within 100 feet as described below) during the maternity period would avoid impacts on these species. Pallid bats using existing buildings on the ranch are unlikely to be affected by project activities unless any of those buildings were to be demolished when bats could be roosting in them.

A literature search found that a buffer to avoid impacts on roosting bats should be 100 feet (H.T. Harvey & Associates et al. 2004). Thus, construction activities during the maternal roosting period should be more than 100 feet from identified roost sites to avoid impacts on the bats. Surveys for bats by a qualified bat biologist would need to be conducted during the maternal roosting period prior to construction activities to determine if roosts are present within 100 feet of the work area, including trail and vegetation maintenance work. Vegetation maintenance within riparian habitat or eucalyptus woodlands for fuel management within 100 feet of new structures should also be limited to the non-maternal roosting period, unless surveys showed that no roosting was occurring.

### Cabana

Dr. Rosemary Thompson provided a summary of biological effects resulting from including a cabana in Development Envelope #2 (DE#2) dated February 7, 2012. The location of the cabana evaluated in that memo was south (on the ocean side) of the existing fence near the southern edge of the parcel in an area of non-native grassland. Moving the cabana location northward of the existing fence on the low terrace adjacent to Gato Creek has the potential to affect native grassland and coyote brush shrub plant

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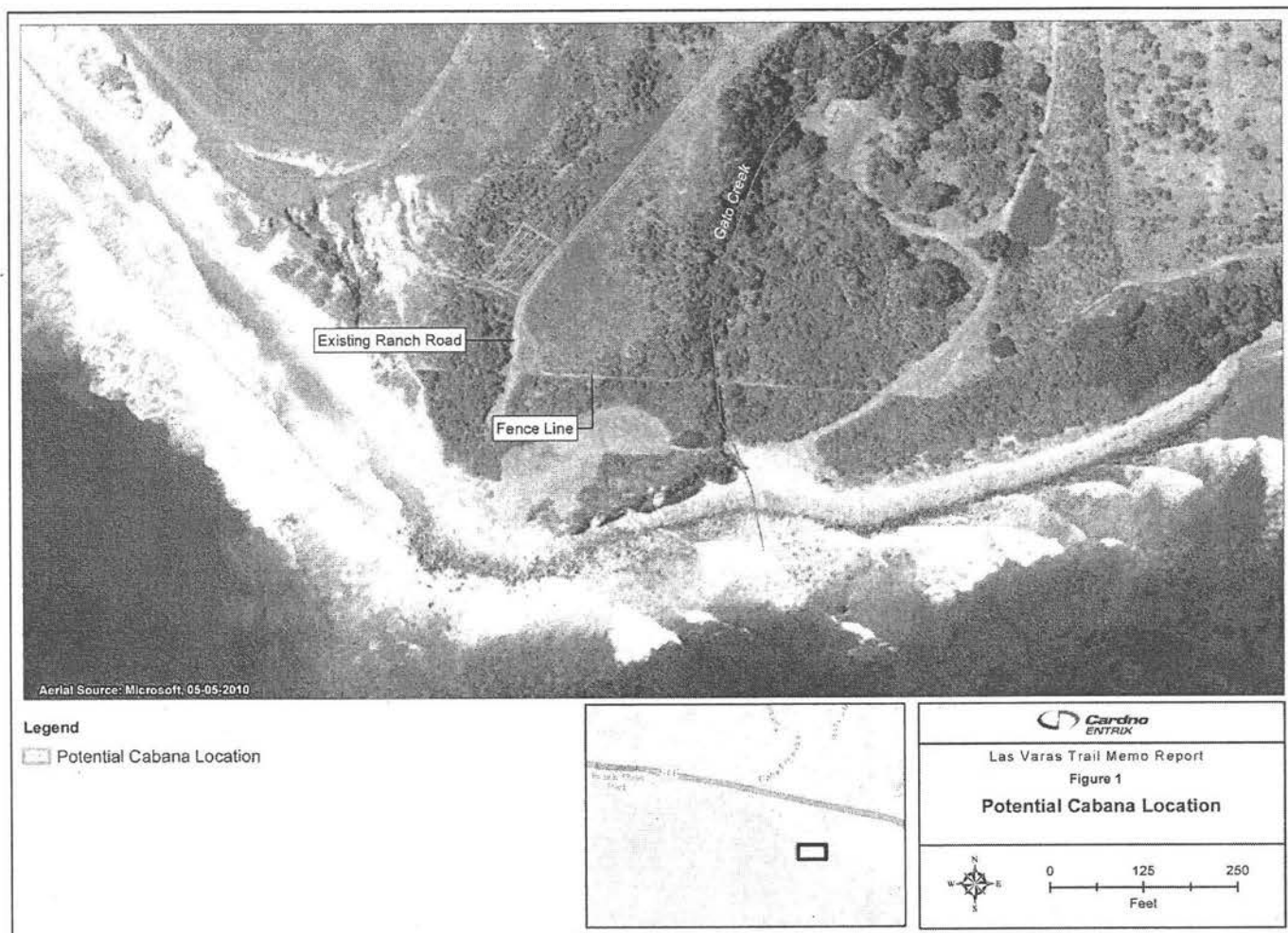
communities, based on the existing vegetation map for this area in the FEIR. Consequently, a site visit was conducted by Dr. Thompson and Ms. Tamara Klug on September 5, 2014 to evaluate if the cabana could be located north of the fence with minimal effects on native plant communities. It was assumed that the cabana would be approximately 800 square feet (less than 30 feet by 30 feet or 40 feet by 20 feet) and that approximately 0.1 acre (4,356 square feet, or less than 70 feet by 70 feet) would be needed to construct the cabana. Based on this site visit, the grassland area on the eastern side of the existing ranch road and north of the fence contains native grasses throughout with patches dominated by non-native Harding grass that are too small to allow construction of a cabana. However, a cabana could be located on the western side of the existing ranch road on this terrace in an area of coyote brush scrub (see Figure 1). The scrub is dominated by coyote brush with some California sage brush and an understory dominated by Harding grass. Native grass plants are present in openings within the scrub with scattered individual plants and patches within the area identified on the figure as a potential location for the cabana. This area is about 4,550 square feet and is more than 200 feet from the beach and bluff.

As noted in the February 2012 memo, the small size of the structure would result in negligible effects on movement of special-status amphibians that inhabit or use Gato Creek. Minor improvements to the existing ranch road to the cabana site for access by vehicles such as a golf cart also would have negligible effects on special-status amphibian movement.

Measures to further reduce the potential for effects on native plant communities and special-status species include:

- Implement the education program in mitigation measure BIO 8 of the FEIR with the addition of restricting pet and human access to Gato Creek, and prohibiting harassment, killing, or handling any frogs, snakes, turtles, and newts (can be confused with salamanders) whether in the creek or in adjacent areas, including the cabana portion of the DE.
- Access to the cabana from the residence would be by unpaved path suitable for light vehicles such as a golf cart.
- The access path would follow the existing, already disturbed ranch road in this area so that native grassland on the low terrace is not affected.
- The path would have no curbs or gutters but could have low “water bars” to distribute runoff so that it does not concentrate and cause erosion.
- Any utility connections to the cabana would be buried under the path.
- The exact location of the DE boundaries for the cabana would be marked in the field by a qualified biologist immediately prior to construction to avoid native grass plants to the extent feasible.
- No grading or filling, other than minor “finish grading” would be allowed for construction of the cabana.
- Parking for the cabana will be limited to within the DE and on the access path. No vegetation clearing will be allowed outside the DE, even for fire protection.

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## Dead Trees

Dead eucalyptus trees in Drainage #1 near the proposed coastal trail location and near the existing Doheny house on Parcel 5 could be removed with no impacts to monarch butterflies if removed in the spring to fall (February through November) when this species is not roosting. The removal would have to be done so that no damage occurs to live trees.

However, dead trees with cavities, including cracks, suitable for bat roosting or bird nesting would need to be left in place unless surveys indicate that no bats or birds are using these trees. Surveys would need to be conducted by a qualified biologist during the appropriate season for bat species that could be present and during the spring to summer bird nesting season (approximately February through August) to verify that the trees are not being used that year. Removal would have to take place after the surveys are completed and outside the monarch roosting season (see above).





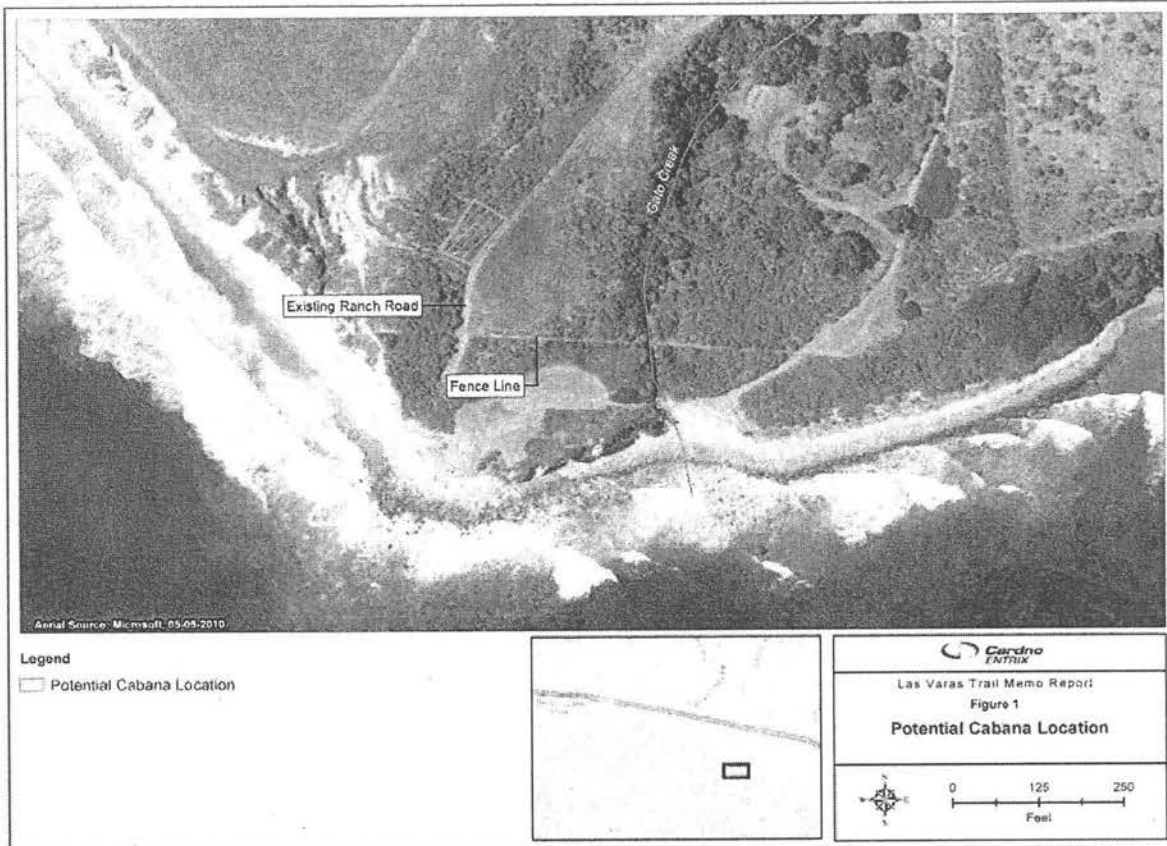
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# LAS VARAS RANCH PROJECT

Presented by:  
SUSAN F. PETROVICH

 Brownstein Hyatt  
Farber Schreck



## A BRIEF REMINDER OF APPLICABLE STATUTES

- California Coastal Trail Act – a trail to be constructed along California’s coastline from Oregon to Mexico.
- Trail “shall be developed in a manner that **demonstrates respect for property rights and the proximity of the trail to residential uses, and that evidences consideration for the protection of the privacy of adjacent property owners.**”

# APPLICABLE STATUTES – COASTAL ACT

Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone **consistent with sound resource conservation principles and constitutionally protected rights of private property owners.** (Pub. Res. Code § 30001.5(c).)

[R]ecreational opportunities shall be provided for all the people consistent with public safety needs and **the need to protect public rights, rights of private property owners, and natural resource areas from overuse.** (Pub. Res. Code § 30210.) [emphasis added]

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, **or the protection of fragile coastal resources... or (3) agriculture would be adversely affected.** (Pub. Res. Code § 30212(a).) [emphasis added]

# CALIF. RECREATIONAL TRAILS ACT

## (PRC §5070-5077.8)

**Sec. 5075.3 (excerpt).** In specifying criteria and standards for the design and construction of trail routes and complementary facilities as provided in subdivisions (b) and (c) of Section 5071.3, the director shall include the following: . . .

- (d) Trails should be located so as to avoid severance of private property and to minimize impact on adjacent landowners and operations . . .
- (i) The department shall erect fences along any trail when requested to do so by the owner of adjacent land, or with the consent of the owner of such land when the department determines it will be in the best interests of the users of the trail and adjoining property owners . . .



## APPLICABLE CASE LAW

- NOLLAN v. CALIF. COASTAL COMMISSION (1987):
- The lack of a nexus between the condition and the original purpose for requiring the development restriction alters that purpose and causes the condition to constitute a taking.
- A state cannot condition a property use permit on an act that does not address a problem caused by the proposed use.
- As to property reserved by its owners for private use, the right to exclude others is among the most important sticks in the bundle of rights commonly characterized as property.

## DOLAN v. TIGARD (1994)

- The government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where exaction has little or no relationship to the benefit.
- It must be decided whether the **degree** of the exactions demanded by the permit conditions bears the required relationship to the projected impact of the proposed development.
- The necessary connection required by the Fifth Amendment is "rough proportionality" -- some sort of individualized determination that the **required dedication is related both in nature and extent** to the proposed project's impact.

## KOONTZ V. ST. JOHN'S RIVER WMD (2013)

- A government may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.
- The *Nollan* and *Dolan* principles do not change depending on whether the government *approves* a permit on the condition that the applicant turn over property or *denies* a permit because the applicant refuses to do so. Both tactics are unconstitutional.

## APPLYING THE LAW TO THE PROPOSED CONDITIONS

- AGRICULTURAL CONSERVATION EASEMENT (COND. 80) – no nexus and no rough proportionality – FEIR finds Class II and III impacts on ag, with the Class II impact mitigated by other conditions.
- ANY TRAIL EXACTION – no significant impact upon recreational resources so no rational basis for requiring dedication of a trail.  
No nexus.
- ROUGH PROPORTIONALITY AND RATIONAL RELATIONSHIP – taken together, the 3 projects reduce the number of buildable lots so no rough proportionality. Taken separately, the lot split is on land between the RR and 101 – the bluff top trail would be on completely different parcels.

## APPLYING THE LAW TO THE PROPOSED CONDITIONS

- EXPANDING BEACH ACCESS EASEMENT (COND. 82)– no basis in fact because much of the Gaviota Coast beach is impassable at high tide and access to Edwards Point will be under water at high tide. No basis in law because no basis for exacting a trail at all. *Nollan* invalidated Coastal Commission policy requiring sandy beach exactions for CDP's.
- REQUIRING OFFER TO DEDICATE RECORDATION PRIOR TO FIRST HOUSE PERMIT BEING ISSUED (COND. 53, 54 & 90)– no nexus or rough proportionality between project approval (lot split + lotline adjustments and mergers). No benefit to owner until first house built.

## APPLYING THE LAW TO THE PROPOSED CONDITIONS

- PAYMENT FOR ACCEL/DECEL LANES (COND. 53, 54 & 90)– no nexus between project build-out because increased residential traffic not significant. Sole significant traffic results from parking lot for public access.
- PARCEL 2 RDE SIZE & CABANA (COND. 83) – no nexus for restriction. RDE relocated to avoid biological impacts. Cabana location will avoid biological impacts and reduce visibility from beach.
- PARCEL 4 RDE LOCATION (COND. 85) – no nexus to visual impacts. Option C is the least visually intrusive, from 101 & RR.

## APPLYING THE LAW TO THE PROPOSED CONDITIONS

- PROTECTIVE FENCING FOR AGRICULTURE (COND. 6) – Coastal Act and California Recreational Trails Act mandate that agriculture be protected from public access and that fencing be installed at property owner request. Property owner proposes to erect the fencing to provide comprehensive protection of agriculture while also allowing reasonable (daylight hours) trail usage.
- RESTRICTIONS ON FUTURE CONVERSION OF GRAZING LAND TO CROPS (COND. 25)– contrary to Coastal Act policies for preservation of agriculture in Coastal Zone. No legal basis for restricting orchards and cropland in agricultural zone.

## APPLYING THE LAW TO THE PROPOSED CONDITIONS

- EXCESSIVE HABITAT SETBACKS NOT SUPPORTED BY SOUND SCIENCE OR COUNTY ORDINANCE – CONDITION 15 regarding bat roosting areas; CONDITIONS 28 & 29 re monarch butterflies.
- REQUIREMENT OF COMPLETE AVOIDANCE IN WATERLINE PLACEMENT – inconsistent treatment of applicants – where it is not feasible to avoid a tree or sensitive plant, mitigation is the standard, yet CONDITION 31 is rigid and could result in extreme expense or impracticability.
- CONDITION 45 – Bluff Retreat Setback – shouldn't be applied to ag structures, only residential
- CONDITION 51 – Residential Setback from Beach – suggests that cabana will not be approved



## APPLYING THE LAW TO THE PROPOSED CONDITIONS

- STORMWATER CONTROL (COND. 60 & 61) – overly broad; as written would apply to existing structures and roads
- TRASH CONTAINER RESTRICTIONS (COND. 62) – same problem. Add before all of these, “For all future residential development”

## APPLICANT'S PROPOSED FENCING

- Between trails and orchards – 6-foot high chain link with 3 strands barbed wire on top
- Between trails and grazing land – 4-foot high hogwire with 2 strands barbed wire on top
- Culverts under the fence – east fence between trail & orchard – two 18-inch diameter culverts; elsewhere, same size culvert, but every 1,000-1,500 feet (NOT every 200 feet – Ranch Road trail extends for miles)

# APPLICANT'S PROPOSED FENCING



- NEW AG ROAD
- NEW CHAIN LINK FENCE
- NEW FIELD FENCE
- EXISTING FENCE

all or portion of extg ag road used for trail

partial or new construction of road

# APPLICANT'S PROPOSED FENCING



Fence tied into  
tunnel wing wall

**NEW CHAIN LINK FENCE**



July 25, 2014

Susan F. Petrovich  
Attorney at Law  
805.882.1405 tel  
805.965.4333 fax  
SPetrovich@bhfs.com

**VIA EMAIL TO DVILLALO@CO.SANTA-BARBARA.CA.US**

Santa Barbara County Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas Ranch Project  
05TPM-00000-0002, 05LLA-00000-00005, 05LLA-00000-00006, 07RZN-00000-  
00006, 07RZN-00000-00007, 07CUP-00000-00057, 11COC-00000-00001,  
11CDP-00000-00078, 10EIR-00000-00005

Dear Honorable Commissioners:

Brownstein Hyatt Farber Schreck submits this letter on behalf of the applicant in response to the current staff report. Because this project has undergone extensive processing to date, we hereby incorporate into the record all of the prior correspondence and exhibits submitted to your Commission regarding this project, both by this firm and by expert consultants retained by this firm or by the applicant directly.

**Introduction**

We first thank the staff for a thorough and legally adequate Revised Final Environmental Impact Report (RFEIR). The RFEIR not only addresses the issues concerning which the Board of Supervisors requested additional detail, but it presents a comprehensive factual analysis regarding what has been called the Blufftop Alternative Trail. As you can see from the EIR, such a trail not only will have extensive impacts on the agricultural operation, it will have unmitigable biological impacts. We believe that the EIR should have characterized the impacts of such a trail as Class I. We also believe that the EIR should have included a more comprehensive disclosure of the provisions of the California Coastal Trail Act. This Act, provided the mandate for implementing a trail that, to the extent feasible, should be constructed along the state's coastline from the Oregon border to the border with Mexico, would be constructed in a manner that is consistent with the protection of coastal resources [including agriculture], and that "shall be developed in a manner that **demonstrates respect for property rights and the proximity of the trail to residential uses, and that evidences consideration for the protection of the**

**privacy of adjacent property owners.”** We attach a copy for your information and for the public record.

The one question that the EIR could not and did not address was the question that your Commission submitted to the Board of Supervisors – is there sufficient nexus between the project impacts and exaction of ANY public trail through the property, let alone a trail that goes through the heart of the ranch.

### **Public Trail Access**

As we have described in detail in prior correspondence, neither the California Coastal Act nor the U.S. Constitution would allow the imposition, as an exaction for this project, of a condition requiring the trail dedications that the applicant proposes as part of this project. There simply is no rational basis, nexus, or rough proportionality as required by law between this project, which essentially reduces the total number of existing lots and configures the proposed lots in a manner that reduces their environmental impacts and visibility on the landscape.

Those realities notwithstanding, the Patron of the Doheny family, Tim Doheny, sought two accomplishments through this project:

- a. Preservation of the agricultural operations on the ranch in a manner that, even long after his death when future generations of the family would be planning homesites on the ranch, the ranch would appear roughly the same as it appears today; and,
- b. There would be an east-west California Coastal Trail and a safe vertical access to the beach that would not impair the agricultural operation.

For that reason, he proposed the trails that he did. After two EIRs and many public hearings on this project and on the Gaviota Coast Plan, the applicant is prepared, however reluctantly, to accept what is called in the RFEIR Trail Alternative 4A, but that acceptance comes with conditions that the applicant considers to be crucial to preserving agricultural viability in the long term while allowing family members to construct their homes without unjustifiable restrictions. The applicant suggests a slightly different hybrid from that proposed by County staff, but this hybrid has had adequate analysis in the RFEIR.

### **Inconsistencies between the RFEIR and Staff Report Analyses**

#### The Agricultural Conservation Easement

Section 4.2 of the RFEIR concludes that the direct impact to agricultural resources from conversion of existing ag land to non-agricultural uses would be less than significant (Class III) and that the indirect impacts would be potentially significant but mitigable

(Class II). This is without considering the fact that this ranch already has eight (8) developable parcels (of which several already have residential development) that could be further developed without any of the conditions that are proposed for this project. The RFEIR acknowledges that the creation of residential development envelopes (RDEs) that, although initially larger to provide the owner flexibility in siting improvements, are restricted to an ultimate maximum size of 2 acres to make those parcels that are large enough eligible for the County's Agricultural Preserve Program, and the creation of a cooperative grazing operation under CC&Rs with an initial 50-year term, will result in the impacts of the project being less than significant.

Commencing on Page 10, the Staff Report describes in detail that the combination of a successful existing agricultural operation with the RDEs and CC&Rs results in sufficient mitigation to ensure long-term viability of agriculture on this land.

In short, the County's own analyses reveal that there is absolutely no justification for requiring this applicant, for this project, to dedicate a permanent agricultural conservation easement over these ranches. The Staff Report acknowledges that such an easement will not ensure that the land will remain in agriculture. No one can ensure that agriculture will be viable in the long term. What such a condition does do is jeopardize the applicant's approval of the ultimate decision. An agricultural conservation easement is a valuable property right that this family ultimately may decide to grant, but not as a condition for a project that has no significant adverse impacts on agricultural resources.

#### The Alternative Trail 4B

Section 6.10 of the RFEIR analyzes, but understates, the potential impacts of this alternative trail route upon the coastal resources on these ranches, particularly agriculture and biological resources. The RFEIR also suggests that there is a conflict between experts regarding the agricultural impacts. We differ regarding the suggestion that there is a legitimate conflict in the expert opinions. The Sage analysis and conclusions are based upon a detailed review of the actual livestock operation on this property. The Havlik opinion is based upon an assumption that this operation is no different from cattle operations on public lands or on other open lands.

Every livestock operation is different. This one, as the RFEIR acknowledges, is run so efficiently that the land is able to carry far more animal units (a cow and calf) than most, and certainly more than the County's Environmental Thresholds (based on general guidelines provided by the Cattlemen's Association). Unlike many ranches, these ranches are cross-fenced in a manner that takes advantage of the unique micro-climates around the ranch and, as a result, allows for unique rotational grazing that makes it possible to move the cattle onto a pasture more often than once each year, all without irrigation. Whereas many ranches of this size only graze cattle part of the year, this is a year-round operation that doesn't require supplemental feeding. The rancher provides



supplemental feed, but not because of the absence of forage – the supplemental feed is provided for the specific objective of promoting healthy calving and post-calving. This operation is in no way comparable to the operations that trail advocates and their “expert” point to as demonstrating that cattle and trails can co-exist. The land also is different. Whereas most cattle ranches have a wide variety of topography and large pastures where cattle can graze far from a trail, the portion of this property south of Highway 101 is on relatively flat land with little topographic relief and direct lines of sight. The cross-fencing with smaller pastures also increases the density of cattle on each acre at any given time, reducing their distance from property lines and roadway.

We urge you to read the Sage letter dated March 4, 2013. It provides valuable insight into the various trail proposals and suggests that if the Alternative 4B trail were to be proposed, it would require seasonal closing from July 1 through December 31, a peak trail usage time, because of the potential impacts on the cattle. It also points out the need to bar dogs from the trail, a prohibition that would be impossible for the County to enforce and would be useless because the burden would fall on the rancher to either chase or shoot marauding dogs who simply don't know not to chase horses and cows, particularly young calves that are less intimidating.

The RFEIR also underplays the significant impacts that such a trail would have on the biology along the route. See, for example, the comparison of the impact on native grasslands of the compacted tread of a pedestrian trail to the impact of grazing or mowing of the grasses. Like the trail advocates, the RFEIR fails to address the issue of how trail users would get through the ranch fence at the west end (entering or leaving the trail) without causing damage, allowing livestock to escape, or injuring themselves on the fencing material. A gate isn't practical because it could be left open, even a spring-loaded gate, allowing cattle to escape.

While the RFEIR includes a comprehensive analysis of the aesthetic impacts of the two proposed pedestrian bridges over the railroad tracks, it suggests that these bridges would not have visual impacts upon the train-riding public, using a photograph of a non-conforming bridge as an example. We ask that you look at the simulation on Page 6-44 of the RFEIR and imagine such a structure superimposed on the photograph on Page 6-45 in place of the old bridge shown. This kind of huge structure in such a rural area would have significant impacts not analyzed in the RFEIR.

In conclusion, the RFEIR, to be fair and accurate, should state the obvious – the Alternative 4B trail would have Class I impacts on agriculture, biology, and aesthetics.

#### The Water Supply

Although the RFEIR describes the irrigation water supply as including Goleta Water District water, the staff report demonstrates some potential confusion in this regard (see, for example, Page B-4, 3<sup>rd</sup> paragraph). In addition to the diversion and reservoir

irrigation supply, the property also has a substantial supply of non-potable irrigation water from the Goleta Water District.

#### The Beach Trail

From the outset, the applicant has included dedication of a trail along the beach. The letters that we have provided from the CardnoENTRIX biologists have pointed out the biological sensitivity of the Gato Creek mouth and the vegetation in the immediate vicinity. Without any comprehensive environmental analysis, the Staff Report proposes that the beach trail be modified to extend upland precisely in this sensitive location. Not only will this have impacts upon sensitive coastal resources, it infringes unnecessarily and inappropriately upon the property owner's privacy and security. There may be times when the beach trail is not passable because of high tides. That will be true at several points along this route. The inland trail offered by the applicant provides ample recreational opportunities during these occasions.

#### The Vertical Trail Traffic Impacts

The residential portion of this project has never created traffic issues. The vertical trail with parking lot is another story. To mitigate the impact of left turning from the northbound lane and the deceleration from the southbound lane, the applicant's traffic engineer proposed, and the applicant agreed, that the applicant would extend the existing left turn lanes and would shave off a knob in the embankment north of the ranch entrance road to improve sight distance. Now we see that the staff has added a major deal-killer with Condition 54, requiring full deceleration and acceleration lanes at the ranch entrance. This would entail hundreds of thousands of dollars and major construction, particularly the acceleration lane because of the steep downslope running along the edge of the road shoulder.

#### The Fencing

Providing a secure barrier between the public and the ranch operations is essential for the success of any trail. In the locations where the trail is directly adjacent to an orchard, the applicant must insist on maintaining the chainlink fencing that has been proposed from the outset and that is in use alongside trails throughout the County and elsewhere. The applicant cannot leave it to the discretion of staff. For that reason, we propose a fencing condition that specifically describes the fencing and provides for a more transparent fence between the trail and the grazing lands. This provides a fair compromise that balances the desire for a completely unimpeded view and the need to protect the intensive agriculture.

### The Parcel 4 RDE

The Alternative 3C location is by far the superior one from a visual and historic perspective. It is sufficiently distant from the historic structures that it won't directly impact their integrity, particularly because the conditions require that any structure be compatible with the existing structures. Most important of all, it is located a substantial distance from both the highway and the railroad and will be out of the view corridors of both. The location now proposed by staff will be visible from the highway and the railroad and will be right on top of the historic structures, making it extremely difficult to avoid impacting their integrity.

### The Parcel 2 RDE

The applicant proposed an RDE that was long and narrow to avoid impacting Gato Creek and related resources. It also afforded a beautiful view and convenient access to the beach. When staff proposed moving the RDE much further from the creek and the ocean, the applicant concurred that it would avoid impacts to the creek, but because it substantially reduces the property owner's access to the beach, we asked that a small cabana be allowed for the owner's use. Biologist Dr. Rosemary Thompson analyzed this proposal and determined that, with certain conditions, it would have no adverse environmental impact and, in fact, could provide an accessway for emergency vehicles should someone need assistance at Edwards Point. There is no apparent reason for denying this small concession of a modest cabana in exchange for such a significant change in the RDE location. Because of the relocation of this RDE, Condition 51. **REC 2** must be modified to remove the reference to a structure breaking the view plane of the Santa Ynez Mountains as viewed by the public. This standard has never been applied to any other project, it vague and ambiguous, and in this context could prevent the construction of a residence, depending on where "as viewed by the public" is measured. Out to sea? Lying on the beach? Crossing the pasture without authorization? This policy also would apply to the Parcel 1 RDE and would be equally problematic. It should be deleted entirely.

### The Parcel 3 RDE

Although the environmental review concludes that the modified RDE avoided the densest portion of the cultural site, the applicant is prepared to accept the further reduction in the RDE size. What we cannot accept is Condition 35. CULT 2-2, which would preclude extending buried utility lines or a paved driveway to the RDE.

### Conclusion

After all of the hard work that has been devoted to analyzing this project, and in light of the constitutional rights of the applicant that would suggest that there be no trail required for this project, the applicant is offering a compromise that fits into the scope of the two

environmental documents that the County has prepared. We urge the Planning Commission to honor the applicant's desires and rights and accept this compromise. The attached Applicant's Compromise Proposal and Applicant's Suggested Changes to Conditions provide further elaboration.

Sincerely,



Susan F. Petrovich

Enclosures:

California Trails Act (Senate Bill 908 (2001), Chapter 446)

Applicant's Compromise Proposal

Applicant's Suggested Changes to Conditions

Dr. Thompson Letter dated July 25, 2014

BILL NUMBER: SB 908 CHAPTERED  
BILL TEXT

CHAPTER 446  
FILED WITH SECRETARY OF STATE OCTOBER 3, 2001  
APPROVED BY GOVERNOR OCTOBER 2, 2001  
PASSED THE SENATE SEPTEMBER 13, 2001  
PASSED THE ASSEMBLY SEPTEMBER 10, 2001  
AMENDED IN ASSEMBLY SEPTEMBER 5, 2001  
AMENDED IN ASSEMBLY JULY 10, 2001  
AMENDED IN ASSEMBLY JUNE 26, 2001  
AMENDED IN SENATE JUNE 4, 2001  
AMENDED IN SENATE MAY 2, 2001

INTRODUCED BY Senators Chesbro and Karnette  
(Principal coauthor: Assembly Member Pavley)

FEBRUARY 23, 2001

An act to add Sections 31408 and 31409 to the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 908, Chesbro. State Coastal Conservancy: California Coastal Trail.

Existing law requires the State Coastal Conservancy to implement various coastal protection and preservation programs in coastal areas of the state.

This bill would require the conservancy, in consultation with the Department of Parks and Recreation and the California Coastal Commission, to coordinate the development of the California Coastal Trail, and would require each agency, board, department, or commission of the state with property interests or regulatory authority in coastal areas, to the extent feasible, and consistent with their individual mandate, to cooperate with the conservancy with respect to planning and making lands available for completion of the trail. The bill would authorize the conservancy to award grants and provide assistance to public agencies and nonprofit organizations to establish and expand inland trail systems that may be linked to the California Coastal Trail. The bill would require the California Coastal Trail to be developed in a manner that demonstrates respect for property rights and the proximity of the trail to residential uses, and that evidences consideration for the protection of the privacy of adjacent property owners.

The bill would also require the conservancy, not later than January 31, 2003, in consultation with the California Coastal Commission, the California Conservation Corps, and the Department of Parks and Recreation, to complete a plan for the development of the California Coastal Trail, and to submit to the Legislature a copy of the plan by that date. The provisions of the bill would be implemented only during those fiscal years for which funding is provided for the purposes of the bill in the annual Budget Act.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) The California Coastal Trail, which has been designated a

Millennium Trail by the Governor of California, should be completed in a timely manner.

(2) The California Coastal Trail is a trail that, to the extent feasible, should be constructed along the state's coastline from the Oregon border to the border with Mexico.

(3) The California Coastal Trail should be constructed in a manner that is consistent with the protection of coastal resources.

(b) The California Coastal Trail shall be developed in a manner that demonstrates respect for property rights and the proximity of the trail to residential uses, and that evidences consideration for the protection of the privacy of adjacent property owners.

SEC. 2. Section 31408 is added to the Public Resources Code, to read:

31408. (a) The conservancy shall, in consultation with the Department of Parks and Recreation, and the California Coastal Commission, coordinate the development of the California Coastal Trail.

(b) To the extent feasible, and consistent with their individual mandates, each agency, board, department, or commission of the state with property interests or regulatory authority in coastal areas shall cooperate with the conservancy with respect to planning and making lands available for completion of the trail, including constructing trail links, placing signs and managing the trail.

SEC. 3. Section 31409 is added to the Public Resources Code, to read:

31409. Consistent with the conservancy's authority under this chapter to develop a system of public accessways to, and along, the state's coastline, the conservancy may award grants and provide assistance to public agencies and nonprofit organizations to establish and expand those inland trail systems that may be linked to the California Coastal Trail.

SEC. 4. (a) The conservancy shall, not later than January 31, 2003, in consultation with the California Coastal Commission, the California Conservation Corps, and the Department of Parks and Recreation, complete a plan for the development of the California Coastal Trail that includes all of the following elements:

(1) Determination of a primary hiking route for the trail, including interim and permanent trail alignments where possible.

(2) Description of lands now under public or conservation ownership on which the trail is, or may be, constructed.

(3) A designation of various alternative routes for the trail, where necessary, that would encourage broad support and use of the trail, while protecting coastal resources and reducing conflicts among various users.

(4) A logo and signing program for the trail.

(5) An estimate of the costs for acquisition and construction of missing trail segments.

(6) A description of areas where the trail should connect to inland trail routes, especially where those connections can be utilized by underserved communities as an alternative means of accessing the coast. The plan shall include an estimate of the support and capital outlay costs for completing the trail by January 31, 2008.

(b) Not later than January 31, 2003, the conservancy shall submit to the Legislature a copy of the plan required to be completed pursuant to subdivision (a).

SEC. 5. This act shall be implemented only during those fiscal years for which funding is provided for that purpose in the annual Budget Act.

## APPLICANT'S COMPROMISE PROPOSAL

For the reasons stated in the letter to which this proposal is attached, the applicant makes the following compromise proposal that conforms to applicable law, reflects the environmentally superior alternative of approving this project, as changed in a way mutually agreeable to the applicant and the County, rather than the "no project" alternative that would result in the build-out of the ranch with no trail dedications and ad hoc conditions applied to individual residences as they are proposed.

The following is a comprehensive and integrated compromise, with each provision being inseparable from each other provision:

The applicant reluctantly will agree to incorporate into the project, not as an exaction (as proposed in Condition 81, which then could be deleted as a condition) but as a project element, what is referred to as the "Ranch Road Coastal Trail" in the Revised Final Environmental Impact Report, in lieu of the east-west lateral trail originally proposed by the applicant north of Highway 101, if and only if the County approves the project application with the "hybrid alternative" modified as follows:

1. Condition 80 is deleted so the applicant is not required to grant an agricultural conservation easement as a project condition. As detailed in the attached letter, the proposed CC&Rs, like those applied to Hollister Ranch for decades, as well as the imposition of residential development envelopes (RDEs) for every parcel, provide sufficient protection and preservation of the agricultural resources on the property.
2. Condition 82 will be deleted so that the "beach trail" is confined to the sandy beach as always proposed. This trail never was proposed to travel through the sensitive habitat and grazing land.
3. Retain the 5-acre RDE for Parcel 1. The RFEIR includes no justification for reducing the size of this envelope. Retaining greater flexibility in house siting makes it easier for an owner to avoid sensitive vegetation and visual impacts. The ultimate RDE, like all of the other RDEs in the project, ultimately will be limited to 2 acres.
4. Retain the 2-acre RDE for Parcel 2, sited in the location described in the RFEIR Alternative 3A and delete Condition 27. **BIO 13**. This location will avoid potential impacts to special-status species in Gato Creek or to westward movements of such species from the creek. After relocating the Parcel 2 RDE to a mesa far from the beach and Gato Creek, the EIR concludes that the biological impacts associated with the RDE have been mitigated to less than significant. Include for Parcel 2 a small beach cabana site for the owner's private use, located in the area designated in the attached letter from Dr. Rosemary Thompson. The site would be included in the 2-acre maximum for the total RDE size. Dr. Thompson's letter also includes conditions that, if implemented, not only will avoid biological impacts from the cabana and its access, but would provide an emergency vehicle access to Edwards Point that could serve a public safety purpose.

5. Relocate the Parcel 4 RDE proposed in RFEIR Alternative 3C and limit its size to 2 acres. As the attached letter and the RFEIR describe, this location allows improvements in the RDE to be screened from public view by existing topography. The location proposed by staff will be highly visible from the railroad tracks and from Highway 101, detracting from the integrity of the existing historic structure cluster.

6. Condition 6 goes to the heart of the core concern that the proposed public trail will impair the viability of the existing agricultural operation. The orchards must be protected or the trail will not work. The applicant has made it clear from the outset that chain link fencing (which can be coated to darken it and make it visually more appealing) is essential between the trail and the orchard. Both food safety and avoidance of theft and vandalism are essential to the continued growing of fruit on this property. The orchards are the backbone of the economic success of agriculture on this land. **AES 5 Fencing** shall be reworded to read: "To minimize the impacts of the trail fencing to the visual character of the site, while preventing trespassing, cattle and worker harassment, vandalism and theft within the adjacent agricultural areas, the fencing between any public trail and any orchard shall be chain link approximately six feet high, and the fencing between any public trail and the grazing land shall be hog wire with 2 strands of barbed wire above for a total height of 48" or more, with the height and construction of fencing being subject to further fortification if trespassers, poachers, thieves, vandals or others gain entry through the fencing. Wildlife accessible passageways or culverts will be incorporated into the fence design to avoid impeding wildlife corridors. The trails through the property, and the parking lot at the trailhead, shall be closed from dusk to dawn to protect the existing agricultural operation and the security and privacy of existing and future residents."

**PLAN REQUIREMENTS AND TIMING:** All fencing shall be installed by county prior to opening of the public trails by the Community Services Department, Parks Division.

**MONITORING:** The Parks Division shall confirm that the fencing is in place prior to opening the trails for public use."

By describing the fencing in detail, there is no need for requiring P&D and Parks Division approval of the fence design. The property owner instead is willing to describe the fencing in detail to provide certainty. Secure fencing will make it possible for trail users to have their dogs on the trails without burdening the agricultural workers with the job of catching loose dogs. Both trail users and the agricultural workers and operation will remain separated and safe.

7. Condition 25. **BIO 12-1** – delete subparagraph a. Long-term agricultural viability is at the very core of the Doheny family's project. This is productive agricultural land and having flexibility as to the type of farming and ranching needed to retain agricultural viability in the face of changing climate and market conditions is essential to continued operations. Imposing this proposed condition would set an unhealthy precedent that would cause widespread and justifiable alarm in the ranching community. It also would be contrary to the County's current agricultural policies and the Coastal Act's emphasis on the importance of preserving and protecting agricultural land.



8. Condition 35. **CULT 2-2** – delete the first sentence completely. This would preclude construction of a driveway and installation of utilities, which precludes development within the RDE. The second sentence should include “driveways” to address protection of the significant portions of the site.

9. Condition 54. **TRANS 3** – delete first sentence. The applicant never agreed to such an burdensome condition and it was not suggested in the traffic report. This would cost many hundreds of thousands of dollars and major construction.

## APPLICANT'S SUGGESTED CHANGES TO CONDITIONS

Although most of the conditions are clear and address the intended result accurately, some are unclear, overly-broad, or could be misinterpreted by future planners not even currently working for the County. We suggest that the following changes be made before the Planning Commission adopts its motion:

1. Condition 7. AES 6 should be revised so that the fourth bullet includes the following addition at the end of the sentence, "except that this requirement shall not apply to lighting for agricultural purposes." The condition is intended to apply solely to residentially-related activities, but as worded it could impact such essential agricultural operations as loading fruit in the cool of the evening for shipping.
2. Condition 8. **AG 1-1: Construction Timing** should read: "All construction-related activities associated with future residential development on **Parcel 4** (the first-calf heifer pasture), including associated infrastructure improvements shall be timed so as not to commence during the calving season (approximately August to October), if calving is occurring in the pasture. Residential construction-related activities on **Parcel 4** shall commence outside of this season so as not to significantly disturb or distress first-calf heifer calving." The remainder of this condition is accurate, except the reference to Parcel 5 under **Plan Requirements and Timing** and **MONITORING**. There appears to be some confusion regarding the use of the pasture area on Parcel 5. Parcel 5 is used for weaning, not calving. The weaning calves are kept at the far side of this pasture a long distance from the existing house (which is also the proposed RDE). This confusion between calving and weaning affects the period stated above for prohibiting construction commencement. Calving occurs approximately during the period between August and October, a time period that is kept intentionally short so the ranch crew can better monitor the cows and calves during this critical period. The phrase "if calving is occurring in the pasture" to address the occasional event, like the current drought, when there are fewer calves during a given year and, therefore, a shorter calving season.
3. Condition 11. **AG 2-3: CC&Rs** should include in the fourth bullet, the following wording at the end of the phrase, "if calving is occurring in the pasture." As noted above, this change in wording is a practical one – if for some reason there are no first-time mothers calving during this calving season, there is no logical basis for imposing the limitation. All of the various time periods when construction commencement is prohibited, whether for calving, bird nesting, or butterfly roosting consume most of the months in the calendar year. These limitations should be practical in order to be fair while still accomplishing the valid objective of preserving resources.
4. Condition 13. **AQ 2: Construction Related Emissions** should include the following clarification, "This condition applies only to construction equipment." The condition clearly is intended to address construction emissions, but the ranch uses diesel equipment for the agricultural operation and, as worded in certain subsections, the condition could be interpreted as applying to ag equipment.

5. Conditions 18, 19 & 30 each should include the following clarification: "This condition does not apply to remodel, expansion, or reconstruction of the existing residence on Parcel 5." This is a critical issue for the applicant. Mrs. Doheny lives in the residence on Parcel 5, but if younger family members ultimately move in with children, they are likely to want to expand what currently is a modest home. The existing residence and the RDE surrounding it already located within the described buffers and the conditions as worded could be interpreted to prevent modification or replacement of the existing residence.

6. Condition 26. **BIO 12-2** – delete subparagraph a and modify subparagraph b to include at the end, "to the extent feasible." Complete avoidance of native grasses may be impossible if conditions change and native grasses encompass all or much of the RDE.

7. Condition 28. **BIO 15-1** should read: "Except as necessary to relocate the existing ranch road and accommodate the Ranch Road Coastal trail, the trees in the portion of the eucalyptus grove located on Parcel 5 occupied by monarch butterflies shall not be trimmed or removed during construction or occupation unless approved and monitored by a County-approved monarch butterfly biologist." The rest of the condition is acceptable, but it should be noted that after years of study, only the southerly portion of this one grove on the property has ever been used by monarch butterflies. Because the condition uses the term "monarch groves" without a definition, it is vague and overly broad. We presume that it applies to monarch roosting sites and there is only one historic roosting site on the entire ranch. Eucalyptus trees are notorious for their shallow root system so they frequently blow over. They also drop limbs. This blanket prohibition on trimming and removal without P&D involvement should be confined to trees that provide monarch roosting habitat and not applied widely throughout the rest of the ranch.

8. For the same reasons stated above in #7, Condition 29. **BIO 15-2** should commence with "In any grove where monarch butterflies are known to roost, future applicants for structural development shall prepare and implement a Monarch Butterfly Protection Plan." The rest of the condition is fine, but as currently worded it is far too broad. Only the southerly portion of the grove on Parcel 5 has ever been known to provide a suitable roosting site for monarchs. The condition also requires the applicant to prepare a Monarch Butterfly Preservation Plan. Why? The RDE on Parcel 5 is developed with a house where Mrs. Doheny lives. There is no reason for her to prepare such a plan. She isn't proposing any new residential development as part of this project.

9. Condition 41. **CULT 5** – Parcel 5 should be deleted from this list. The Parcel 5 RDE is located 2 tree-lined drainages and a long distance away from the historical structures, completely outside their viewshed. It has no connection to the historic structures, either spatially or visually.

10. Condition 32 – this condition should be limited to the parcels known to have cultural sites anywhere in the vicinity of the RDE – Parcels 2, 3 & 7. Otherwise, it is

overly broad and imposes unjustified financial burdens on the property owner. Condition 33 adequately deals with excavation that reveals archaeological remains during construction elsewhere.

11. Condition 52 must be re-worded to delete the reference to breaking the view plane of the Santa Ynez Mountains as viewed by the public. This is a completely new condition never imposed on any other project and is incomprehensible. The suitability of any structure on these two RDEs should be left to the CBAR, applying all applicable County policies.

12. Condition 88 – please modify by addition “for a residential unit within an RDE” at the end of the first line of #2 to clarify that the issuance of the Conditional Certificate of Compliance or a Land Use Permit for a ranch activity unrelated to the residential project will not trigger all of these fees landsliding onto the property owner.



Shaping the Future

25 July 2014

Santa Barbara County Planning Commission  
123 Anapamu Street  
Santa Barbara, CA 93101

**Subject: Las Varas Ranch Project**

Dear Honorable Commissioners:

The following is my independent assessment of biological effects associated with the revised Lot 2 Development Envelope (DE), including a cabana.

The potential for Lot 2, including the cabana, effects on the following species are also assessed:

1. Sandy beach tiger beetle (*Cicindela hirticollis gravida*)
2. Pinnacles optioservus riffle beetle (*Optiocervus canus*)
3. Ringtail (*Bassariscus astutus*)
4. Benthic macroinvertebrates in streams

These analyses are based on information in the Final EIR (FEIR) project description and biological resources section as well as prior site visits to Gato Creek south of U.S. Highway 101 and DE#2. Literature information was used for the three species listed above. Effects on benthic macroinvertebrates are based on experience sampling in streams along the Santa Barbara coastline and preparation of numerous CEQA documents.

#### Lot 2 Revisions

Potential changes in the Lot 2 DE include moving the main DE up onto the terrace to the west of the applicant-proposed location analyzed in the FEIR. This relocation would avoid the potential for impacts on special-status species in Gato Creek and interference with westward movement of such species from the creek (e.g., California red-legged frog [*Rana draytonii*] and southwestern pond turtle [*Emys marmorata pallida*]). The applicant could still have a small structure, such as cabana, near the beach on the west side of Gato Creek with no impacts on special-status species in Gato Creek if the following measures are implemented.

- Access to the cabana from the residence would be by unpaved path suitable for light vehicles such as a golf cart.
- The access path would be located so that native grassland on the low terrace is not affected. It would follow the existing, already disturbed road in this area (see attached figure).

Cardno ENTRIX

201 N. Calle Cesar Chavez  
Suite 203  
Santa Barbara, CA 93103  
USA

Phone 805 962 7679  
Toll-free 800 368 7511  
Fax 805 963 0412  
[www.cardno.com](http://www.cardno.com)

[www.cardnoentrix.com](http://www.cardnoentrix.com)

- The access path would have no curbs or gutters but could have low "water bars" to distribute runoff so that it does not concentrate and cause erosion.
- Any utility connections to the cabana would be buried under the path.
- The path would be wide enough for emergency vehicle access to the vicinity of Edwards Point, if needed.

### **Project Effects on Species**

The following analysis is based on literature information for the species and expertise of Dr. Thompson.

#### ***Sandy Beach Tiger Beetle***

The sandy beach tiger beetle is not state or federally listed as threatened or endangered (NatureServe 2011). It inhabits moist sandy areas above the high tide line, such as in swales behind sand dunes. This habitat does not occur along the Las Varas Ranch coastline, including Lot 2, as high tides reach the base of the bluffs. The proposed cabana site is on a small terrace adjacent to the beach with no sand dunes and no moist swale. Thus, the project would have no effects on this species.

#### ***Pinnacles Optioservus Riffle Beetle***

The Pinnacles optioservus riffle beetle is not state or federally listed as threatened or endangered (USFWS 2012, NatureServe 2011). It is endemic to Chalone Creek in Pinnacles National Monument (NPS 2008) and is found in Monterey and San Benito counties (NatureServe 2011). The species prefers rocky streambeds.

This species is not likely to be present in Gato Creek since this is outside the known range of the species. Furthermore, proposed disturbances associated with the Lot 2 cabana near the creek would not affect suitable habitat, and no impacts would occur.

#### ***Ringtail***

The ringtail is a fully protected species in California (CDFG 2012). Preferred habitat is rocky areas within 0.6 mi of permanent water and includes riparian canyons (Ahlborn 2005, Arizona-Sonora Desert Museum 2008). Ringtails grow to about 24 inches in total length, have a long tail with alternating black and white rings, and are primarily nocturnal (Arizona-Sonora Desert Museum 2008).

Ringtails have the potential to use Gato Canyon, particularly at higher elevations where rocky habitat is present. The proposed Lot 2 development and cabana would not adversely affect any habitat for this species, and increased human activity in the riparian canyon at night is unlikely. Therefore, the project would have no impacts on this species.

#### ***Benthic Macroinvertebrates***

A variety of benthic (bottom dwelling) invertebrates are present in coastal streams and can be found burrowed into soft sediments as well as on or under rocks. Other invertebrates use the water column and water surface. The species composition and abundance of these invertebrates depends on factors such as substrate type (silt/sand, gravel to boulders, or bedrock), water regime (duration of flow over a year), water depth and velocity, water quality (e.g., temperature, salinity, pH, pollutants), and presence or absence of aquatic plants (submerged and emergent). Aquatic invertebrates may spend their entire life cycle in the water or only pre-adult life stages. Common taxa present include dragonfly and damselfly nymphs, caddisfly larvae, black fly larvae, water boatmen, leaches, mayfly and stonefly nymphs, water striders, snails, and a number of aquatic beetles.

The proposed Lot 2 development would not affect aquatic invertebrates because no activities would occur in Gato Creek. Measures to prevent runoff of sediment to Gato Creek from soil disturbance during construction within the Lot 2 DE and cabana site would minimize the potential for indirect effects on invertebrate habitat. Thus, impacts would be less than significant.

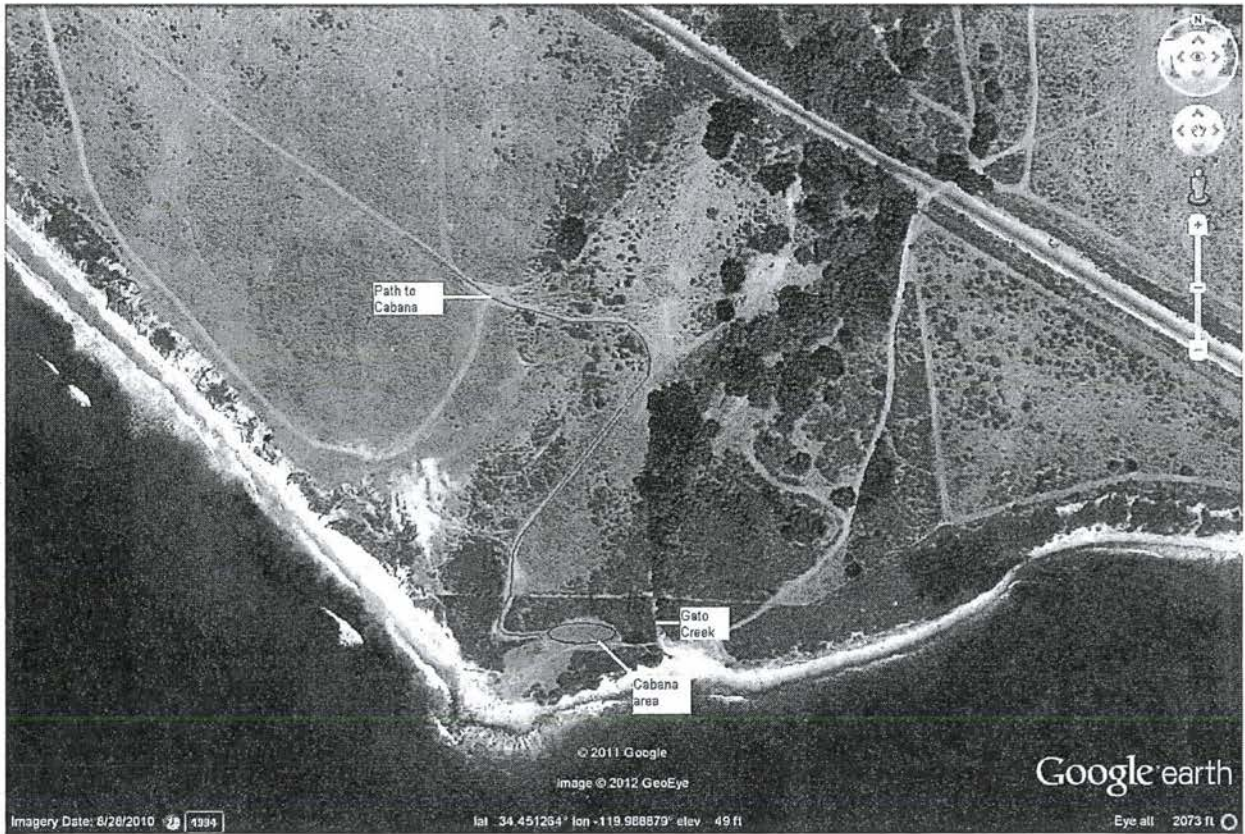
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Sincerely,



Rosemary Thompson, Ph.D.  
Senior Consultant  
for Cardno ENTRIX  
Direct Line 805 979 9413  
Email: [rosemary.thompson@cardno.com](mailto:rosemary.thompson@cardno.com)



File: Cardno ENTRIX letter to SB Planning Commission-Las Varas DE#2 25Jul14



APPLICANT'S  
PRESENTATION  
LAS VARAS RANCH  
PROJECT

Presented by:

SUSAN F. PETROVICH

■ Brownstein Hyatt  
Farber Schreck

# WHAT THE PROJECT IS

IT IS 3 SEPARATE PROJECTS ANALYZED TOGETHER  
TO AVOID A PIECE-MEAL ANALYSIS OF IMPACTS:

- South of RR – lot merger & lotline adjustment -- existing  
Parcels A, B & C become Parcels 1 & 2
- Between RR & Highway 101 – lot split -- existing  
Parcels D & E become Parcels 3, 4 & 5
- North of Highway 101 – lot merger & lotline adjustment  
– existing Parcels F, G, H & I become Parcels 6 & 7

[See Figure 2-2 & Table 2-1 in RFEIR]

# WHAT THE PROJECT IS

## South of Railroad

Parcel A – 11.05 acres

Parcel B – 94.25 acres

Parcel C – 8.35 acres

Will become 2 parcels of 55 & 58.68 acres (1 net parcel reduction)

# WHAT THE PROJECT IS

## North of Highway 101

Parcel F – 740 .09 acres

Parcel G – 281.35 acres

Parcel H – 242.30 acres

Parcel I – 1.27 acres

Will become 2 parcels of 150.01 and 1,115 acres  
(2 net parcels reduction)

# WHAT THE PROJECT IS

## Between Railroad and Highway

Parcel D – 239.53

Parcel E – 165.21

Will become 3 parcels of 100, 147.53, & 157.21 (1 net increase)

The Project Reduces the Total Number of Buildable Parcels on this Property

## WHAT THE PROJECT IS

Creates restrictive residential development envelopes (RDEs) to confine non-agricultural development within max. 2-acre building envelope that avoids or minimizes visual and other environmental impacts.

Currently, there are no building envelopes and no restrictions on where a new main residence may be built.

One of the proposed parcels, #5, already has the Doheny main residence on it and the RDE has been created around that house. No new RDE for that parcel.

## WHAT THE PROJECT IS

- 3 new public trails where none now exist and none could be required as an exaction
- Creates CC&Rs that will require cooperative combined grazing to perpetuate the existing rotational grazing that has resulted in efficient use of forage and maximization of herd size and success without over-grazing.
- Requires that orchards continue best management practices for long-term success
- Currently, there are no such requirements. This project provides a structure for long-term ag viability.

## WHAT THE PROJECT IS

Includes shared water system solely for proposed parcels. Capacity if limited due to well size (25 gpm) and diversion water limited to 18 AFY for domestic uses.

Current agricultural irrigation system will be unaffected and not a part of project – Goleta Water District ag meters (non-potable) and stream diversion/reservoir

Current household water service will be unaffected and not a part of project – Goleta Water District delivers potable bottled water and limits use of ag meter water for domestic purposes. This water is not potable water but can be used for bathing, laundry, toilet flushing.

2 entirely separate systems – no new residences on GWD



# WHAT THE PROJECT IS NOT

Results in no more buildable lots than currently exist.

Will allow for 6 additional main residences, not 8, not 14, not 100 (7 lots with Parcel 5 already having a main residence)

Includes no envelopes for ag worker housing – as is true today, any future ag worker dwellings will be subject to all of County's existing and future development regulations.

Doesn't result in significant non-ag development on prime soils – only a portion of 2 RDEs overlap prime soils.

## **WHAT THE PROJECT IS NOT**

The project is not growth inducing – it reduces the # of lots.

The water system is modest and sized for only these RDEs  
25 gpm well for potable water dedicated to domestic use  
only – County requires minimum domestic water flow of 3  
gpm per residence.

# WHAT THE PROJECT IS NOT

- State prohibits use of more than 18 AFY for domestic from diversion & reservoir
- Reservoir is a back-up supply
- No cross plumbing between potable system and GWD irrigation system
- GWD West Conduit water limited in supply sources, quality, and reliability

# THE TRAIL ISSUE – COASTAL ACT

## GOALS & POLICIES

- Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone **consistent with sound resources conservation principles and constitutionally protected rights of private property owners.** (Pub. Res. Code § 30001.5(c).) [emphasis added]
- Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. (Pub. Res. Code § 30001.5(a).)
- Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state. (Pub. Res. Code § 30001.5(b).)

# THE TRAIL ISSUE – COASTAL ACT

## GOALS & POLICIES

- Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values .... (Pub. Res. Code §§ 30240(a).)
- The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:.... (e) **By assuring that [nonagricultural development[s] do not impair agricultural viability** .... (Pub. Res. Code §30241; see also Pub. Res. Code §§ 30242 and 30250.) [emphasis added]

# THE TRAIL ISSUE – COASTAL ACT

## GOALS & POLICIES

- Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, **or the protection of fragile coastal resources.... or (3) agriculture would be adversely affected.** (Pub. Res. Code § 30212(a).) [emphasis added]
- [A]ll development adjacent to prime agricultural lands shall **not diminish the productivity of such prime agricultural lands.** (*Id.* § 30241(f).) [emphasis added]

# COASTAL ACT

The public access policies of this article shall be implemented in a manner that **takes into account the need to regulate the time, place, and manner of public access** depending on the facts and circumstance in each case including, but not limited to... (2) The capacity of the site to sustain use and at what level of intensity.

(3) The **appropriateness of limiting public access to the right to pass and trespass depending on such factors as the fragility of the natural resources** in the area and the **proximity of the access areas to the adjacent residential uses**. (4) The need to provide for the management of access areas so as to **protect the privacy of adjacent property owners** and to protect the aesthetic values of the area by providing for the collection of litter. (*Id.* § 30241.)  
[emphasis added]

# THE TRAIL ISSUE

Compare the impacts – agricultural and biological – between the applicant-proposed trail, the “bluff top” trail, and the “ranch road” trail.

The one that has by far the most significant adverse environmental impacts is the bluff top trail – on agriculture, cultural impacts, and biology

The EIR fails to properly identify this trail for what it is – a Class I environmental disaster.



# THE PROPOSED COMPROMISE

Applicant's proposed compromise terms attached to end of letter dated July 25, 2014

- No Ag conservation easement
- No Upland addition to beach trail
- No RDE reductions for Parcels 1 & 2 + allow for cabana
- Return #4 RDE to non-visible site closer to Hwy. 101

# THE PROPOSED COMPROMISE

- Define the fencing between the trail and the agricultural areas up front, clearly, and consistent with applicant's stated requirements.
- Delete any provision that limits ag flexibility – no requirement that grazing land not be converted to crops/orchard
- Avoid overly-restrictive language like Condition 35, which would prevent reasonable use of the RDE
- Condition 54 – modify to make it clear that it will not apply to a CDP if the County isn't prepared to open the trail – these lanes are tied to the public's use of the parking lot/trail

# CONCLUSION

Applicant is offering a substantial compromise

We ask that you consider our proposal, including the condition revisions attached to the July 25 letter

This project requires a delicate balancing of coastal priorities and practical considerations – e.g., visual impacts must trump prime soils to allow for RDE siting

If the County over-reaches, it jeopardizes the project and the trail system and comes with it

**Brownstein Hyatt  
Farber Schreck**

RECEIVED

JUL 28 2014

July 28, 2014

S.B. COUNTY  
PLANNING & DEVELOPMENT  
HEARING SUPPORT

Russell M. McGlothlin  
Attorney at Law  
805.882.1418 tel  
805.965.4333 fax  
RMcglathlin@bhfs.com

VIA HAND DELIVERY AND ELECTRONIC MAIL

Alex Tuttle  
County of Santa Barbara  
Planning & Development  
123 E. Anapamu Street  
Santa Barbara, CA 93101

AGENDA ITEMS

ITEM #: 4

MEETING

DATE: 7-30-14

RE: Briarcliff Trust's Opposition to the Bluff-Top Trail Alternative

Dear Mr. Tuttle:

On behalf of Briarcliff Trust ("Trust"), owner of an 11.5 acre parcel ("Property") adjoining the western boundary of the Las Varas Ranch between the ocean and the Union Pacific railroad, we thank the County for considering our prior comments on the recirculated Environmental Impact Report ("Recirculated FEIR") and submit the additional following comments. The Trust generally supports the Project, but opposes the proposed coastal bluff-top trail alignment alternative ("Bluff-top Trail Alternative"<sup>1</sup>). We encourage the Planning Commission to adopt the coastal trail proposed by the applicant ("Applicant's Proposed Alignment") or the alternative designated in the Recirculated FEIR as Alternative 4-A ("Ranch Road Trail Alternative").

Construction of the Bluff-top Trail Alternative is impractical, inconsistent with state and county law, and would result in an extreme infringement on the privacy and security of the Trust's Property and beneficiaries. The Ranch Road Trail Alternative provides a viable alternative trail alignment, acceptable to the applicant, that would substantially improve the recreational opportunities on the Gaviota Coast.

#### Compromised Privacy and Increased Likelihood of Trespass

The Bluff-top Trail Alternative would significantly intrude on the privacy of the Property's occupants. The Bluff-top Trail Alternative would create opportunities for the public to view private portions of the Trust's property (e.g., habitable structures, large windows into the internal portions of the residence, and surrounding sundecks). (See attached Declaration of Brett De Campos, ¶¶ 6 and 10.) The view of the Property's residence from the proposed trail location under the Bluff-top Trail Alternative is shown within the picture attached as Exhibit 1 to the De Campos Declaration. Such privacy intrusion would be inconsistent with the California Legislature's declaration that "[t]he California Coastal Trail shall be developed in a manner that demonstrates respect for property rights and the proximity of the trail to residential uses, and that evidences consideration for the protection of the privacy of adjacent property owners." (Sen. Bill No. 908 (2001-2002 Reg. Sess.) § 1, subd. (b), attached as Exhibit B; see also Cal. Coastal Act, Pub. Res. Code §§ 30001.5(c) and 30210 [establishing policy for public access and recreational opportunities in the coastal zone consistent with the rights of property owners].)

<sup>1</sup> The Bluff-top Trail Alternative is identified as Alternative 4-B in the Recirculated FEIR.

1020 State Street  
Santa Barbara, CA 93101-2711  
main 805.963.7000

While the Bluff-top Trail Alternative would cause an improper privacy invasion for any property owner, the privacy concerns are amplified here because the Trust's beneficiary is a well-known celebrity, as are many of his guests. As discussed in the De Campos Declaration, the celebrity stature of the Property's resident has attracted paparazzi seeking to photograph the Property and its occupants, and has caused members of the public to trespass onto the Property, seeking to photograph the property and/or intercept the Trust's beneficiary and his family. His family includes young children whose privacy is of the utmost importance. The placement of a public trail with direct views into the most private portions of the Property would likely cause an increase in trespass and other intrusions. In addition to these significant privacy concerns, the resulting trespassing off of the trail would threaten sensitive biological habitat and create severe public safety risks, as discussed below.

#### **Additional Concerns with the Bluff-top Trail Alternative**

The Bluff-top Trail Alternative is unviable for numerous additional reasons including environmental, archeological, public safety, economic and legal concerns.

**Sensitive Biological Habitat.** The habitat in the vicinity of the Property along the Bluff-top Trail Alternative contains sensitive biological habitat, including abundant growth of a rare plant species as well as habitat that is well suited for sensitive aquatic species, both of which would be compromised by the trail construction and the likely trespassing from the trail by those seeking to photograph or enter the Trust's Property. Consistency with the Coastal Act and the state Legislature's declaration in regards to development of the California Coastal Trail also mandates that projects be constructed in a manner that is protective of coastal resources. (Sen. Bill No. 908 (2001-2002 Reg. Sess.) § 1, subd. (a)(3); see also Cal. Coastal Act, Pub. Res. Code §§ 30001.5(c), 30210, and 30212(a).) As recognized in the Recirculated FEIR, the Bluff-top Trail Alternative is expected to result in greater biological impacts as compared to the Applicant's Proposed Alignment and require additional mitigation measures. (Las Varas Ranch Revised Final EIR, pp. 6-51 to 6-57.)

**Significant Native American Archeological Site.** At the west end of the Las Varas Ranch, the Bluff-top Trail Alternative would pass directly through a significant Native American archeological site, which also extends onto the Trust's Property.<sup>2</sup> Placement of the trail in this location would open the site to illicit artifact collecting and looting. Development of the trail through this site would conflict with County law, which requires that any development within an archaeological site be designed to avoid impacts to the site, if possible. (County of Santa Barbara Land Use and Development Code, § 35.60.040; County of Santa Barbara Zoning Ordinance, Article II, § 35-65.) As recognized in the Recirculated FEIR, the Bluff-top Trail Alternative would result in greater archeological impacts as compared to the Applicant's Proposed Alignment. (Las Varas Ranch Revised Final EIR, p. 6-58.)

**Public Safety Risks.** The Bluff-top Trail Alternative could also create significant public safety risks. The celebrity status of the occupants of the Trust's Property will likely cause trail users to venture off of the trail and trespass onto portions of the Las Varas, Caltrans, and Trust properties outside the trail corridor, which contains hazards, including uneven grounds, cliffs, a highly-active railroad track, and a stream culvert under the railroad tracks. The Bluff-top Trail Alternative is also inconsistent with the state policy that requires consideration of public safety in siting coastal trails. (See Pub. Res. Code § 30212(a).)

<sup>2</sup> As currently proposed, the Bluff-top Trail Alternative would also pass through a second recorded archeological site ("CA-SBA-1803"). The boundaries and significance of CA-SBA-1803 are not well understood. Further investigation would be required in order to determine whether, like CA-SB-81, the site is also considered to be significant. (Las Varas Ranch Revised Final EIR, p. 6-57.)

Extremely Difficult and Expensive Trail Construction. Construction of the Bluff-top Trail Alternative trail would require the expenditure of exorbitant sums. The route would require extensive bridges over both the railroad tracks and to span the wetland areas on the north side of the tracks and the construction of barriers for public safety as well as a retaining wall due to the very steep slopes. These necessities would involve further significant expenses and public safety risks.

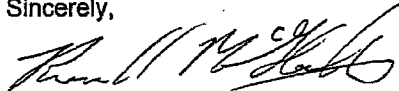
Legal and Practical Concerns.

If the Bluff-top Trail Alternative is approved as a condition of project approval, we anticipate that the applicant will either withdraw the application or bring a lawsuit against the County for an illegal exaction. Such a lawsuit would likely succeed because the exaction of land for the Bluff-top Trail Alternative would not have a sufficient nexus to the project impacts and because the exaction would be vastly disproportionate to any adverse project impacts to recreation. (See *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391; *Nolan v. California Coastal Commission* (1987) 483 U.S. 825, 836-37.)

**Conclusion**

Simply stated, the Bluff-top Trail Alternative is not a viable alternative for reasons discussed. From a practical perspective, Bluff-top Trail Alternative would result in no trail and potentially expensive and unnecessary litigation. Pursuing this course when the Ranch Road Trail Alternative is available and acceptable to the applicant would fundamentally compromise the public welfare as well as the reasonable interests of the applicant and the Trust. On these grounds, we respectfully request that the Planning Commission reject the Bluff-top Trail Alternative and recommend adoption of the Ranch Road Trail Alternative.

Sincerely,



Russell M. McGlothlin

RMM:lem

Enclosure

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EXHIBIT A

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**EXHIBIT A**

**DECLARATION OF BRETT DE CAMPOS  
IN OPPOSITION TO PROPOSED ALIGNMENT  
OF THE EAST/WEST LAS VARAS TRAIL**

I, Brett De Campos declare:

1. I have personal knowledge of the facts stated herein and if called upon I can competently testify thereto.

2. I have served as a private security agent for the past nine years, and I am presently employed by a private individual.

3. I have extensive experience providing security for high profile celebrity clients/individuals.

4. I presently provide security services for the 11.5 acre property located at 11000 Calle Real (the "Property"), which adjoins the western boundary of the Las Varas Ranch. The Property is owned by the Briarcliff Trust (the "Trust"). The beneficiary of the Trust is a well known celebrity.

5. In my professional opinion, the alignment of the east/west Las Varas trail proposed by the Santa Barbara Trails Council ("SBTC") would significantly intrude on the privacy of the Property's residents, and would also create substantial safety risks for members of the public using the trail.

6. The SBTC's proposed trail alignment would place the trail in an area where trail users could view private portions of the Property (e.g., residences and sundecks). This would compromise the privacy of the Property, which was a principle basis for its purchase by the Trust. Attached as Exhibit A hereto is a picture of the main residence<sup>1</sup> on the Property taken from the proposed trail location at the west end of the Las Varas Ranch where the proposed trail would veer northeast away from the coastal bluffs. As this photograph demonstrates, the view of the Property would include the main residence and the surrounding sundeck.

7. On several occasions, paparazzi have sought to photograph the residence and the Property's occupants. For example, we have intercepted paparazzi wearing ghillie/camouflage suits that have attempted to photograph the Property from the State Park property that adjoins the

<sup>1</sup> The portion of the picture including the main residence has been blurred for privacy reasons.



1 Property to the west. Paparazzi have also sought to photograph the Property and its occupants from  
2 elevated railroad tracks to the rear of the Property and from the beach. Although illegal, the  
3 paparazzi nearly always employ extremely powerful telephoto lenses.<sup>2</sup>

4 8. We have also arrested paparazzi who have driven into other private properties owned  
5 by the Trust through security gates when temporarily opened to allow entry of authorized vehicles.

6 9. In addition to the privacy impairment from paparazzi, privacy concerns also result  
7 from "obsessive" members of the public that desire to photograph the property or to approach the  
8 Trust's beneficiary and his family. To illustrate, in the last four years that I have worked on the  
9 Property there have been two incidents where individuals have walked onto the property from the  
10 beach, past private property/no trespassing signs. In the first incident, a woman with a camera  
11 sought to photograph the inside of the Property. In the second incident, a woman sought to deliver  
12 paintings, letters and photographs of her children to the Trust's beneficiary. Other security  
13 personnel have intercepted numerous other trespass incidents concerning the Trust's beneficiary and  
14 his family, some including bizarre and disturbing aspects that are not appropriate for public  
15 disclosure.

16 10. Despite these prior trespasses and privacy intrusions, we are able to maintain a  
17 significant degree of privacy for the Property's residences by avoiding activities in the areas of the  
18 Property that are visible from adjacent properties that are accessible to the public. Importantly, the  
19 ocean side of the Property's residence shown in the photograph attached as Exhibit 1 is situated on a  
20 bluff that is largely not visible from the beach, the railroad, or the State Park property to the East.  
21 This side of the house includes large windows and a front sundeck. The proposed trail alignment  
22 would provide a public vantage directly into this private portion of the Property, and effectively  
23 eliminate the most essential privacy at the Property.

24 11. I anticipate that the open view of the Property and the aforementioned private  
25 portions of the residence from the proposed trail alignment would encourage paparazzi and other  
26 members of the public to seek to photograph the Property and its occupants to a far greater extent

27 <sup>2</sup> Pursuant to California Civil Code, section 1708.8, a person may be liable for constructive invasion  
28 of privacy when they photograph another person engaged in a personal or familial activity through  
the use of a visual enhancing device (e.g., telephoto lens).

1 than presently occurs. Such result would substantially impair the benefit that the Trust's beneficiary  
2 and his family and guests (frequently other high profile celebrities) obtain from the Property's  
3 current privacy and solitude.

4 12. In light of past experiences, I also anticipate that paparazzi and other trail users  
5 would not respect the trail boundaries and would attempt to trespass onto the Property. In addition  
6 to the nuisance and intrusion that this would cause to the Property's occupants, such trespassing  
7 could result in significant safety risks since the area around the trail includes uneven grounds, cliffs,  
8 highly-used railroad track, and other hazards.

9 13. One specific hazard is the culvert that drains Las Llagas creek beneath the railroad.  
10 Trail users would be able to access this culvert, which is about 12 feet in diameter, from the trail  
11 and walk through it to where it empties into the estuary on the Trust Property. Not only would this  
12 create a substantial privacy concern in that paparazzi could hide in the culvert, but it would also risk  
13 severe injuries to anyone attempting to access the Property from the culvert since the culvert drops  
14 out onto concrete and rock rip rap. The pictures attached as Exhibit 2 show the upstream and  
15 downstream sides of this culvert.

16 14. Another significant hazard in the area is the railroad. Trail users could easily access  
17 the railroad tracks from the trail. They may do so to proceed west to seek a better vantage of the  
18 rear of the Property. In this vicinity, the railroad bends significantly just west of the Property (see  
19 pictures attached as Exhibit 3). Because of this bend there is little period of sight of eastbound  
20 trains coming from the west, all of which travel at full railway speed in this area. Someone on the  
21 tracks in the vicinity of the Property would only receive approximately seven seconds advance site  
22 of an eastbound train before its arrival. With this short of period, there is a material risk of a person  
23 on the tracks being hit by a train.


24 15. Another similar safety concern involves the entry to the Property. On numerous  
25 occasions, out-of-area visitors have approached the Briarcliff gate under mistaken belief that the  
26 gate was the entry to the El Capitan State Park, the private campground at El Capitan, or other some  
27 other beach access. To access the Property's gate, a vehicle must cross a railroad crossing that is  
28 not equipped with signals or barrier arms (see picture attached as Exhibit 4). There is limited space

1 between the gate and the railroad track at this location, which is immediately eastbound of the  
2 railroad bend discussed above. Further, there is a large crown to the crossing at the track location  
3 which easily high-centers larger RV's and trucks. There is also a dropoff between the tracks that  
4 can immobilize vehicles if a vehicle veers off of the paved crossing. Such result is likely because  
5 there is no room for a u-turn, and thus motorists must negotiate a backing left turn in order to leave  
6 the driveway.

7 16. The mistaken approach of the Briarcliff Trust caused a minivan to be "clipped" by a  
8 train in 2009, but miraculously without injury or extensive property damage. Pictures of the  
9 accident and my filed -police report are attached as Exhibit 5.<sup>3</sup> Many years prior to the Trust's  
10 ownership of the Property, an elderly man was hit in his car at this crossing and killed. I am  
11 concerned that the siting of a public trailhead immediately next to the Property's gate may lead to  
12 even greater mistaken efforts to enter the Property than presently occur, which would increase the  
13 potential for another train accident at this crossing.

14 17. For the privacy and safety reasons discussed above, I believe that it would be highly  
15 ill-advised for the County to approve the alignment of the east/west Las Varas trail proposed by the  
16 SBTC.

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18  
19 Date: June 7, 2013

By:   
Brett De Campos

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28 <sup>3</sup> I met with Dan J. Miller, a senior engineer for the Union Pacific Railroad, after this incident, and  
he stated that, from a safety perspective, this crossing concerns him more than perhaps any other.

**EXHIBIT 1**  
**PICTURES OF PROPERTY'S MAIN RESIDENCE FROM PROPOSED TRAIL**

Picture Taken from Proposed Trail Location on Las Varas Ranch



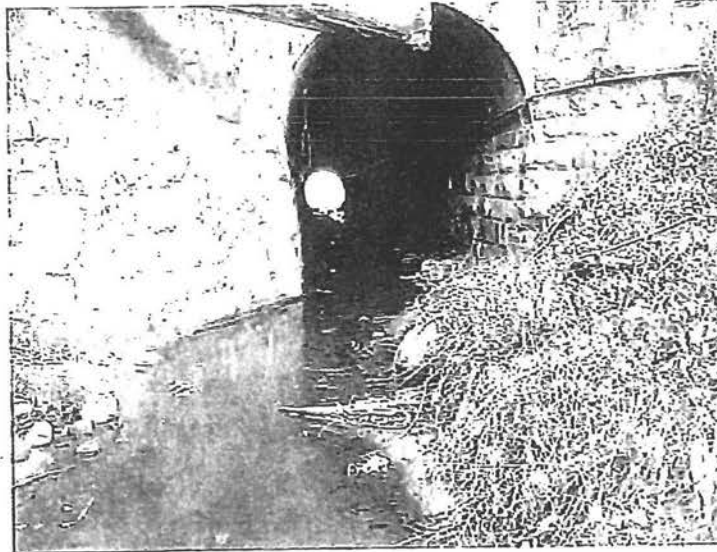
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
31 East Carrillo Street  
Santa Barbara, CA 93101

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**EXHIBIT 2**  
**PICTURES OF LLAGAS CREEK CULVERT IN VICINITY OF TRAIL**

From North Entrance (Caltrans Property)



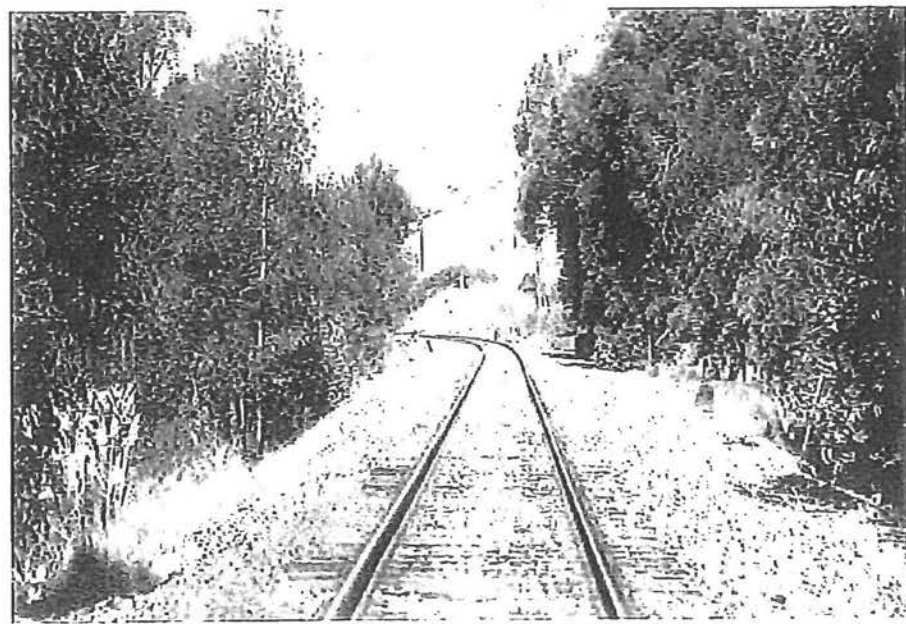
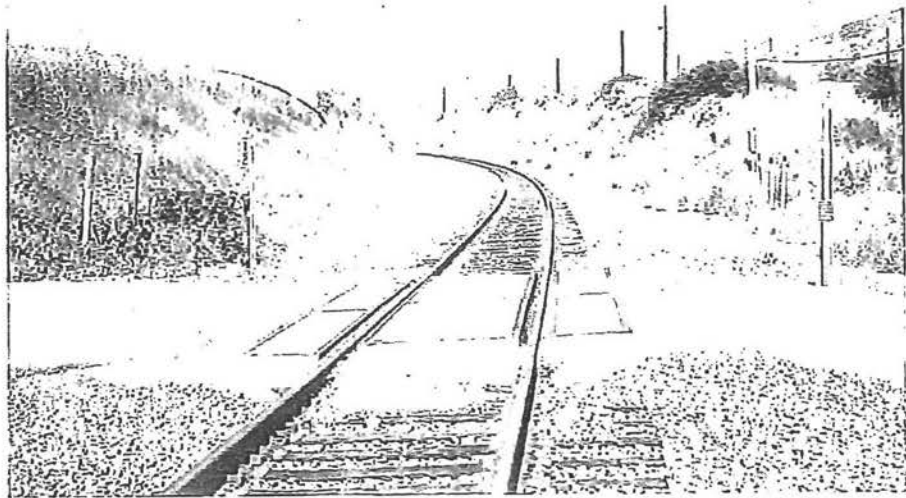
From South Entrance (Briarcliff Trust Property)



BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101

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**EXHIBIT 3**  
**PICTURES OF RAILROAD IN VICINITY OF PROPERTY/PROPOSED TRAIL**



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**EXHIBIT 4**  
**PICTURES OF PROPERTY'S ENTRY GATE ADJACENT TO RAILROAD**

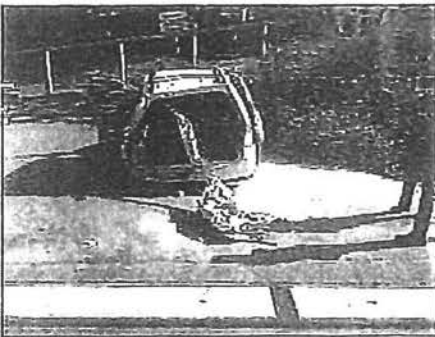


BROWNSTEIN HYATT FARBES SCHRECK, LLP  
21 East Curtillo Street  
Santa Barbara, CA 93101

EXHIBIT 5  
PICTURES OF TRAIN ACCIDENT AND FILED POLICE REPORT

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BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101





1 Incident Report:

2 At approximately 1630 on June 22, I was working on the NW corner of the property at  
3 11000 Calle Real. I heard a ringing sound coming from the railroad tracks which indicated to me  
4 that a train was coming. At the same time, I could hear voices emanating from the driveway below,  
5 which alerted me to the fact that people may be near the tracks. Understanding the danger of this  
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26 Sincerely,

27 Brett  
28

EXHIBIT A

EXHIBIT A

DECLARATION OF BRETT DE CAMPOS  
IN OPPOSITION TO PROPOSED ALIGNMENT  
OF THE EAST/WEST LAS VARAS TRAIL

I, Brett De Campos declare:

1. I have personal knowledge of the facts stated herein and if called upon I can competently testify thereto.

2. I have served as a private security agent for the past nine years, and I am presently employed by a private individual.

3. I have extensive experience providing security for high profile celebrity clients/individuals.

4. I presently provide security services for the 11.5 acre property located at 11000 Calle Real (the "Property"), which adjoins the western boundary of the Las Varas Ranch. The Property is owned by the Briarcliff Trust (the "Trust"). The beneficiary of the Trust is a well known celebrity.

5. In my professional opinion, the alignment of the east/west Las Varas trail proposed by the Santa Barbara Trails Council ("SBTC") would significantly intrude on the privacy of the Property's residents, and would also create substantial safety risks for members of the public using the trail.

6. The SBTC's proposed trail alignment would place the trail in an area where trail users could view private portions of the Property (e.g., residences and sundecks). This would compromise the privacy of the Property, which was a principle basis for its purchase by the Trust. Attached as Exhibit A hereto is a picture of the main residence<sup>1</sup> on the Property taken from the proposed trail location at the west end of the Las Varas Ranch where the proposed trail would veer northeast away from the coastal bluffs. As this photograph demonstrates, the view of the Property would include the main residence and the surrounding sundeck.

7. On several occasions, paparazzi have sought to photograph the residence and the Property's occupants. For example, we have intercepted paparazzi wearing ghillie/camouflage suits that have attempted to photograph the Property from the State Park property that adjoins the

<sup>1</sup> The portion of the picture including the main residence has been blurred for privacy reasons.

1 Property to the west. Paparazzi have also sought to photograph the Property and its occupants from  
2 elevated railroad tracks to the rear of the Property and from the beach. Although illegal, the  
3 paparazzi nearly always employ extremely powerful telephoto lenses.<sup>2</sup>

4 8. We have also arrested paparazzi who have driven into other private properties owned  
5 by the Trust through security gates when temporarily opened to allow entry of authorized vehicles.

6 9. In addition to the privacy impairment from paparazzi, privacy concerns also result  
7 from "obsessive" members of the public that desire to photograph the property or to approach the  
8 Trust's beneficiary and his family. To illustrate, in the last four years that I have worked on the  
9 Property there have been two incidents where individuals have walked onto the property from the  
10 beach, past private property/no trespassing signs. In the first incident, a woman with a camera  
11 sought to photograph the inside of the Property. In the second incident, a woman sought to deliver  
12 paintings, letters and photographs of her children to the Trust's beneficiary. Other security  
13 personnel have intercepted numerous other trespass incidents concerning the Trust's beneficiary and  
14 his family, some including bizarre and disturbing aspects that are not appropriate for public  
15 disclosure.

16 10. Despite these prior trespasses and privacy intrusions, we are able to maintain a  
17 significant degree of privacy for the Property's residences by avoiding activities in the areas of the  
18 Property that are visible from adjacent properties that are accessible to the public. Importantly, the  
19 ocean side of the Property's residence shown in the photograph attached as Exhibit 1 is situated on a  
20 bluff that is largely not visible from the beach, the railroad, or the State Park property to the East.  
21 This side of the house includes large windows and a front sundeck. The proposed trail alignment  
22 would provide a public vantage directly into this private portion of the Property, and effectively  
23 eliminate the most essential privacy at the Property.

24 11. I anticipate that the open view of the Property and the aforementioned private  
25 portions of the residence from the proposed trail alignment would encourage paparazzi and other  
26 members of the public to seek to photograph the Property and its occupants to a far greater extent

27 <sup>2</sup> Pursuant to California Civil Code, section 1708.8, a person may be liable for constructive invasion  
28 of privacy when they photograph another person engaged in a personal or familial activity through  
the use of a visual enhancing device (e.g., telephoto lens).

1 than presently occurs. Such result would substantially impair the benefit that the Trust's beneficiary  
2 and his family and guests (frequently other high profile celebrities) obtain from the Property's  
3 current privacy and solitude.

4 12. In light of past experiences, I also anticipate that paparazzi and other trail users  
5 would not respect the trail boundaries and would attempt to trespass onto the Property. In addition  
6 to the nuisance and intrusion that this would cause to the Property's occupants, such trespassing  
7 could result in significant safety risks since the area around the trail includes uneven grounds, cliffs,  
8 highly-used railroad track, and other hazards.

9 13. One specific hazard is the culvert that drains Las Llagas creek beneath the railroad.  
10 Trail users would be able to access this culvert, which is about 12 feet in diameter, from the trail  
11 and walk through it to where it empties into the estuary on the Trust Property. Not only would this  
12 create a substantial privacy concern in that paparazzi could hide in the culvert, but it would also risk  
13 severe injuries to anyone attempting to access the Property from the culvert since the culvert drops  
14 out onto concrete and rock rip rap. The pictures attached as Exhibit 2 show the upstream and  
15 downstream sides of this culvert.

16 14. Another significant hazard in the area is the railroad. Trail users could easily access  
17 the railroad tracks from the trail. They may do so to proceed west to seek a better vantage of the  
18 rear of the Property. In this vicinity, the railroad bends significantly just west of the Property (see  
19 pictures attached as Exhibit 3). Because of this bend there is little period of sight of eastbound  
20 trains coming from the west, all of which travel at full railway speed in this area. Someone on the  
21 tracks in the vicinity of the Property would only receive approximately seven seconds advance site  
22 of an eastbound train before its arrival. With this short of period, there is a material risk of a person  
23 on the tracks being hit by a train.

24 15. Another similar safety concern involves the entry to the Property. On numerous  
25 occasions, out-of-area visitors have approached the Briarcliff gate under mistaken belief that the  
26 gate was the entry to the El Capitan State Park, the private campground at El Capitan, or other some  
27 other beach access. To access the Property's gate, a vehicle must cross a railroad crossing that is  
28 not equipped with signals or barrier arms (see picture attached as Exhibit 4). There is limited space

1 between the gate and the railroad track at this location, which is immediately eastbound of the  
2 railroad bend discussed above. Further, there is a large crown to the crossing at the track location  
3 which easily high-centers larger RV's and trucks. There is also a dropoff between the tracks that  
4 can immobilize vehicles if a vehicle veers off of the paved crossing. Such result is likely because  
5 there is no room for a u-turn, and thus motorists must negotiate a backing left turn in order to leave  
6 the driveway.

7 16. The mistaken approach of the Briarcliff Trust caused a minivan to be "clipped" by a  
8 train in 2009, but miraculously without injury or extensive property damage. Pictures of the  
9 accident and my filed -police report are attached as Exhibit 5.<sup>3</sup> Many years prior to the Trust's  
10 ownership of the Property, an elderly man was hit in his car at this crossing and killed. I am  
11 concerned that the siting of a public trailhead immediately next to the Property's gate may lead to  
12 even greater mistaken efforts to enter the Property than presently occur, which would increase the  
13 potential for another train accident at this crossing.

14 17. For the privacy and safety reasons discussed above, I believe that it would be highly  
15 ill-advised for the County to approve the alignment of the east/west Las Varas trail proposed by the  
16 SBTC.

17  
18  
19 Date: June 7, 2013

20 By:   
21 Brett De Campos

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28 <sup>3</sup> I met with Dan J. Miller, a senior engineer for the Union Pacific Railroad, after this incident, and  
he stated that, from a safety perspective, this crossing concerns him more than perhaps any other.

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**EXHIBIT 1**  
**PICTURES OF PROPERTY'S MAIN RESIDENCE FROM PROPOSED TRAIL**

Picture Taken from Proposed Trail Location on Las Varas Ranch



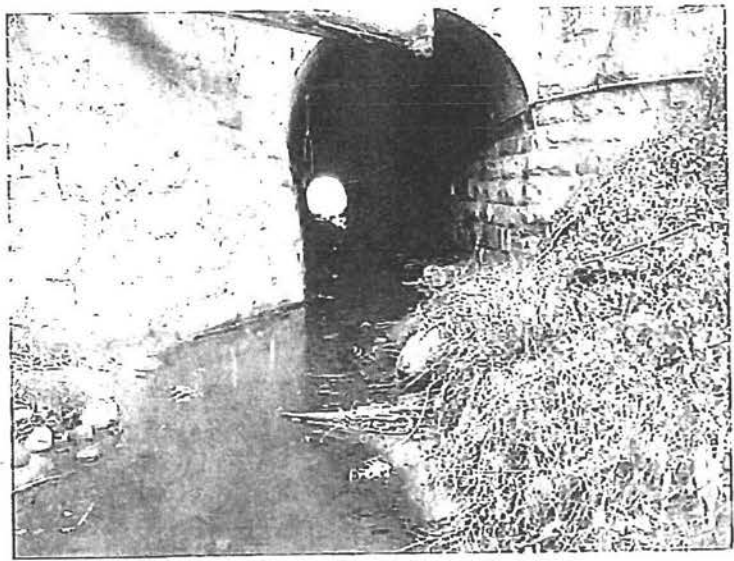
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101



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**EXHIBIT 2**  
**PICTURES OF LLAGAS CREEK CULVERT IN VICINITY OF TRAIL**

From North Entrance (Caltrans Property)



From South Entrance (Briarcliff Trust Property)

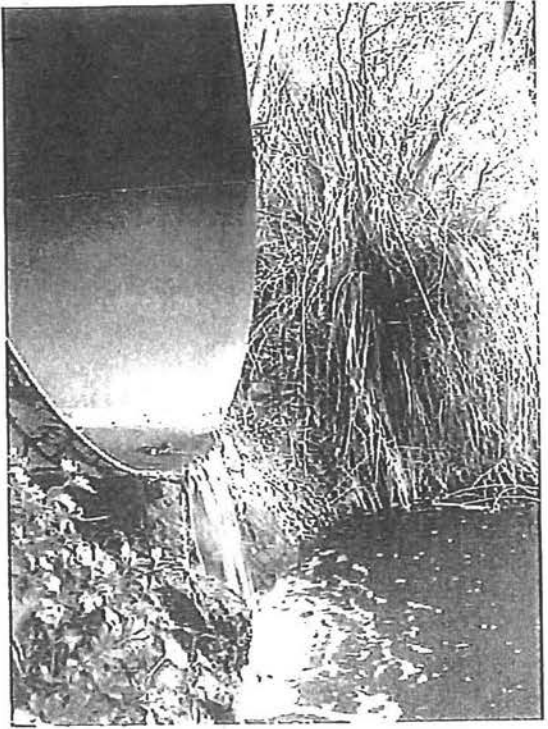
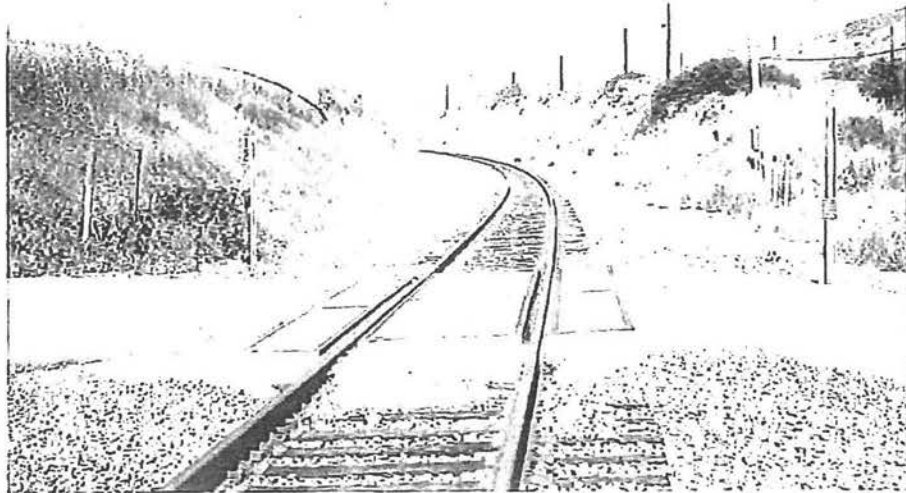


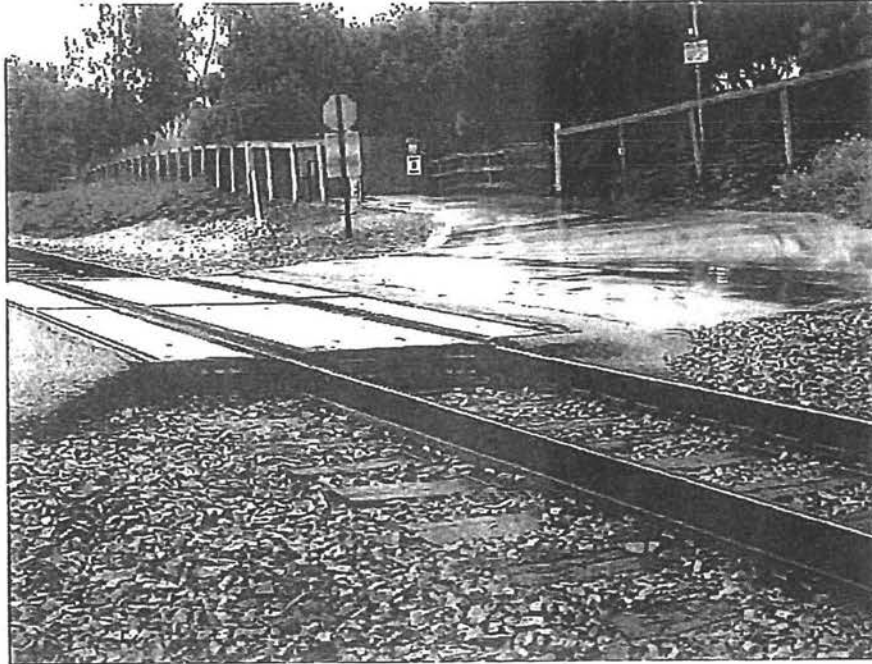
EXHIBIT 3  
PICTURES OF RAILROAD IN VICINITY OF PROPERTY/PROPOSED TRAIL



BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
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EXHIBIT 4  
PICTURES OF PROPERTY'S ENTRY GATE ADJACENT TO RAILROAD



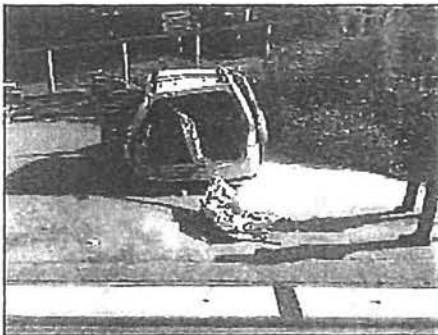
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EXHIBIT 5  
PICTURES OF TRAIN ACCIDENT AND FILED POLICE REPORT

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BROWNSTEIN HYATT FARBES SCHRECK, LLP  
21 East Canillo Street  
Santa Barbara, CA 93101



1 Incident Report:

2 At approximately 1630 on June 22, I was working on the NW corner of the property at  
3 11000 Calle Real. I heard a ringing sound coming from the railroad tracks which indicated to me  
4 that a train was coming. At the same time, I could hear voices emanating from the driveway below,  
5 which alerted me to the fact that people may be near the tracks. Understanding the danger of this  
6 crossing, I immediately ran to the vantage point between the pepper trees and the property fence to  
7 alert anyone present to the oncoming train.

8 As the driveway and crossing came into view, I realized that there was a significant  
9 problem. Below me, I saw a green Tacoma pickup and a white Toyota van pointed into the  
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20 After interviewing the parties involved, here are the specifics of the incident. As Lori Doty  
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26 Sincerely,

27 Brett  
28



Brownstein | Hyatt  
Farber | Schreck

February 2, 2012

Santa Barbara County Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas/Edwards Ranch Project/05TPM-00000-00002, 05LLA-00000-00005, -00006, 07CUP-00000-00057, 07RZN 00000-00006, 07RZN-00000-00007, 10EIR-00000-00005, 11COC-00000-00001, 11CDP-00000-00078 –  
**Follow Up to January 13, 2012 Letter**

Dear Honorable Commissioners:

Certain issues raised during your Commission's January 18, 2012 hearing merit a response and update from the applicant. We are limiting our letter to a few points only and ask that you review our concerns prior to the February 8, 2012 hearing.

**The Trail Issues**

Last week, the applicant's ranch manager conducted another "trail walk" with representatives of trails groups, who have changed their proposed trail route such that there are three (3) alternative routes. **None of these routes is acceptable to the applicant.**

The applicant continues to offer three (3) distinct trails: (a) the trail from the applicant-offered parking lot location to the ocean; (b) the trail along the entire sandy beach frontage of the Las Varas and Edwards Ranches; and (c) the trail north of Highway 101 from the east end of the ranches to the west end, connecting with the existing trail system from El Capitan State Beach (the County must install a "pedestrian" bridge across Gato Canyon to avoid interfering with the agricultural operation). These trails are multi-use in nature – hikers, equestrians and bicyclists all could use them, although the type of bicycle used depends upon the trail. Street bikes would find the trails to and along the beach difficult going, but the trail north of the freeway could be developed to accommodate street bikes, allowing them to travel this stretch of the 101 off of the freeway in a much safer environment. Presently, they cannot use this portion of the County without riding on the freeway shoulder.



All of the trail groups' proposed routes will have a significant adverse environmental impact upon natural habitat and sensitive resources, including sensitive and listed species, and upon the viability of the agricultural operation.

The County cannot consider approving any trail route other than the trails that the applicant has proposed without conducting thorough environmental analysis.

We have enclosed exhibits to this letter, demonstrating the trail groups' newly proposed trails alternative routes, along with the lost pasture acreage that would result if these trails were installed. The following totals do not reflect the potential inability to use entire pastures because the proximity of hikers, mountain bikers, and equestrians spooks the cattle and makes the pastures more of a hazard than a productive component to the operation:

Option #1: 67.42 acres of pasture, including calving and "nursery" pasture land used for cows during calving and in the initial time period when the calves are particularly vulnerable to post-birth health issues, predators, and other issues that make the mothers highly protective and make it important to keep the animals close to the farmstead for monitoring.

Option #2: 57.21.46 acres of pasture, also including the above calving and nursery pasture land.

Option #3: 31.93 acres of pasture, including the above calving and nursery pasture land.

Every one of these options propose placing the public in the front yards of the Doheny family residence (between the house and the ocean, putting people and/or screening to block the view) and of the historical structures, including the Victorian residence, on the ranch. They also impose a public presence within a few yards of the development envelopes of proposed Parcels 1 and 2. This is unacceptably close and an invasion of the current and potential residents.

In contrast, the applicant proposed east-west trail will comprise only 0.95 acre of pasture land and is located to minimize the impact upon the cattle operation.

During the Commission's first hearing, one Commissioner asked why the applicant proposed closing the trail at dusk. The applicant must do this to protect the agricultural operation and the security of the ranch residents. The Baron Ranch trail, through County-owned land that includes avocado orchards, is open only 3 days per week and is closed from sunset to sunrise, monitored by an onsite manager and a ranger. Although open for only a year (so not yet discovered by most of the public) and being quite steep and rough in places, this trail doesn't have the same potential for heavy usage that the Las Varas/Edwards trails have, but the County already has discovered

that the public doesn't respect trails, even when the rules are posted.<sup>1</sup> Mr. Garciacelay reported last night to the GavPAC that the Baron Trail is an experimental work in progress, testing the combination of agricultural operations and public entry. Although usage has been low, they have had a problem with people wandering off the trail and bringing dogs onto the trail, a practice that is prohibited. This with an onsite manager and volunteer "trail hosts" and a ranger. The Las Varas/Edwards Ranch trails will have no manager, no ranger and no "trail hosts." Other ranchers have testified as to their experience with abuse of their land by the public. The potential impacts of the trail groups' proposed trail alternatives are not speculation – they are very real impacts that have not been analyzed in the FEIR.

The Arroyo Hondo Preserve, privately owned by a non-profit, is open to the public only on limited days, with strict controls on who uses the trails, to safeguard the natural environment.

The impacts of the trail groups' proposed alternative trails routes upon the natural environment are described in detail in a letter from Cardno ENTRIX, based upon the observations of one of their biologists during last week's "trail walk."

The applicant will not fund the cost of conducting an environmental analysis of trail segments that the applicant cannot and will not approve because of their impacts.

***These Are Three Separate Projects and the Project South of the Railroad Tracks Is Only a Lotline Adjustment and Merger that Reduces the Number of Parcels and Has No Potentially Significant Environmental Impacts or Impacts upon Recreation. The County Has No Legal Authority to Impose a Trail Exaction upon this Project.***

The most impacting of the trail segments proposed by the trail groups is on the land south of the railroad tracks. There is no rational nexus or rough proportionality between the trail groups' demanded trail exaction and the merger and adjustment of lot lines on this portion of the Las Varas and Edwards Ranches so there is no legal basis for the exaction. To impose it would be an abuse of discretion. Any such trail would be in direct conflict with the County's Agricultural Element.

The project north of Highway 101 also is a merger and lotline adjustment, significantly reducing the total number of lots in this breath-takingly beautiful setting. Were the applicant not offering the east-west Coastal Trail, the County likewise would have no legal basis for exacting the trail.

The project between the freeway and railroad tracks results in creation of one additional lot that meets applicable minimize zoning requirements. The applicant's

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<sup>1</sup> See enclosed excerpt from Baron Ranch Trail website with trail rules.

offer to dedicate the parking lot acreage and the trail to the beach meets and exceeds any trail exaction that the County legally could require.

In short, the applicants proposed three (3) trail dedications far exceed what the County could exact from this applicant. The offers are generous. The trails were selected carefully to provide the public with reasonable access to an incredible stretch of the Gaviota Coast while preserving the agricultural enterprise that keeps this area pristine and preserves the bucolic setting. The trails that the applicant proposes will not result in significant impacts upon the natural environment either.

### **A Few Requests Regarding the Project Description and Mitigation Measures**

As mentioned in our earlier letter and during the hearing, the applicant considers certain aspects of the project to be particularly important (other than the trails, that is):

1. Include in the development envelope for proposed Lot 2 a modest component for an 800-square foot cabana with unpaved access road (road to be for owner's cart path and emergency responders' access) between residence and cabana.
2. Retain flexibility for development envelope on Proposed Lot 5 to expand easterly and westerly, not just southerly as staff proposes.
3. Retain sole discretion in landowner to determine the best fencing to use to keep the public out of the agricultural lands.
4. Retain all three (3) alternative development envelopes for proposed Parcel 6.

Additional requests are included in our letter.

### **Conclusion**

The trails simply must not interfere with agricultural viability. As proposed by the applicant, the trails not only will not impair agricultural operations, they also will preserve sensitive habitat and resources. As proposed by the trail groups, they will significantly impact agriculture, habitat, and environmental resources.

There is no rational basis for denying this project or for imposing conditions that impose upon the Dohenys requirements that are not justified by the environmental impacts of the project or imposed upon other applicants. If the County denies this project or conditions it in a manner that the applicant will not accept the approval, public trails won't be granted and the many conditions and project restrictions that the applicant is agreeable to accepting simply won't be applied to this property.

Approving this project in a way that the applicant finds acceptable will result in a precious gift to the public of access across a private land holding that will remain in agricultural production. These won't be trails adjacent to a residential subdivision – the pastoral setting that you see today will be retained.

This kind of opportunity seldom arises in a lifetime. We urge the Commission to approve the project and to thank and respect those who are clamoring for more. Refusing this offer in the hopes of getting a better offer in the future is poor planning and will do the public no favors.

Sincerely,

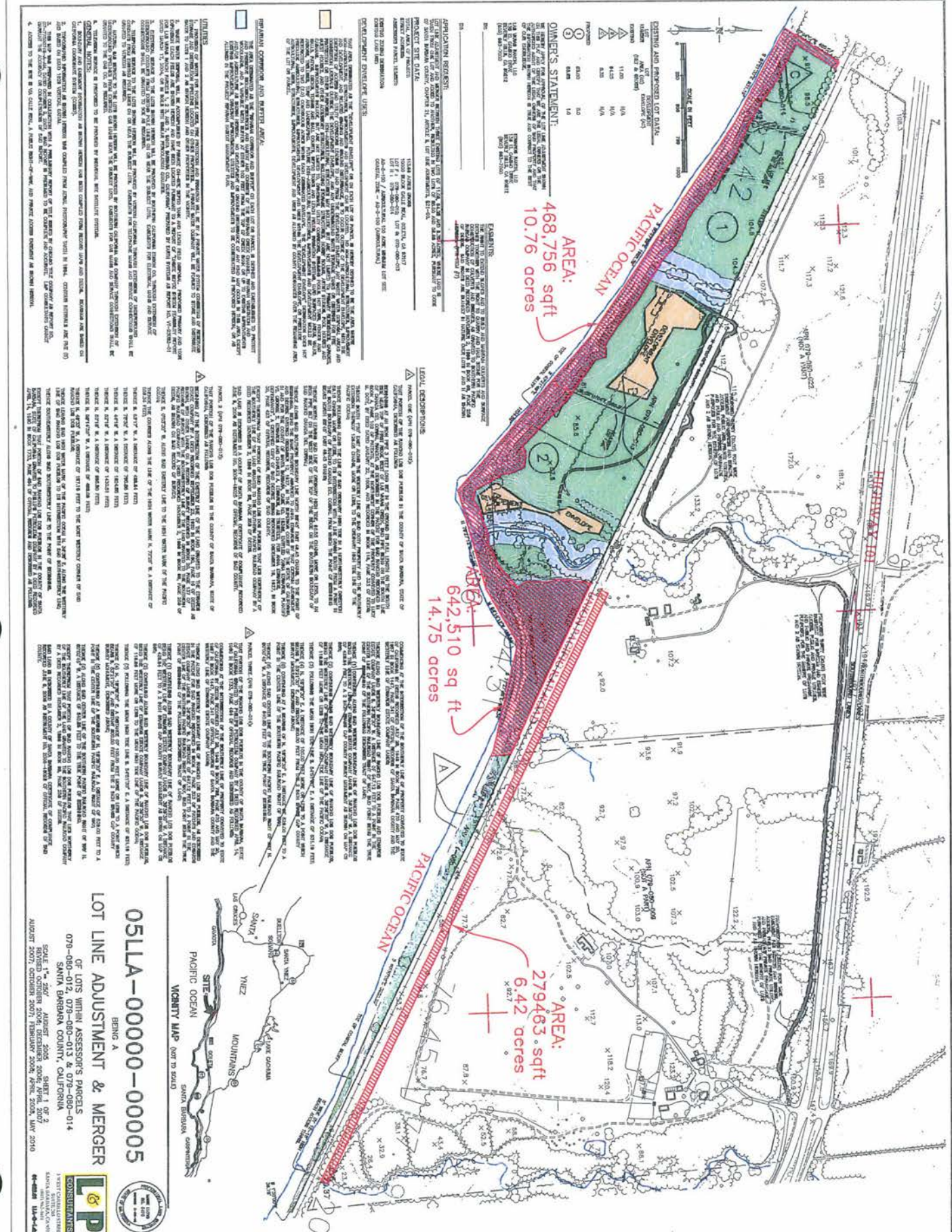


Susan F. Petrovich

Attachments Maps of Trails Groups' Routes and Lost Pasture Acreages  
Baron Ranch Trail Rules







**OWNERS STATEMENT:**  
 THE AREA SHOWN ON THIS PLAN IS THE PROPERTY OF THE LAND ADJUSTER COMPANY AND IS NOT TO BE CONSIDERED AS A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE LAND ADJUSTER COMPANY SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS PLAN OR FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS PLAN. THE LAND ADJUSTER COMPANY SHALL NOT BE RESPONSIBLE FOR ANY CHANGES IN THE INFORMATION CONTAINED HEREIN AFTER THE DATE OF THE ORIGINAL PLAN.

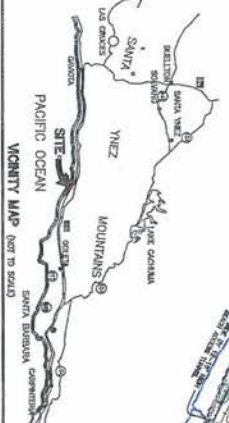
**APPLICABLE REGULATIONS:**  
 THE APPLICABLE REGULATIONS FOR THIS PROJECT ARE THE ZONING ORDINANCES OF THE COUNTY OF SANTA BARBARA, CALIFORNIA, AND THE LOCAL ORDINANCES OF THE CITY OF SANTA BARBARA, CALIFORNIA. THE PROJECT SHALL BE SUBJECT TO THE APPLICABLE REGULATIONS AND PERMITS OF THE COUNTY OF SANTA BARBARA AND THE CITY OF SANTA BARBARA.

**GENERAL NOTES:**  
 1. THE AREA SHOWN ON THIS PLAN IS THE PROPERTY OF THE LAND ADJUSTER COMPANY AND IS NOT TO BE CONSIDERED AS A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.  
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**LEGAL DESCRIPTIONS:**  
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**05LLA-00000-00005**  
 BEING A  
**LOT LINE ADJUSTMENT & MERGER**  
 OF LOTS WITHIN ASSESSOR'S PARCELS  
 079-080-012, 079-080-013 & 079-080-014  
 SANTA BARBARA COUNTY, CALIFORNIA  
 SCALE 1" = 200'  
 REVISIONS: OCTOBER 2006, DECEMBER 2006, APRIL 2007  
 AUGUST 2007, COORDINATE 2007, FEBRUARY 2008, APRIL 2008, MAY 2010

**CONSULTANTS:**  
 LAND ADJUSTER COMPANY  
 1100-4444

## Welcome to the Baron Ranch Trail!



This trail has been realized through the cooperation of the Santa Barbara County Resource Recovery and Waste Management Division and Santa Barbara County Parks with the assistance of the Santa Barbara Trails Council and various other community based trails advocacy and volunteer groups, and especially with the generous funding support of the Goleta Valley Land Trust.

We ask you to please observe the following rules and regulations:

- Trail is open for use on Saturday, Sunday and Monday only
- Hours of use are daylight hours from 8:00 a.m. to sunset
- This trail is only open for pedestrian/hiking use. No bicycles or equestrians.
- Absolutely no motor vehicles allowed.
- Absolutely no smoking or open fires of any kind.
- Dogs are not allowed on the Baron Ranch Trail
- You will be passing through an active agricultural facility. Stay on the marked trail and do not disrupt the agricultural operation.
- Fruit theft is a crime and if fruit theft is detected, the trail may be closed for future use.
- Trail may be temporarily closed due to agricultural operations. Observe all posted signs.
- The Baron Ranch contains sensitive plants and wildlife. Do not disturb/remove plants or animals present on the ranch or bring plants or animals onto the ranch.
- Please, no littering. Pack out what you bring in.

This trail is managed by Santa Barbara County Parks under the authority of Santa Barbara County Code Chapter 26.



February 6, 2012

Santa Barbara County Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas/Edwards Ranch Project/05TPM-00000-00002, 05LLA-00000-00005, -00006, 07CUP-00000-00057, 07RZN 00000-00006, 07RZN-00000-00007, 10EIR-00000-00005, 11COC-00000-00001, 11CDP-00000-00078 –  
**Response to Staff Report**

Dear Honorable Commissioners:

When we submitted our February 2, 2012 letter, the staff report had not yet been posted. This letter is a response to the staff report posted late February 2 for the February 8, 2012 hearing.

**Staff Modification to Proposed Conditions**

We thank the Staff for considering our requests for modification to certain conditions and the following modifications:

**Parcel 5 Development Envelope** – we concur with Staff that sensitive resources will be equally protected by leaving the development envelope as the applicant proposes because the conditions imposed upon residential development on this parcel, as with all of the parcels, impose setbacks and protective measures that will address field conditions and house design at the time that proposed changes are proposed for the existing residence. Because this is the Doheny home, no changes are anticipated, but these conditions are permanent and the location of sensitive resources varies over time.

**Condition 6** – the proposed wording is acceptable to the applicant if the word “dogs” is replaced with “animals.” Under the implementation language, please remove all wording referencing P&D “approval” and “approved” fencing. The applicant will submit the fencing plan for review, but final approval must remain with the applicant or the potential impacts of the trail will become potentially significant to agriculture.

**Condition 10** – please change “adversely impact” to “significantly adversely impact” agriculture. CEQA addresses significant impacts, not every adverse impact, no matter how minor.

**Conditions 17 & 18** – the applicant accepts the new language and thanks Staff for the clarification.

**Condition 20** – the applicant accepts the new language and thanks Staff for the modification.

**Condition 24** – the applicant accepts the new language and thanks Staff for the clarification.

**Condition 25** – Staff has not modified the Parcel 2 development envelope to allow for the cabana and, instead, has significantly reduced the size of both Parcel 1 and Parcel 2 development envelopes. The applicant opposes movement of the Parcel 2 development envelope so far from the ocean, and its size reduction, unless the cabana is included to allow the ultimate owner of this parcel to be able to enjoy the ocean front property that he or she owns.

**Condition 57** the applicant accepts the new language and thanks Staff for the clarification.

**Additional Conditions Requiring Modification**

**Condition 34** – this condition continues to be too broadly stated. The requirement that “No ground disturbance of any kind, including landscaping and vegetation removal involving disturbance of root balls, shall be permitted outside of the reconfigured Parcel 3 development envelope” should be limited solely to the portions of Parcel 3 that are within the boundaries of CA-SBa-80. As written the restriction applies to all of Parcel 3. CA-SBa-80 represents only a small portion of this parcel.

**Conditions 50, 51, and 52** – these are agreeable, except as to the timing. There will be no project impact upon the existing freeway unless and until a new residence is constructed south of Highway 101. Please change the timing for the improvements listed in Conditions 50, 51, and 52 so they are required to occur “prior to issuance of a final occupancy permit for the first future residential development south of Highway 101.” The applicant already has requested that it be clear that no dedication of the parking lot and trail to the beach will occur until issuance of the final occupancy permit for the first new residence south of the freeway. The highway improvements will be constructed at the same time.

One modest change is required at the bottom of Page B-2, in the last line of the last paragraph – the westerly extent of the proposed Coastal Trail will continue along the

former route of Calle Real, which now is owned by the applicant. Unlike many other sections of Calle Real that remain public, this portion of Calle Real is owned by Edwards Ranch and is not subject to a public easement.

**Conclusion**

One additional word regarding public trails on private agricultural land – in each case so far mentioned by trail advocates, save one, the trails in question either are on publicly owned lands, lands owned by a land trust, or lands subject to a purchased conservation easement. In short, they are not private property under the sole ownership of the agricultural operator. In the one exception, the owners operate their ranch more as a mountain bikers day resort, charging for entry and allowing paying guests to use their trails. Their agricultural operation clearly is secondary to this commercial recreational enterprise. None of these cases are comparable to the Las Varas and Edwards Ranches.

When trail users blithely state that it's common for the public to be allowed to walk through agricultural lands, they are not talking about a landowner being forced to allow the unsupervised public to cross through their privately owned agricultural enterprise.

Sincerely,



Susan F. Petrovich

● ● ●  
WELCOME TO LAS VARAS AND  
EDWARDS RANCHES



Brownstein | Hyatt  
Farber | Schreck



Cala Land Co  
14

D. Harlow Hartman  
Parcel 14-A

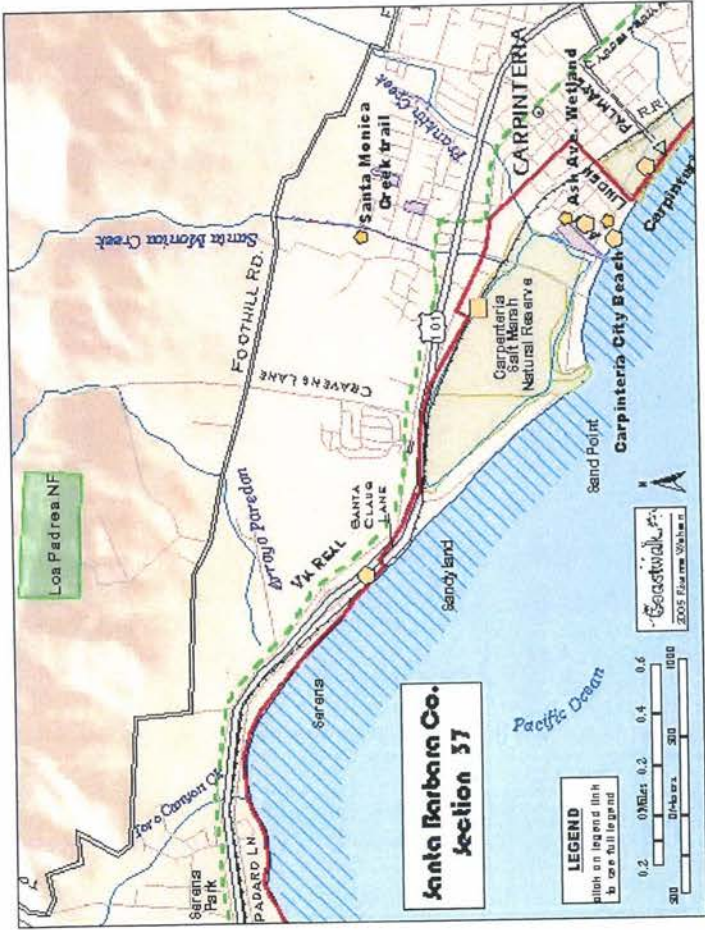
EDWARDS EXETER CO

STATE OF CALIFORNIA

EDWARDS EXETER CO

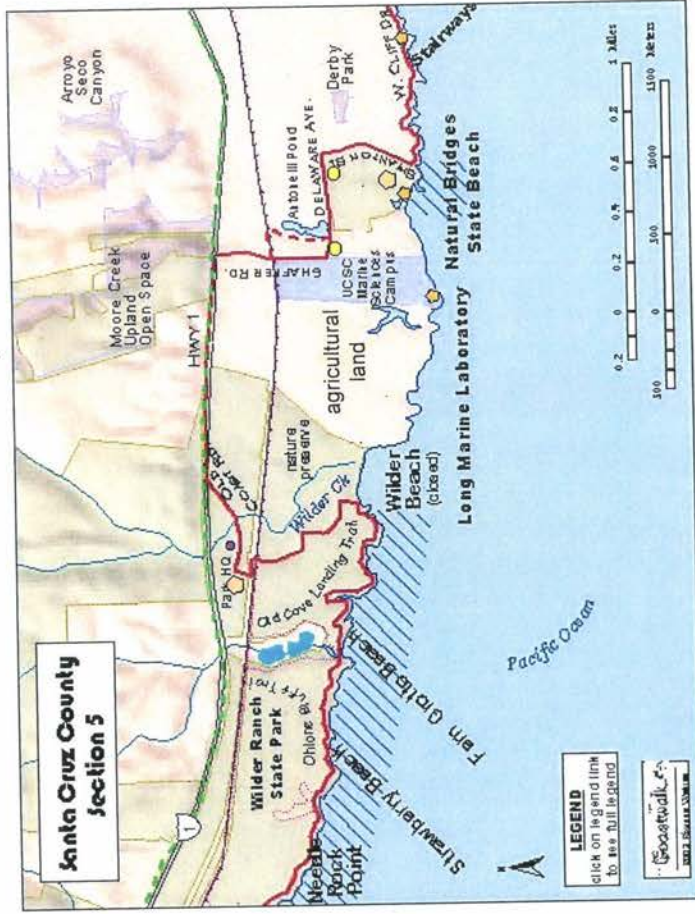
APOLINE RIVER

23



### Carpinteria, Santa Barbara County

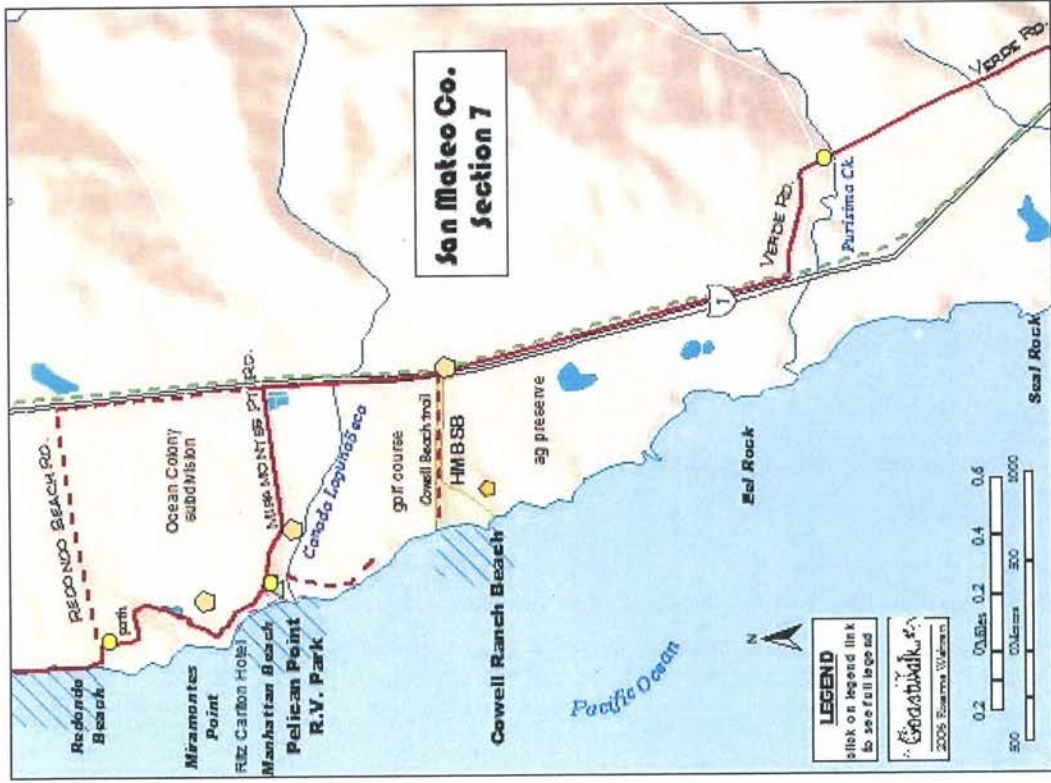
Coastal Trail runs inland of Salt Marsh Natural Reserve, providing sweeping views across the marsh to the coast.



### Santa Cruz County

Coastal Trail runs inland of agricultural land and nature preserve along PCH.

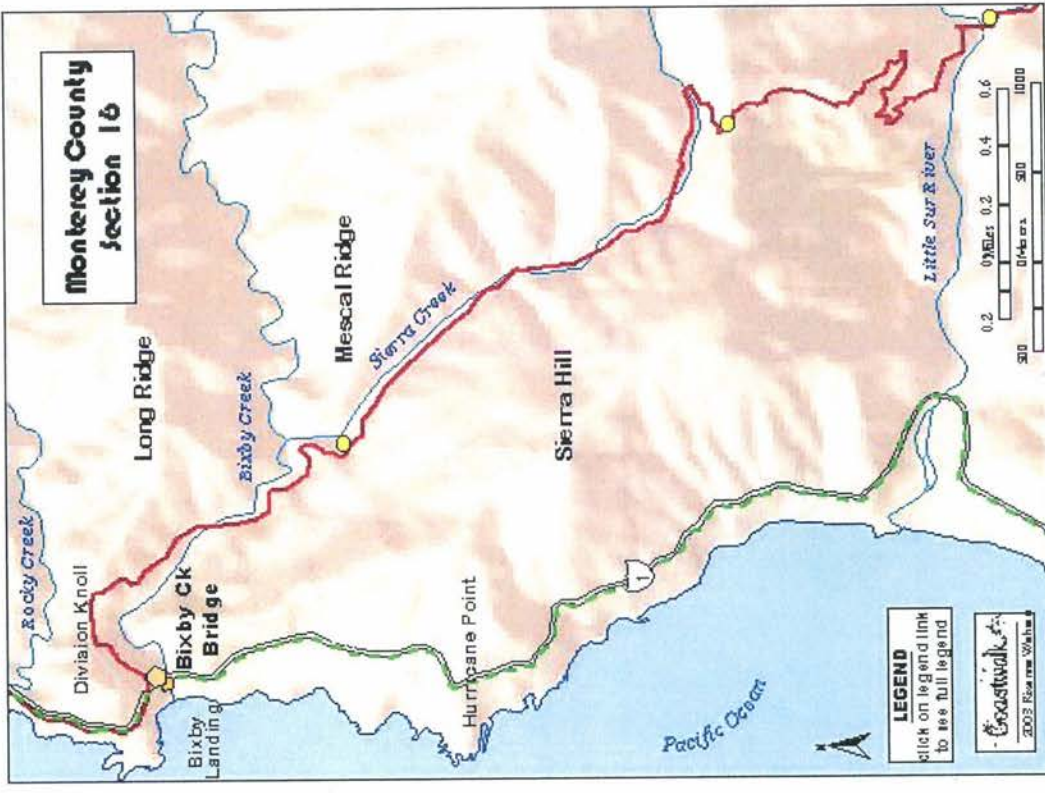
Source: [www.californiacoastaltrail.info](http://www.californiacoastaltrail.info)



### San Mateo County

Coastal Trail runs inland of agricultural preserve with a vertical access point to the beach.

- Coastal Trail
- - - Pacific Bike Route



### Monterey County

Coastal Trail runs inland along Sierra and Bixby Creeks, over one mile from the coast in some locations.

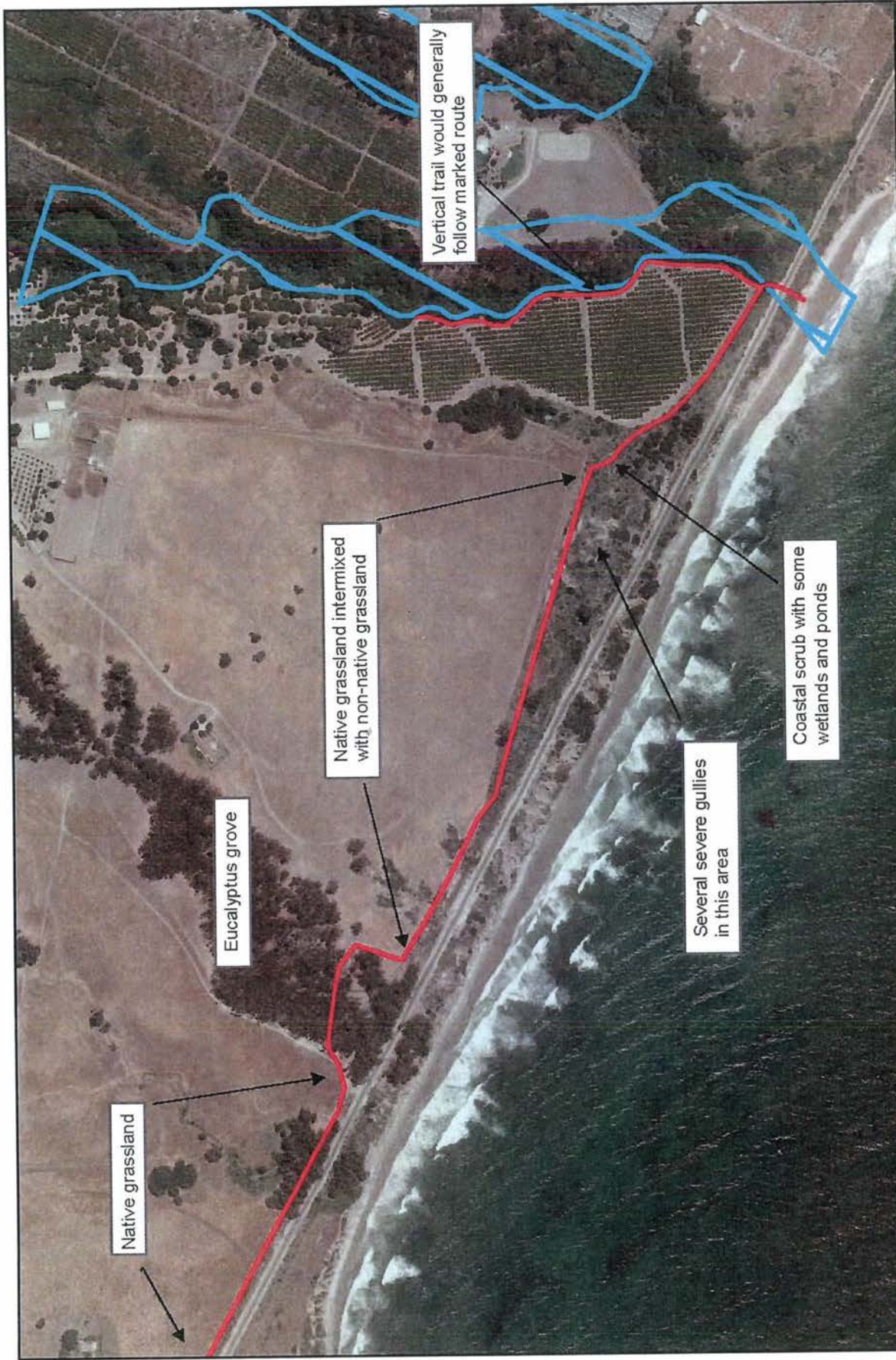
Source: [www.californiacoastaltrail.info](http://www.californiacoastaltrail.info)











**Legend**

- Approximate Proposed Trail Route
- County Designated Environmentally Sensitive Habitat

0 200 400 800 Feet





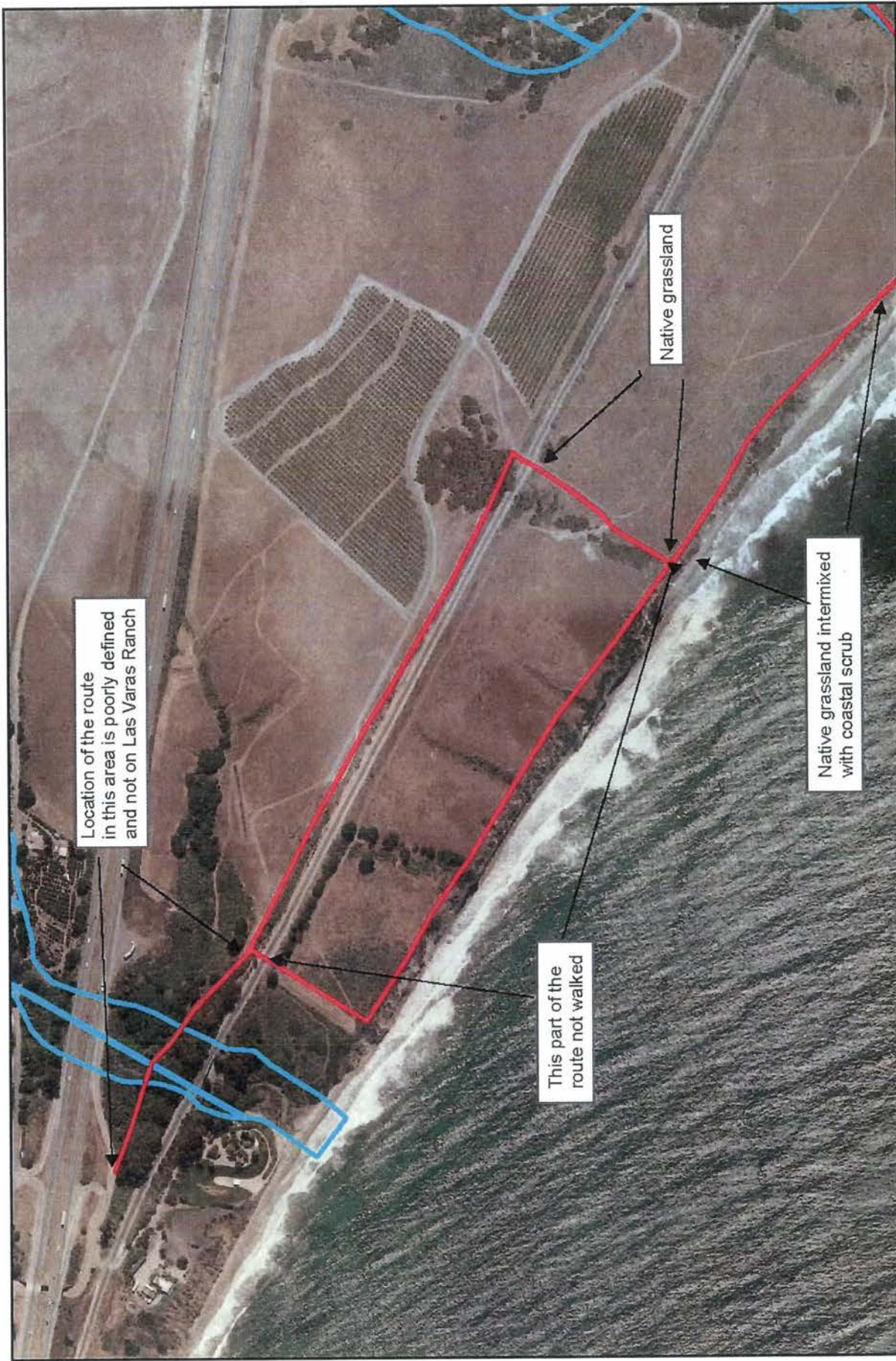
**Legend**

- Approximate Proposed Trail Route
- County Designated Environmentally Sensitive Habitat

0 200 400 800 Feet



**Cardno**  
ENTRIX



Location of the route in this area is poorly defined and not on Las Varas Ranch

This part of the route not walked

Native grassland

Native grassland intermixed with coastal scrub

**Legend**

- Approximate Proposed Trail Route
- County Designated Environmentally Sensitive Habitat





February 1, 2012

Planning Commission  
County of Santa Barbara  
143 Anapamu Street  
Santa Barbara, CA 93101

RECEIVED  
FEB 07 2012  
2-8-12

Re: Las Varas Ranch Project/Doheny Family Project

Dear Honorable Commissioners:

My name is Bill King. I have been in the cattle business for 50 years. During these years, I have run cattle on our home ranch and I have leased many ranches throughout the Tri-County area.

I have just heard that, during the review of the Las Varas Ranch project, there are people who desire to hike through the Doheny property and other privately owned ranches. In fact I have heard that some of these people say that, "the public hikes through cattle ranches all over the country." I am opposed to this proposal for several reasons.

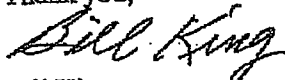
First, all ranches serve the dual purpose of being people's homes as well as their place of business. Surely, there is no one in your hearing room who will claim that they want to be forced to allow strangers to trek through their homes, yards, or work places.

Second, approximately half of Santa Barbara County is publicly owned, e.g., Los Padres National Forest, which consists of thousands and thousands of acres - plenty of area for hiking.

Third, range cattle are only semi-domestic animals. They are not accustomed to humans on foot or on bicycles. I have witnessed many cattle panic at the sight of human beings on foot which, of course, disturbs their normal habitat. In some instances, they have become a threat to the intruder. The disturbance of the cattle results in lost weight, abandonment of new calves, running into fences, and other activity that is a direct detriment to the income of their owners.

While I sympathize with outdoor enthusiasts' desire for areas to hike and enjoy the outdoors, there is plenty of public land to do so. To force upon ranchers the intrusion into their private property, near their homes, and across their place of business is unconscionable.

Thank you,



Bill King

RECEIVED

FEB 07 2012

S.B. COUNTY  
PLANNING & DEVELOPMENT  
HEARING SUPPORT



Shaping the Future

# Memorandum

2-8-12

**Date:** February 7, 2012  
**To:** Santa Barbara County Planning Commission  
**From:** Tamara Klug, Rosemary Thompson  
**RE:** Las Varas Ranch - Coastal Trail Site Visit to Caltrans Area

Cardno ENTRIX

201 Calle Cesar Chavez  
 Suite 203  
 Santa Barbara, CA 93103  
 USA

Phone 805 962 7679  
 Fax 805 963 0412  
 www.cardno.com

www.cardnoentrix.com

At the Applicant's request, on February 5th Ms. Klug visited the potential west end termination point of the coastal trail route proposed by trail advocates. This termination point is located near US 101 on Caltrans property. This property is highly constrained by US 101, associated on/off ramps, the railroad, a Caltrans staging area, various native habitats, and Las Llagas Creek. The trail advocates are proposing that the coastal trail traverse this constrained property.

The challenges with this potential route are as follows (working from east to west):

1. *Native scrub/oak woodland habitat impacts.* Exiting Las Varas Ranch, the trail would cut through oak woodland and coastal scrub habitat. Because of large no trespassing signs, Ms. Klug did not access this area, but it is likely that sensitive species are present in this area (see below).
2. *Creek crossing required.* The trail must cross Las Llagas Creek in native habitat that likely supports sensitive aquatic species (red-legged frog, pond turtle, etc.) that would be impacted by trail construction and public access. The slope adjacent to the railroad is too steep to place a trail and the creek crosses under the railroad (toward the ocean) about mid way along the property. Las Llagas Creek is vegetated with willows and sycamores in this area.
3. *Rare plant species and native habitat.* After crossing riparian habitat, the trail would cross coastal scrub to avoid the drainage. The coastal scrub in this location is dominated by rare plant species including the Santa Barbara honeysuckle – CNPS list 1B (rare, threatened, or endangered in California and elsewhere).
4. *Infeasibility of trail construction at west end.* After cutting through the scrub, the trail would continue westward to the only possible parking location discussed below. To access the parking area, the trail would parallel the freeway onramp (outside the guard rail). This extremely narrow area would make trail construction challenging, even for a single track trail (2-3 feet wide). Potential erosion of the trail could deposit sediments into Las Llagas creek, resulting in significant environmental impacts. Without realigning the on/off ramp, a wider trail is impossible in this area. The natural habitat areas are too steep to build a trail.

For the analysis, Ms. Klug assumed that a parking area would be necessary to access this end of the trail. She identified 2 potential parking areas within disturbed habitat adjacent to pavement. The first is a Caltrans staging area adjacent to US 101. This is not feasible because it would interfere with Caltrans use and would require vehicles from the parking area to enter the freeway with unsafe merging distance. The second is alongside the freeway on/off ramp, which would require trail users to cross the onramp and offramp, which could be very hazardous.

RECEIVED

FEB 07 2012





**Cardno  
ENTRIX**

Shaping the Future

# Memorandum

2-8-12

Cardno ENTRIX

**Date:** February 7, 2012  
**To:** Santa Barbara County Planning Commission  
**From:** Dr. Rosemary Thompson  
**RE:** Las Varas Ranch Project – DE#2 Cabana Biological Effects Summary

201 Calle Cesar Chavez  
Suite 203  
Santa Barbara, CA 93103  
USA

Phone 805 962 7679  
Fax 805963 0412  
www.cardno.com

www.cardnoentrix.com

The Final EIR (FEIR) identified impacts to sensitive aquatic species (e.g., California red-legged frog, southwestern pond turtle, coast range newt, and two-striped garter snake) as Class I – significant and unavoidable – (Impact BIO-13) for Development Envelope #2 (DE#2). According to the FEIR, this impact would result from introduction of a "barrier to upland migration, especially in an east-west direction and could interfere with dispersal and aestivation of amphibian species." The impact analysis specifically addresses dispersal of California red-legged frog and coast range newt.

The applicant subsequently has agreed to move DE#2 westward up on the higher terrace in an area that would not interfere with upland movement of amphibian species. The applicant, however, would like to retain the ability to have a small cabana located on a low terrace near Edwards Point be part of DE#2. I visited the site on February 28, 2011, and the proposed and alternative DE#2 locations were walked and evaluated for the potential to affect special-status aquatic species. This included the cabana location, which is dominated by non-native plant species. I also submitted a comment letter dated 13 January 2012 that included a detailed discussion of the cabana location.

From this evaluation, it is my professional opinion that allowing construction of a small structure such as a cabana on the low terrace would have negligible effects on special-status amphibians that inhabit or use Los Gatos Creek. Its small size would not interfere with animal movement, nor would minor improvements to the existing ranch road to the site to allow access by vehicles such as a golf cart. Measures that would further reduce the potential for effects on these species include:

- Implement the education program in mitigation measure BIO 8 of the FEIR with the addition of restricting pet and human access to Gato Creek, and prohibiting harassment, killing, or handling any frogs, snakes, turtles, and newts (can be confused with salamanders) whether in the creek or in adjacent areas, including the cabana portion of the DE.
- Access to the cabana from the residence would be by unpaved path suitable for light vehicles such as a golf cart.
- The access path would be located so that native grassland on the low terrace is not affected. It would follow the existing, already disturbed road in this area.
- Path would have no curbs or gutters but could have low "water bars" to distribute runoff so that it does not concentrate and cause erosion.
- Any utility connections to the cabana would be buried under the path.

RECEIVED

FEB 07 2012

S.B. COUNTY  
PLANNING & DEVELOPMENT  
HEARING SUPPORT



**Cardno  
ENTRIX**

Shaping the Future

# Memorandum

DATE: \_\_\_\_\_  
TO: \_\_\_\_\_  
FROM: \_\_\_\_\_  
SUBJECT: \_\_\_\_\_  
2-8-12

**Date:** February 2, 2012  
**To:** Santa Barbara County Planning Commission  
123 E. Anapamu Street  
Santa Barbara, CA 93101  
**From:** Rosemary Thompson  
Tamara Klug  
**RE:** Las Varas Ranch Project -- Coastal Trail Site Visit

RECEIVED

FEB 03 2012

S.B. COUNTY  
PLANNING & DEVELOPMENT  
HEARING SUPPORT

Cardno ENTRIX  
  
201 Calle Cesar Chavez  
Suite 203  
Santa Barbara, CA 93103  
USA  
  
Phone 805 962 7679  
Fax 805 963 0412  
www.cardno.com  
  
www.cardnoentrix.com

This memo provides an overview of a site visit to walk the route of a coastal trail, as proposed by trail groups, on Las Varas Ranch conducted on January 26, 2012. A team of people were present including trail advocates, and Anne Almy and Alex Tuttle from the County Planning Department. Melissa Mooney (county biologist) was not present, apparently at the request of her boss (Dianne Black) for cost-cutting reasons. This effort focused on the coastal route, more or less skipping the "vertical trail" that would run from the highway to the coast along the west side of Las Varas Creek. We examined the route starting at the eastern end of the proposed coastal trail and working our way west. Additional maps and photographs can be provided on request.

Over the course of our visit, the route changed in some locations, and there was discussion regarding the placement of the trail. The County Parks representative, Claude Garciacelay, indicated that it would be a single track trail that could be used by mountain bikes and foot traffic while others indicated that it would be an all-weather trail with a 6-foot wide crushed granite surface and a small dirt-track adjacent, possibly taking up about 10 feet in total width. There was some discussion of what sorts of users had to be allowed on the coastal trail (I believe including ADA requirements). Obviously, depending on which design is being proposed, the impacts of such a project would be very different.

The visit was a little rushed because some County staff had other commitments, meaning they only had about 2 hours on site. This limited the degree of conversation, note taking, and photographing.

Several environmental issues became apparent during our site walk including:

1. Native grasslands. They were abundant in many areas crossed by the proposed trail (see Exhibit pages 1-3) that are not mapped as such on the project vegetation map. I believe the reason that they are not mapped is because field surveys for the project vegetation map were limited to proposed development envelopes. The remaining non-surveyed areas were probably mapped using aerial photography, and native grasslands are not apparent on aerial photography.

To determine impacts accurately, a detailed effort would be required to map the native grasslands properly in the vicinity of the proposed trail route. It takes many hours to

February 2, 2012  
 Santa Barbara County Planning Commission

delineate and map native grassland patches, and if the best route for a trail is to be selected, mapping would need to extend over a larger area to facilitate selecting the least impacting route. Given the relative importance of native grasslands; especially in the coastal zone, a detailed mapping and analysis would be warranted.

Impacts to native grasslands resulting from disturbance during construction and maintenance of the trail could exceed the County thresholds for significance. The County biologist has expressed hesitance in using native grassland mitigation for other development projects. Thus, the trail alignment has a potential for significant impacts on native grasslands, if it proceeds.

2. Special-status species. The proposed route would cross Gato Creek near its outlet to the ocean, or just south of the railroad. It is unclear at this time where project proponents want to put the trail, but any location would make it impossible to control access to the creek, both by people and dogs. Gato Creek is known to support the California red-legged frog among other sensitive aquatic species, and the additional human and pet traffic would have the potential to significantly impact these species and their habitat.

Special-status species surveys are needed for the proposed route(s). The proposed trail traverses many areas of native habitat, and it is possible that special-status plant or animal species are present that were not previously detected for reasons stated above about the vegetation mapping. These resources need to be surveyed for at the appropriate times of year to allow an adequate understanding of environmental impacts. Until these surveys are conducted, the significance of potential impacts to these species is unknown. Other than for grazing, this property is relatively undisturbed in areas where the trail is located. Installation of the trail in these areas would significantly change this undisturbed habitat.

3. Erosion. Minor to moderate erosion was observed in areas where the route would go up or down hills, either on the slopes of drainages or slopes dominated by coastal scrub vegetation, particularly in the vicinity of Edwards Point (see Exhibit page 2). A trail of any sort could cause severe erosion in these areas unless it were carefully planned and maintained to prevent impacts. Maintenance would be a key aspect of this project, and funding for maintenance would need to be built into construction costing to ensure that it would be available when needed.
4. Vegetation removal. Substantial vegetation removal would be necessary to stabilize severe bluff top erosion that would be essential to construction at the eastern end of the route. This area of severe erosion is located west of the orchards that are adjacent to Las Varas Creek (See Exhibit page 1). This vegetation would then need to be reestablished in the disturbed area.
5. Wildlife. The group agreed that a fence would be necessary to prevent dogs owned by trail users from getting into the cattle operation and disturbing it. In order to properly fence out dogs, a moderate height fence with relatively small gaps (e.g., cyclone fence, hog wire, etc.) would be necessary. There was some discussion about not using a fence and using a visual barrier of dense vegetation, but, based on personal observations, that will not discourage most dogs. A fence that would keep out dogs would also prevent wildlife movement. The freeway corridor already forms one barrier and the addition of a coastal fence would further limit wildlife movement. The impacts to wildlife movement corridors, especially along Gato Creek and other drainages, would be a significant impact of the proposed trail project, and this trail cannot be considered without thorough environmental analysis.
6. Invasive species. Several important invasive plant species were noted during the brief site walk. In particular, I noted Harding grass, poison hemlock, fennel, and asphodel. I suspect there are several additional species that more thorough surveys would detect. Invasive species spread easily along corridors (such as trails) and are also easily introduced from public use of trails, brought in on shoes, bikes, and dogs. Control of these species would be essential to prevent compounding impacts of trail construction and

February 2, 2012  
Santa Barbara County Planning Commission

use, though maintenance and monitoring is costly and time-consuming and often dependent on volunteers. If volunteers are relied on for invasive species control, the program is not likely to be effective, and spread of invasive species would potentially be a significant impact of the project.

The following is a description of habitats crossed by the proposed trail route and some brief statements regarding the quality of those habitats:

The eastern portion of the trail would parallel the orchard road on the south side. The proposed trail could not be placed on the road itself because the ranch manager needs to use that road for orchard maintenance. The area adjacent to the road alternates between native coastal scrub and weedy habitat. This vegetation is dense for quite a ways, and the trail would require vegetation removal to make a new path. The trail in this section would also require building on the side of/adjacent to the cut slope supporting the railroad tracks. From the orchard, the trail would head up slope through more native coastal scrub without predominance of non-native species. There are also patches of rush in this area and some pooled water that may qualify as a State/County wetland. Due to the known location of fairy shrimp elsewhere on the property, these pools should also be checked for fairy shrimp. If listed species of fairy shrimp are present, the trail construction could drain their habitat, resulting in a significant impact. There was also rilling and minor erosion noted in this area.

Once the route reaches the top of the slope, it runs on the south side of the fence line adjacent to or near the cattle pasture. This area has more patches of native coastal scrub and could have some rare plant species (such as Santa Barbara honeysuckle). Of particular concern in this area is the number of very substantial gullies in the cliffs leading to the ocean. The gullies would have to be stabilized prior to placement of the trail, and the action of stabilizing them would require substantial ground disturbance and damage/removal of native plant communities (mostly coastal scrub) that would need to be restored.

Further west, the trail would cross to the north side of the fence because the railroad and fence angle towards each other. Patches of native grasses are abundant in this area, and some are quite large. A couple of unnamed eucalyptus-lined drainages would have to be crossed. The eastern drainage (D1 in the EIR) is a known permanent overwintering site for Monarch butterflies (Figure 4.4-6 of the EIR), but it is unknown if roosting occurs at the crossing location. That should be determined as part of any detailed environmental analysis for the trail to identify and quantify potential impacts of the proposed trail route. Project advocates indicated that a bridge likely would be necessary for one or both of the crossings. Based on my understanding of project construction, it would be unlikely that the bridge(s) could be placed without removing some of the existing trees and possibly changing the wind patterns in the grove, which could negatively impact roosting monarchs, if present. Monarch butterfly roosting areas are unique habitats where this species gathers in great numbers to survive the winter. Roosting sites are sensitive to a variety of disturbances, most importantly changes in the wind patterns within the groves. Any disturbance that would result in the removal of dead or live trees could change wind patterns within the grove and could result in abandonment of the roosting site.

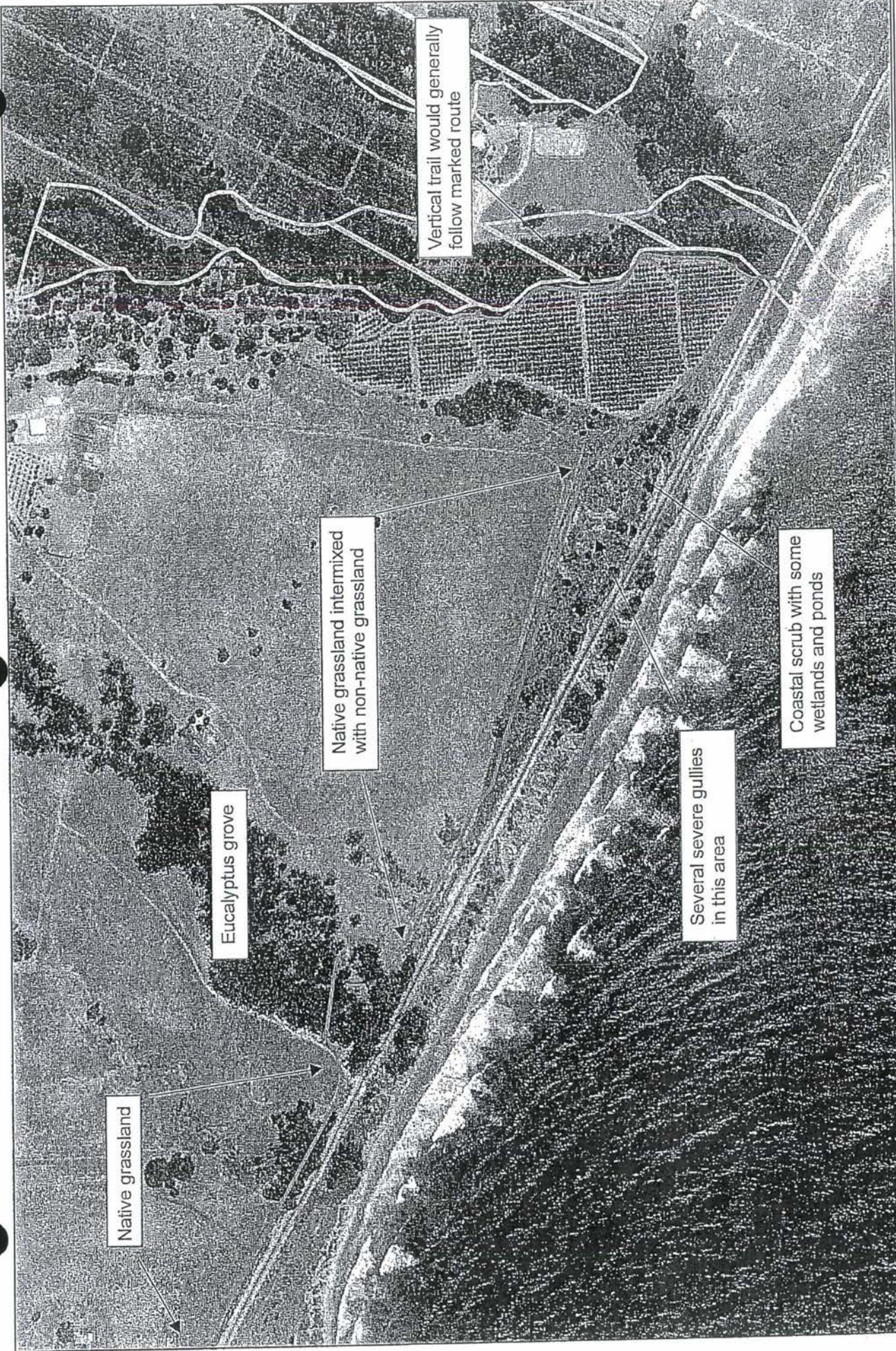
Continuing westward, grassland is composed of patches of native grassland and patches of non-native grassland (including Harding grass). Where the trail would cross Gato Creek and Edwards Point, at least three routes were proposed: (1) follows the ranch road under the railroad and then southward on the west side of Gato Creek to the bluff top, (2) follows the ranch road to an above grade crossing and then continues to the beach where it crosses Gato Creek, and (3) follows the ranch road over the above grade crossing, continues south, and then turns north to cross Gato Creek near the railroad. Number 1 would be within the creek under and just south of the railroad, and the creek could not be bridged at this location. Number 2 would take trail users through a portion of the proposed development envelope for that lot. Number 3 would put the trail within the riparian corridor and require crossing the creek. None of these creek crossings could be adequately fenced to protect the aquatic habitat unless bridged, and bridging (if feasible) would have significant impacts on the habitat.

February 2, 2012  
Santa Barbara County Planning Commission

From Edward's Point, the trail would pass through an eroded area and continue along the bluff top in a mixed patchy habitat of native grassland and coastal scrub. After proceeding along the bluff top for about 1,500 feet, the trail would either turn northward following an oak-lined drainage or bridge the drainage and continue westward along the bluff top. We walked the route that followed the drainage (the other route was not explored).

Following the northward trending route, the trail would cross the railroad at an at-grade crossing. The route cuts westward through another eucalyptus grove and a drainage. This eucalyptus grove is identified as a Monarch butterfly autumnal site in the EIR. After crossing the drainage, the route would run between the northern fence line for the railroad and an existing paved road. This area is primarily non-native grassland, although there are scattered native grasses present.

The unexplored alternative would cross the railroad on a bridge. Regardless of which route was chosen, the next section would run northwestward and cross another drainage (Las Llagas Creek, according to the USGS maps) off the property. This area was not visited.



Native grassland

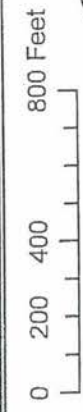
Eucalyptus grove

Native grassland intermixed with non-native grassland

Vertical trail would generally follow marked route

Several severe gullies in this area

Coastal scrub with some wetlands and ponds





**Legend**

— Approximate Proposed Trail Route

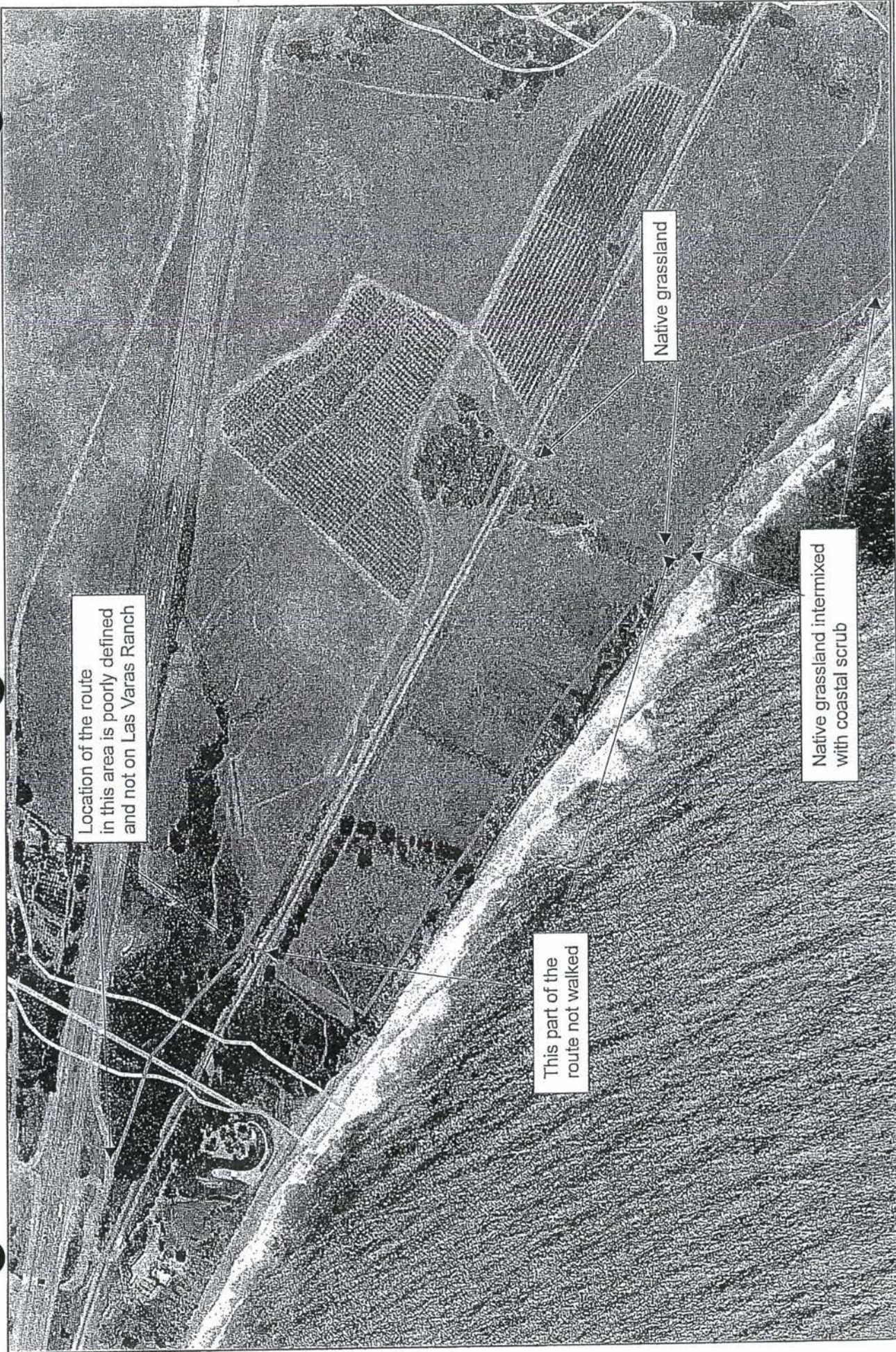
□ County Designated Environmentally Sensitive Habitat



**Legend**

-  Approximate Proposed Trail Route
-  County Designated Environmentally Sensitive Habitat







Location of the route in this area is poorly defined and not on Las Varas Ranch

This part of the route not walked

Native grassland

Native grassland intermixed with coastal scrub

**Legend**

-  Approximate Proposed Trail Route
-  County Designated Environmentally Sensitive Habitat





Ksen~Sku~Mu  
Frank Arredondo ~Chumash MLD  
Po Box 161  
Santa Barbara Ca, 93102

March 14, 2011

Alex Tuttle, Planner  
Santa Barbara County  
123 E Anapamu St.  
Santa Barbara Ca, 93101

RE: Las Varas Ranch Project  
05LLA-00000-0005 & 6, 05TPM-0000-00002, etc.

Dear Mr. Tuttle:

I thank you for the opportunity to comment on the above referenced project. My name is Frank Arredondo. I am Chumash/Coastanoan. I am recognized within my community as the Former Director of the Board with the Coastal Band of the Chumash Nation. Currently, I am an active member of the Coastal Band of the Chumash Nation; I am listed on the Most Likely Descendant (MLD) list for the Chumash Territory and the Native American Contact list with the Native American Heritage Commission. My comments today are of my own.

Being of Native American descendant, from the Chumash territory, I have a strong vested interest in the project. I currently provide comment on several Planning and Development projects in the surrounding areas that have cultural resources impacts. I have been an advocate for the preservation of those Cultural Resources within my community and for several years now as well as placing an emphasis on local governments adhering to policies and procedures. I thank you for taking the time to review my comments.

As per several SB county guidelines I request for a specific consultation meeting with the Chumash community.

So it is perfectly clear, I am Not making any reference to SB-18 consultation.

Several problems with the use of "Density" to attribute significance need to be corrected.

Under various sections of the EIR the use of the term "density" is establishing the basis of significance and its ability to Yield Important information. The terms "Low Density" and "High Density" are describing the amount of cultural material found during a survey, and is being used to determine if a site is "significant" or not.

The site is a site, you cannot deem there will be less than significant impact on an area of a site based on density values. Any part of the site impacted is an adverse impact regardless of density amounts.

Individually low density materials may yield very little definitive information on important research topics, but in aggregate these data may enable archaeologist to better understand regional prehistoric land-use patterns. The qualities that make a site significant are not determined on the amount of material that can be obtained.

Through consultation with individuals or community groups it is possible that the project area may have a tangible or intangible quality that is important to an identifiable cultural group. It appears that no formal consultation has taken place and should be done with the Native American Community.

Examples of sections that are using "density values" to determine "significance".

#### 4.5.2.4 Archaeological Sites Potentially affected by the Proposed Project CA-SBA-80 (Proposed Parcel 3) pg. 4.5-10

"The results of the testing allowed some boundary delineation and identification of the site's higher and lower density areas. As a result of the study, the proposed development envelope was revised to avoid the higher density areas of the site."

"In total, SAIC and AE excavated 8.58 cubic meters of soil from 66 STPs. Based on review of SAIC's work and analysis of the AE materials, Lebow et al. concluded that CA-SBA-80 is eligible for listing on the California Register of Historical Resources (CRHR) based on Criterion 4, that the site "has yielded, or may be likely to yield, information important in prehistory or history" (Public Resources Code Section 5024.1, Title 14 CCR Section 4852). However, AE also concludes that the qualities that make the site significant are not present within the portions with the lowest density of materials. AE recommended avoiding the significant qualities of CASBA-80 by further reducing the Area 3 development envelope"

This section of the report is also unclear as to what "qualities" makes the site significant and not significant. Only that in areas of "Low Density" lack the "qualities" that makes them significant. In order to determine if adverse impact is to take place the "qualities" need to be clarified. Otherwise the whole site is significant regardless of density.

#### CA-SBA-2409 (Proposed Parcel 7) 4.5-11

“Given the lack of artifacts on either side of the road in either Lebow’s or SAIC’s test units in the northern part of the development envelope, and the correlation between the surface artifacts and the road in SAIC’s site map, it is clear that the surface artifacts identified by SAIC were redeposited during road construction and/or maintenance. Consequently, Applied EarthWorks shifted the northern site boundary southward to correspond with the northernmost positive shovel test pits (2009:38-39).”

It is unclear if testing was done in the roadway to determine if subsurface material was present. Further sewage and road improvements may potentially impact sub-surface material within the roadways areas.

“Based on this information, a new proposed Parcel 7 development envelope and a modified access route to the development envelope were defined outside of the site boundary, as shown in the current project description and maps (Figure 2-3). Based on the existing information gathered by SAIC and Applied Earthworks, the site likely qualifies as a significant historic resource under CEQA. However, no formal Phase 2 significance evaluation was conducted because the site has been avoided through redesign of the development envelope.”

The development envelope appears to be modified based on an assumption that any subsurface resources that might be under the roadway still intact is non-existent. This could be clarified by reviewing the development footprint and site survey reports.

#### CA-SBA-3984 (Proposed Parcel 7)

“The very low artifact density precludes addressing any of the research issues and questions identified in the project’s research design” and conclude that it does not contain information important to understanding prehistory and thus is not eligible for listing on the California Register of Historical Resources.

The ability to yield important information is being quantified by the reference of “Density” of site material. This attribute of significance is not quantifiable as it states in the in the:

Santa Barbara Environmental Thresholds and Guidelines Manual, Page 64.

8. Ability to Yield Important Information.

This attribute of significance is not quantifiable

The density amounts cannot be susceptible to some form of measurement. I have asked archaeologist in the field what constitutes a low density site as opposed to high density site is and have been told it is based on the comparison to other surveyed site locations with similar attributes. The quantity of material found at these comparison sites is the justification of density classification for current sites.

This is implied quantifying of site densities.

The qualities of the resource might enable it to yield information that is important to another scholarly discipline.

Is there evidence that features of a Native American site may have survived to the present as subsurface resources?

In order to also assist in the evidence determination, consultation with community groups or individuals is needed to determine that the project area has a tangible or intangible quality of tradition that is important to an identifiable cultural group. To achieve this answer would involve the consultation of such known group.

Areas of the Project description that were lacking from the Cultural resources report for review.

## 2.4 PROJECT DESCRIPTION... pg 2-5, 2-9

### 2.4.2 FUTURE RESIDENTIAL DEVELOPMENT

“Agricultural structures and uses, including associated ground disturbance, may be located inside or outside of the development envelopes.”

The Cultural Resource section does not address Agricultural Structures as potential Impacts in areas Outside development envelopes.

### 2.4.3 PUBLIC TRAIL EASEMENTS

“The project includes the dedication of an easement to the County of Santa Barbara for a public parking lot and public riding and hiking trail leading to the beach along the eastern boundary of proposed Parcel 5.”

The Cultural Resources Section does not address public trail easements and the impacts and potential for impacts to archaeological resources.

### 2.4.4 ACCESS ROADS

Very Little discussion on cultural resources impacts associated with access roads

### 2.4.5 WATER AND SEWER SERVICE

Very little discussion on impacts and potential for impacts to archaeological resources from water and sewer service.

## 2.4.6 AGRICULTURAL OPERATIONS

No discussion on impacts associated with agricultural operations. Specifically, the fencing activities.

A request for site surveys was made by my-self but no copy was available for review. Several copies should be on hand for review by interested Native American Parties. I still wish to see the reports.

None of the summaries of the Extended phase 1 and Phase 2 surveys indicate if Native American Monitors were involved in the work. I request that Field notes be made available for my review.

All future contracts should require that a Native American Monitor provide a separate report as described on pg 14.(c. Native American Consultant reports shall include the following) of the County of Santa Barbara Resource Management Department Regulations Governing Archaeological and Historical Projects Undertaken in Conformance with the California Environmental Quality Act and related laws: Cultural Resource Guidelines.

All ground moving work conducted in lots 1, 2, 3, 4, 7 should be monitored with a Native American Monitor. Any area that requires the use an Archaeologist should have a Native American monitor.

### Impact CULT-4: Ethnic Impacts

There seems to be some creative interpretation taking place to determine if this project location fits the criteria for "Ethnic" impact and its significance to a community. This can be determined on tangible and intangible criteria. Unfortunately it is something that is reserved for the community to bring forward. It cannot be inferred by site criteria alone. I submit that not enough outreach to the community has taken place to establish if the intangible ethnic impact has been addressed.

Native American sacred areas and Traditional cultural sites include definitions such as villages, campsites, gathering and harvesting areas, quarries, tool manufacturing areas, rock painting and carving areas, and burial grounds but something more can be can establish ethnic or religious value, and it can only be obtained by contact with an area or place. Typically, it is the elders of a community that make this determination. To my knowledge no one from the community has ever been asked to visit the location to assess the ethnic value. Until then, the Ethnic impact cannot be determined. It is part of the traditional process that the local chumash are part of.

I ask that the Native American community to be allowed to identify, manage and maintain the site.

I thank you for your time. Please feel free to contact me with any question you might have.

*Best wishes, Frank Arredondo  
Ksen~Sku~Mu  
Chumash MLD  
Po Box 161  
Santa Barbara, Ca 93102  
Email [Ksen\\_Sku\\_Mu@yahoo.com](mailto:Ksen_Sku_Mu@yahoo.com)  
805-617-6884*



Brownstein | Hyatt  
Farber | Schreck

January 13, 2012

Santa Barbara County Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas/Edwards Ranch Project Trails Issues

Dear Honorable Commissioners:

Brownstein Hyatt Farber Schreck represents Mr. and Mrs. Timothy Doheny, on behalf of the Doheny family, applicants for the Las Varas/Edwards Ranch project. Although we have provided a letter addressing the general issues associated with the project and expressing the property owner's position on a variety of issues, representatives of trails groups have made strong claims of entitlement to use the Las Varas and Edwards Ranches for trails that (a) don't respect the integrity of natural resources on the Ranches; and, (b) don't acknowledge privacy or private property rights; and (c) don't acknowledge or understand the importance of avoiding conflict between public recreation and viable agriculture; and (d) aren't supported by law or adopted policy. This letter sets forth the facts and the law regarding those claims.

**The Facts.**

Although Timothy Doheny passed away during this process, Mrs. Doheny is determined to complete this project to accomplish the estate planning objectives that she and Mr. Doheny established before making application. Mrs. Doheny proposes three (3) public trails not presently in public ownership:

1. A vertical (north-south) trail **with 30-space parking lot** that provides a safe route from Highway 101 to a beautiful sandy beach. The trail meets the beach at a point that is less than one mile from Edwards Point; approximately the same distance that a handful of surfers presently use when they park their cars at the El Capitan Ranch off-ramp, then climb up to the railroad tracks, walk along the tracks, trespassing on the railroad right of way, then drop down and trespass across the westerly end of Edwards Ranch. This trail will provide an opportunity for access to Edwards Point by other surfers, who choose not to risk their safety by walking on the railroad tracks and who respect private rangeland enough not to trespass. During some high tide events, a few parts of the beach are covered with water. This is not common and a walker can wait for the waves to recede before working around these points even when the tide is high. Beach trail users also can time their beach walks for low tide. During extremely high tides, surfers can use their boards to paddle around the points where there is no open beach. Either way, this trail opens up a whole new beach access not presently available to most members of the public. The vertical trail is shown on the County's PRT map as a County Adopted Proposed Off Road Trail Corridor so this trail meets a major County trail objective. Because the railroad owns the tunnel through which the trail passes just before reaching the beach, the County must apply for permission for the public to use the tunnel. If the railroad refuses, the County has condemnation rights.



2. A horizontal (east-west) trail along the entire beach frontage itself. This access appears on the County's PRT map as well. Although much of the route is white sand, some of it is cobbled. It remains one of the most beautiful long stretches of beach on this portion of the Gaviota Coast.

3. A horizontal (east-west) trail north of and adjacent to Highway 101 that connects with a short segment of Calle Real, then to an existing trail to the west, extending to El Capitan State Beach. El Capitan State Beach then connects with Refugio State Beach via another trail that is closed temporarily for repairs. The applicant-proposed trail, together with the existing links to the west, would create, end-to-end, approximately a 6-mile long trail. El Capitan State Park extends inland for miles, providing an opportunity for existing hikes. The applicant-proposed trail is on a County-designated bikeway and could be used by hikers and bicyclists, fulfilling a primary objective of the Coastal Trail – that it be a multi-use trail open to a wider range of the public, not just hard-core hikers. The trail also provides an opportunity for panoramic scenic views of the adjacent agricultural lands, the mountains, the coastal plain, and the ocean. The view from this trail largely looks above the freeway because the trail is elevated above the freeway along much of its route. It is "within sight [and] the scent of the sea."<sup>1</sup> The remainder of the trail drops down to roughly the same elevation as the freeway, but crosses through an open field along the route of the former Calle Real (now owned by the Dohenys) so the freeway is not a factor in the walker's viewshed along this portion of the trail either.

Some FEIR commenters argue that the California Coastal Trail must be right next to the ocean. They are incorrect. There are many locations throughout the state where the existing California Coastal Trail does not run immediately adjacent to the coast, including areas where the trail runs adjacent to or is located inland of the Pacific Coast Highway. From south to north, some examples include Orange County and southern Los Angeles County where the trail runs adjacent to or on the inland side of Highway 1 for several miles at various locations due to existing development along the coast. In Santa Barbara County, the trail runs north of the Carpinteria Bluffs Nature Preserve adjacent to Highway 101, providing sweeping views across the salt marsh to the coast. The trail includes numerous segments in Monterey County that are a mile or more inland of the coast and run through Los Padres National Forest. The trail also runs adjacent to Highway 101 near Big Sur and then moves further inland, at times over two miles from the coast as it extends north. West of the City of Santa Cruz, the trail moves inland and runs adjacent to Highway 1 to avoid disturbing agricultural land and a nature preserve. The trail is inland, running adjacent to Highway 1 through most of San Mateo County skirting around and avoiding existing development, public land and a coastal agricultural preserve area. It continues to run adjacent to Highway 1 in Sonoma and Mendocino Counties and is located a half mile or more inland in much of Marin County. It is located several miles inland in parts of Humboldt County and travels inland of Highway 101 in portions of Del Norte County as well.

Some trail users demand a horizontal trail that traverses the grazing lands of the Ranches just north of the railroad right of way, taking it right through the Dohenys' front yard. This route would require crossing multiple drainages and wetlands with sensitive species habitat. Unless they propose that the public splash through these creeks, drainages and wetlands, the expense of bridging the wetted areas and grading a trail through the wetlands would be prohibitive and, either way, habitat would be degraded or destroyed. This proposed horizontal trail would include two at-grade crossings of the railroad track and a crossing of Gato Creek at or near its mouth, crossing immediately adjacent to the proposed relocated building envelope for Parcel 2 (Option 3C – the environmentally superior alternative), and crossing a creek and adjacent wetland, traversing extremely steep slopes in the process. Besides compromising the integrity of the agricultural operation by placing trail users in close proximity to cows and their calves, this route isn't for the general public. In contrast to the applicant-proposed trail north of Highway 101 that would provide approximately two (2) miles of walking and bicycling trail for users of El Capitan State Beach Park and El Capitan Canyon campground, this

<sup>1</sup> Completing the Coastal Trail, p. 15.

proposed trail would serve a limited segment of hikers with advanced hiking skills. The best, safest, most flexible, and least impacting east-west trail, that would serve the widest segment of the public (including bicyclists) is the one that the applicant has proposed after careful study of alternatives.

Others demand that the existing agricultural road south of Highway 101 be devoted to public trail use. The road they demand is the main ranch road that ranch workers use daily, including moving heavy equipment from one place on the Ranches to another. Because this is the sole road tying together all parts of the Ranches, the agricultural operation would be impossible if it were lost. Replacing it would require major orchard loss, tree removal in a monarch butterfly habitat, and building new crossings over the same drainages described above. This road also goes through the tunnel under Highway 101, connecting the grazing lands north and south of the freeway to one another and providing the sole access to the ranch reservoir. The cattle operation cannot share the tunnel with the public, so this option is completely incompatible with the agricultural operation.

As will be described in more detail below under the discussion of the applicable law and policies, without this project, the public would not be able to cross the Las Varas and Edwards Ranches legally at any time. With the No Project Alternative, if the existing legal parcels that comprise these ranches are developed with residences in the future, the County would find it virtually impossible to legally justify an exaction of a trail dedication simply for a single family residence.

The Dohenys have permitted surfers to cross their property to reach Edwards Point, but this was permissive use only and anyone caught damaging a fence or wandering around the property rather than going straight to the Point has been escorted out. Some trespassers may have been able to sneak onto the property from time to time, but surreptitious entry does not give rise to a prescriptive easement.

Some trail advocates have demanded that the County condemn trails across these Ranches. That would be contrary to County and Coastal Act policies to preserve the integrity of agricultural land. The landowners would resist condemnation with all of their resources. This project represents a golden opportunity for the County to gain public recreational opportunities through a voluntary dedication of trails that serve the family user as well as the more devoted hiker.

Others claim that the requirement of a pedestrian bridge over Gato Canyon would delay public trail usage. That is incorrect. The Dohenys are willing to open the west end of the trail, adding approximately a mile of trail to the existing Coastal Trail from El Capitan State Beach Park, until the pedestrian bridge, carrying the users an additional 1 1/2 miles further east, has been completed. The claim that the pedestrian bridge is a major obstacle to construction of this trail directly contradicts repeated statements from representatives of trails groups that there is ample funding available, including from the California Coastal Conservancy (the agency charged with seeing the Coastal Trail through to conclusion), for bridges over creeks if those bridges help complete the Coastal Trail. Even pending the bridge construction, with the applicant's proposal, the trail dedication substantially extends the trail from El Capitan State Beach, although it would end at Gato Canyon rather than Las Varas Canyon.

The Coastal Trail is a long-term project -- a chain that lengthens each time project proponents offer to dedicate new links. It may take many years, but gradually the chain will become complete.

Finally, some trail proponents claim that it's okay to put the trail right through grazing land because cattle and the public are compatible. The cattle operation on Las Varas and Edwards Ranches differs from some grazing operations on public lands, which is where virtually all trails through grazing lands are located. First, Las Varas and Edwards is a cow-calf operation. The herd consists of protective mothers, young calves that are easily spooked, and bulls. This is not a stocker operation with steers

being prepared for market. A hiker who gets too close to a calf, or whose dog harasses the cattle, will find a cow or bull bearing down on him or her. A startled calf will run into or between the strands of a fence. Hitting a barbed wire fence is injurious enough. If a calf goes between the strands of the fence, chaos erupts as the frightened calf and frantic mother attempt to reach one another. At Las Varas/Edwards, some calves have run off the edge of the bluff and fallen to the beach below, a deadly event, because something (possibly a trespasser) has spooked them. A public trail through this grazing operation would put it out of business. Second, the cattle on Las Varas/Edwards are rotated from one confined pasture to another to maximize efficient rangeland management. That means that they are not as spread out as one finds in the open grazing lands of mountainous areas and other public lands. Third, unlike the public lands, this is private property and the owner would be an easy target for a lawsuit by a hiker injured by an enraged cow or bull.

Even a trail placed adjacent to the fenceline of a small pasture can result in herd decline. Calves are curious and experimental. They will eat plastic bags or other trash, resulting in death. The ranch keeps their calving cows in small pastures on the south side of Highway 101 to avoid predators and to make monitoring easier during calving season. Deaths to cows and calves during calving drastically impacts the economics of cattle ranching. Cows and calves must be checked regularly so that a cow having trouble birthing or a weakened calf can receive immediate assistance. The opponents' proposal to site the Coastal Trail along the entire frontage of this pasture will impact the cows and their calves at a critical time. Although cattle are domesticated animals, range cows are not tame. They survive and successfully raise calves because they react like wild animals to predators. Humans on foot are detected as predators. The sight, sound, movement, and smell of humans in the vicinity will stress and spook cows with young calves. Losing the use of this pasture during calving time means placing the cows in a less safe environment when during calving season.

#### The Law.

Proposition 20, the precursor of the Coastal Act, described a coastal trail: "A hiking, bicycle, and equestrian trails system shall be established along or near the coast" and that "ideally the trails system should be continuous and located near the shoreline."

The Coastal Act includes in its list of priority uses within the Coastal Zone recreational opportunities, natural resource protection, and preservation of agriculture. The Coastal Act also clearly acknowledges that any implementation measures must take into account private property rights. Where Coastal Act policies create a conflict, the Act requires a balancing that is most protective of significant coastal resources.<sup>2</sup>

The Coastal Act includes the following findings:

*That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.<sup>3</sup>*

*Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.<sup>4</sup>*

<sup>2</sup> Public Resources Code section 30007.5.

<sup>3</sup> Public Resources Code section 30001(c).

<sup>4</sup> Public Resources Code section 30001.5(c).

*[T]his division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore.<sup>5</sup>*

*[R]ecreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.<sup>6</sup>*

*Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, . . . or (3) agriculture would be adversely affected.<sup>7</sup>*

*The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following: . . . (e) By assuring that [ ] nonagricultural development do not impair agricultural viability. . . .<sup>8</sup>*

*The long-term productivity of soils and timberlands shall be protected.<sup>9</sup>*

Senate Bill 908, Chapter 446 (Chesbro), creating an impetus for the Coastal Trail, is widely misunderstood. It does NOT mandate that the Coastal Trail be located as "close as possible" or as "close as feasible" to the ocean. Instead, it requires that the Coastal Conservancy, State Parks Department, and Coastal Commission coordinate development of the California Coastal Trail, including requiring that each state agency with property interests or regulatory authority in coastal areas (not just the coastal zone) cooperate with the Coastal Conservancy to plan and make lands available for the Coastal Trail. The statute also provides for Coastal Conservancy grants to assist in establishing and expanding the inland trail systems that might link with the Coastal Trail. The law specifically states that:

*The California Coastal Trail is a trail that, to the extent feasible, should be constructed along the state's coastline from the Oregon border to the border with Mexico.*

*The California Coastal Trail should be constructed in a manner that is consistent with the protection of coastal resources.*

*The California Coastal Trail shall be developed in a manner that demonstrates respect for property rights and the proximity of the trail to residential uses, and that evidences consideration for the protection of the privacy of adjacent property owners.*

Case law plays a powerful role in determining when trails can and cannot be exacted, particularly where, as here, the number of developable parcels is not increased as a result of the project so there can be no claim that the project increases demands upon coastal recreational resources. This project makes no increased demand upon recreational resources. Trail exactions are not permissible if they violate constitutionally-protected private property rights.

<sup>5</sup> Public Resources Code section 30010.

<sup>6</sup> Public Resources Code section 30210.

<sup>7</sup> Public Resources Code section 30212(a).

<sup>8</sup> Public Resources Code section 30241.

<sup>9</sup> Public Resources Code section 30243.

Some project opponents have stated that the public has a right to a trail along the bluff top on the Ranches because of "prescriptive use" arising out of the periodic trespassing by a small group of surfers who are widely known to exhibit hostile behavior toward any "newbie" surfer who dares use Edwards Point. These folks are confusing prescriptive rights with the concept of "implied dedication." During the 1970's California case law carved out a completely new concept of an implication, through historic use and practice, that private property had been dedicated to the public use.

To demonstrate implied public dedication of a beach or shoreline area, claimants have the burden of proof of showing that the land historically has been used as if it were a public recreation area and the "continuity of use must be great enough to clearly indicate to the owner that his property is in danger of being dedicated." (*County of Orange v. Chandler-Sherman Corp.* (1976) 54 Cal.App.3d 561, 565.) The court held that long term use of a beach by groups of people rarely larger than 15, who used the beach precisely because it was isolated, deserted, and lightly used, did not constitute use as a public recreational area. In addition, the court found that "haphazard" and "diverse" paths taken by the public across the property owner's land to reach the beach was not great enough in scope or continuity to indicate to the property owner that his land was at risk of being deemed to have been dedicated to the public. (*Id.* at 566.) In a 2008 case, the court noted that implied dedication occurs only where the "public at large" relies upon an offer to dedicate land to public use such that it would be unfair under principles of estoppel to deny the public continued use of the land. (*Blagini v. Beckham* (2008) 163 Cal.App.4th 1000, 1012) Here, only a few surfers have been given permission to traverse the property for the sole purpose of surfing at Edwards Point. The general public has been excluded, by the landowner and by the surfers. The facts do not support an implied dedication to the public at large.

The Fifth Amendment to the U.S. Constitution states that "[N]or shall private property be taken for public use, without just compensation."

Two cases decided by the U.S. Supreme Court have established the restrictions applicable to a public agency exacting an easement dedication in exchange for granting a permit to develop property. Even assuming that this project could be characterized as property development, these two cases state the law clearly and in a manner that would prevent exaction of the proposed trail easements that are offered voluntarily as part of the project. In short, if there is no project, there will be no public trails on this land.

"One of the principal purposes of the Takings Clause is 'to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" (*Dolan v. City of Tigard* (1994) 512 U.S. 374, 383) In the *Dolan* case, the United States Supreme Court grappled with the requirement that a applicant, applying to expand her store and pave her gravel parking lot, dedicate a public open space easement and a public pedestrian/bicycle pathway to the City. "Under the well-settled doctrine of 'unconstitutional conditions,' the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit. In evaluating *Dolan's* claim, it must be determined whether an 'essential nexus' exists between the legitimate state interest and the permit condition." (512 U.S. 374,)

In *Dolan*, the Supreme Court noted that *Dolan* argued that "the city has not identified any 'special quantifiable burdens' created by her new store that would justify the particular dedications required from her which are not required from the public at large" (512 U.S. 374, 386), and concluded that, "We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development." (512 U.S. 374, 391)

The second case, *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, involved the Coastal Commission's condition upon a residential coastal development permit that the landowner dedicate a horizontal access encompassing all of the beach located on the property. The Supreme Court struck down the exaction based upon the Fifth Amendment, stating that "the lack of nexus between the condition and the original purpose of the building restriction converts that purpose to something other than what it was. The purpose then becomes, quite simply, the obtaining of an easement to serve some valid governmental purpose, but without payment of compensation." (483 U.S. 825, 837) The court also observed that, "our cases describe the condition for abridgement of property rights through the police power as a 'substantial advanc[ing] of a legitimate state interest. We are inclined to be particularly careful about the objective where the actual conveyance of property is made a condition of the lifting of a land-use restriction, since in that context there is a heightened risk that the purpose is avoidance of the compensation requirement, rather than the stated policy-power objective." (483 U.S. 825, 841) With no evidence in the record upon which to justify the exaction, the Court ruled that the easement requirement could not be imposed.

The FEIR and the staff report concede what is obvious on the facts – the proposed project in no way impairs public access to and along the shoreline. Neither does it increase the number of potential residences on this property, thereby increasing demands upon public recreational facilities. In fact, the project **reduces** the number of lots upon which residences can be built. Under no standard could the County constitutionally require a dedication of the three (3) trails offered, or even one of them, as a condition of this project.

#### The Policies

The County's Local Coastal Plan also provides for balancing conflicting objectives:

*The Act also attempts to establish a framework for resolving conflicts among competing uses for limited coastal lands. The policies which spell out priority uses constitute this framework. The Coastal Act places as its highest priority the preservation and protection of natural resources including environmentally sensitive habitat areas (i.e., wetlands, dunes), and prime agricultural lands.<sup>10</sup>*

*There is a need for more accessways to the County shoreline, particularly in the South Coast urban areas.<sup>11</sup>*

*Provision of access and recreational opportunities is expensive. . . . Frequently, acquisition of upland area is not necessary; all that is needed is an access corridor to connect a public road to the beach. Such corridors can often be acquired as a condition of development for adjacent property. The County, if it is to achieve the State-mandated goal of maximum access and recreation, will have to rely on these alternative methods for providing access and recreation.<sup>12</sup>*

*Policy 7-1: The County shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline. At a minimum, the county actions shall include:*

a) *Initiating action to acquire easement to beaches and access corridors for which prescriptive rights exist consistent with the availability of staff and funds.*

<sup>10</sup> Santa Barbara County LCP, p. 2.

<sup>11</sup> Santa Barbara County LCP, p. 78.

<sup>12</sup> Santa Barbara County LCP, p. 81.

b) *Accepting offers of dedication which will increase opportunities for public access and recreation consistent with the County's ability to assume liability and maintenance costs.*

c) *Actively seeking other public or private agencies to accept offers of dedication, having them assume liability and maintenance responsibilities, and allowing such agencies to initiate legal action to pursue beach access.<sup>13</sup>*

*Policy 7-2: For all development between the first public road and the ocean granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:*

b) *Access at the site would result in unmitigable adverse impacts on areas designated as "Habitat Areas" by the land use plan, or*

c) *Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected.<sup>14</sup>*

*[Policy 7-3 has been deleted from this discussion because its constitutionality has been significantly undermined by the Supreme Court case law cited above.]*

*Policy 7-18: Expanded opportunities for access and recreation shall be provided in the Gaviota Coast planning area. [The Implementing Actions for this policy include a vertical (north-south) access to the beach shall be acquired to Edwards Point, "near Gato Canyon" – given the sensitivity of the habitat and the presence of productive agriculture, this proposed implementing action was not well-conceived and is contrary to Coastal Act and LCP policies.]<sup>15</sup>*

*Policy 7-25: Easement for trails shall be required as a condition of project approval for that portion of the trail crossing the parcel upon which the project is proposed.<sup>16</sup>*

*The County's commitment to the preservation of agricultural lands is demonstrated by the success of its Agricultural Preserve Program. Currently, there are 525,760 acres enrolled in preserves throughout the County representing 90 percent of the eligible privately owned prime and non-prime lands.<sup>17</sup>*

*Coastal Act policies require that the maximum amount of prime agricultural lands be maintained in production and that conflicts between agricultural land and urban land uses be minimized. The Act also calls for the protection of the long-term productivity of soils and stipulates conditions under which conversion of agricultural lands to non-agricultural uses would be appropriate.<sup>18</sup>*

*In the rural areas of the County's coastal zone extending west from Ellwood to Point Conception and north to the County line, existing zoning includes General Agriculture and Limited Agriculture designations. Since agriculture in this area is mostly non-prime, i.e., cattle grazing and forage crops, large acreages are required to be economically viable and 100-acre minimums are specified for most areas under present zoning. . . . On the basis of economic viability and resource constraints, both the 100-acre and 10-acre minimums are inadequate for non-prime agricultural lands. Yet, on the Gaviota*

<sup>13</sup> Santa Barbara County LCP, p. 85.

<sup>14</sup> Santa Barbara County LCP, p. 85.

<sup>15</sup> Santa Barbara County LCP, pp. 91-92.

<sup>16</sup> Santa Barbara County LCP, pp. 95.

<sup>17</sup> Santa Barbara County LCP, p. 100. As of January 2010, there were over 541,000 acres of privately-owned land enrolled in the County's Agricultural Preserve Program.

<sup>18</sup> Santa Barbara County LCP, p. 100.

*Coast between Ellwood and El Capitan, the vast majority of parcels are less than 100 acres in size and existing agriculture is a mixture of prime and non-prime pursuits. A 100-acre minimum, therefore, continues to be the most appropriate minimum parcel size for agriculturally designated lands in this area.*<sup>19</sup>

*Policy 8-1: An agricultural land use designation shall be given to any parcel in rural areas that meets one or more of the following criteria:*

- a) *Prime agricultural soils (Capability Classes I and II as determined by the U.S. Soil Conservation Service).*
- b) *Other prime agricultural lands as defined in Section 51201 of the Public Resources Code [the Williamson Act, defining prime land as including highly productive livestock grazing land and land planted to fruit or nut bearing trees, vines, bushes or crops that have a nonbearing period of less than 5 years and normally return an annual production of not less than \$200 per acre].*
- c) *Lands in existing agricultural use.*
- d) *Lands with agricultural potential (e.g., soil, topography, and location that will support long term agricultural use).*<sup>20</sup>

*Policy 8-2: If a parcel is designated for agricultural use and is located in a rural area not contiguous with the urban/rural boundary, conversion to non-agricultural use shall not be permitted unless such conversion of the entire parcel would allow for another priority use under the Coastal Act, e.g. . . . recreation and access . . . .*<sup>21</sup>

*The County's Agricultural Element provides:*

*Agriculture is vital to the needs of the nation and the world. Agriculture is the largest production industry in Santa Barbara County and contributes a very large inflow of money into the county's economy. The County, therefore, recognizes the need to protect and maintain a healthy economy and to provide for the conservation of its agriculture.*<sup>22</sup>

*Policy IA. The integrity of agricultural operations shall not be violated by recreational or other non-compatible uses. Imposition of any condition requiring an offer of dedication of a recreational trail or other recreational easement shall be discretionary (determined on a case-by-case basis), and in exercising its discretion, the County shall consider the impact of such an easement upon agricultural production of all lands affected by and adjacent to said trail or other easement.*

1. *On lands which are in agricultural production and have a zoning or Comprehensive Plan designation for agriculture, provisions for recreational trails or other recreational easements defined in the Comprehensive Plan may be imposed by the County as a condition for a discretionary permit or land division in the following circumstances:*

<sup>19</sup> Santa Barbara County LCP, p. 103.

<sup>20</sup> Santa Barbara County LCP, p. 106.

<sup>21</sup> Santa Barbara County LCP, p. 106.

<sup>22</sup> Santa Barbara County Comprehensive Plan Agricultural Element, p. 3 ("Ag Element"). In 2010, the most recent crop report, agriculture provided over 2B in revenue to the County's economy.



a. *The area in which the trail is proposed to be located is land which is not under cultivation or being grazed or is not part of a rotation program, or is not an integral part of the agricultural operations on the parcel; or,*

b. *The land use permit requested is not for a use which is compatible with agricultural production on the property, as defined in the in the County Agricultural Preserve Uniform Rules. In this instance, the recreational trail or other recreational use shall be required to be located only on the portion of the property taken out of agricultural production for the permit; or,*

c. *The land division requested requires a rezoning of the property to a more intensive zone district than that applied to the property prior to the application.*

2. *A recreational trail or other recreational use shall not be required as a condition for a discretionary permit (except a land division or a rezone which permits a smaller minimum parcel size than that permitted on the property at the time of the application) on lands which are in agricultural production and have a zoning or Comprehensive Plan designation for agriculture, in the following circumstances:*

a. *The permit requested is for a lot line adjustment or Minor Conditional Use Permit only;*  
or,

b. *The discretionary permit requested is compatible with the agricultural use of the land, as defined in the County Agricultural Preserve Uniform Rules.*

4. *Where trails are required, they shall be sited to minimize the impacts to prime soils, agricultural operations, public safety, and environmentally sensitive areas.<sup>23</sup>*

*Goal II. Agricultural lands shall be protected from adverse urban influence.<sup>24</sup>*

*Goal III. Where it is necessary for agricultural land to be converted to other uses, this shall not interfere with remaining agricultural operations.<sup>25</sup>*

### **Conclusion**

Opposition expressed to the three (3) applicant-proposed trail dedications is a classic case of looking a gift horse in the mouth while at the same time ignoring laws and policies that protect agriculture and private property rights and that encourage trails that can be used by a wide range of the public, not just by carefree wanderers who will slip through fences, scramble through pristine woodlands and riparian areas, splash through streams, and otherwise bush-whack their way through the countryside. The Coastal Trail was intended for wide usage and to be located in a manner that respects private property rights, privacy, and agricultural viability.

The California Coastal Conservancy's January 2003 publication, Completing the California Coastal Trail, calls for a trail or trails that are respectful of private property rights, and designed "to provide a valuable experience for the user by protecting the natural environment and cultural resources while providing public access to beaches, scenic vistas, wildlife viewing areas, recreational or interpretive

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<sup>23</sup> Ag Element, pp. 7-9.

<sup>24</sup> Ag Element, p. 11.

<sup>25</sup> Ag Element, p. 12.

facilities, and other points of interest." It describes one objective as being the creation of "linkages" to increase accessibility to coastal resources from urban population centers.<sup>26</sup>

In designing the Coastal Trail, the publication states, "Coastwalk envisions a 1,300-mile hiking trail linking California's northern and southern borders through some of the planet's great landscapes; a trail that will extend along beaches, bluffs and roadsides, through ancient redwood forests, over sand dunes, mountains, and cactus-covered hillsides, through towns, cities, parks, and historic sites. Respecting and protecting the terrain, the California Coastal Trail will vary widely, according to the character of the landscape and the built environment."<sup>27</sup> "Wherever feasible, the Coastal Trail should be within sight, sound, or at least the scent of the sea. The traveler should have a persisting awareness of the Pacific Ocean. It is the presence of the ocean that distinguishes the seaside trail from other visitor destinations."<sup>28</sup>

The trails for dedication as part of this project extend far beyond any exaction that the County legally could impose upon the applicant, and these trails meet all of the criteria set forth in the laws, policies, and publication described above – they provide a parking area with vertical access to the beach, a horizontal beach trail that extends the entire 2 1/2 mile frontage of the property, and a horizontal trail on the north side of the freeway that provides sweeping vistas, proximity to open agricultural fields, foothills, canyons, and mountains, while protecting and preserving agricultural productivity.

Offering to dedicate these trails, particularly the trail north of Highway 101, is a major departure from the practice of most ranchers and represents a leap of faith on the Dohenys' part. Placing the public adjacent to agricultural lands in such a wide open space, allowing them to travel almost a mile along the vertical trail adjacent to a productive avocado orchard and 2 1/2 miles along the east-west trail adjacent to grazing land submits the Dohenys' agricultural operation to risk. The ranch personnel don't have time to monitor the public's behavior on these trails and the County doesn't have resources for that monitoring. The Dohneys are trusting that unsupervised strangers will treat their agricultural operation with respect. The issues with trash and disturbing the livestock apply to all grazing land, but at least the pasture north of Highway 101 is large enough that the danger of death or injury declines. The cows can put as much distance as they need between the trail users and their calves. The introduction of the public into these undisturbed grazing areas brings the risk that a careless smoker will start a rangeland fire that would destroy the forage, kill any livestock in the vicinity, and endanger the employee residences. Down-canyon winds could blow the fire across the Highway to cause the same damage and threat to humans and animals. The offer of these trails was a major concession, made after careful weighing of the risks to the agricultural operation and the long-term benefit to the public.

Objectors may not be getting everything they want from this offer, but they aren't the only members of the public who want to use trails. With the Dohenys' proposal, the public is being provided with recreational opportunities unprecedented for a lot merger, lot line adjustment, and 2-way lot split. If this project is denied, the public will wait for decades before this opportunity will arise again.

We urge acceptance of the offers of dedication, without the fencing restriction proposed by staff and

<sup>26</sup> Completing the California Coastal Trail, p. 9.

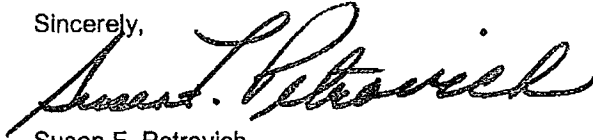
<sup>27</sup> Completing the California Coastal Trail, p. 12.

<sup>28</sup> Completing the California Coastal Trail, p. 15.

Santa Barbara County Planning Commission  
January 13, 2012  
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mentioned in our broader letter, and with the timing for grading the parking lot tied to completion of the first residence south of the highway, not mere approval of a CDP.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan F. Petrovich". The signature is written in a cursive style with a large initial "S".

Susan F. Petrovich

Brownstein Hyatt  
Farber Schreck

January 13, 2012

Santa Barbara County Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas/Edwards Ranch Project/05TPM-00000-00002, 05LLA-00000-00005, -00006,  
07CUP-00000-00057, 07RZN 00000-00006, 07RZN-00000-00007, 10EIR-00000-00005,  
11COC-00000-00001, 11CDP-00000-00078

Dear Honorable Commissioners:

Brownstein Hyatt Farber Schreck represents Mr. and Mrs. Timothy Doheny, on behalf of the Doheny family, applicants for the Las Varas/Edwards Ranch project. You have received a thorough staff report and Final EIR, for which we thank your diligent staff. We anticipate that you will receive public comment letters and testimony, providing you with the particular views of the individual correspondents and speakers. With this letter, we hope to provide the property owners' perspective of this project.

**History and Introduction to the Las Varas and Edwards Ranches**

Although now operated as a single ranching enterprise, the Las Varas Ranch (the easterly half of the present Doheny Ranch) and the Edwards Ranch (the westerly half) were two separate operations until combined by the Doheny purchases of November 1967 and July 1969. The ranches have a long, rich history of successful agricultural operations, dating back to the early Mission days of the 1700's. The combined ranches, once part of the much larger Canada del Corral and Rancho Los Dos Pueblos, now total 1,802 acres, of which 1,784 acres are the subject of this project.

Edwards Ranch was the site of a prisoner of war camp during WWII, where German prisoners were billeted and loaned out to Las Varas and Edward Ranches and to other ranches in the vicinity for agricultural labor. No remnants of the camp remain, but the support structure for the water storage tank serving the camp is clearly visible from Highway 101.

The purpose of this project is to freeze these ranches in time, ensuring that limited future non-agricultural (i.e., residential) development occurs in areas not visible from the Highway, and that the remainder of the ranches continue to be operated as a cooperative grazing operation in the same manner that the land is managed today. In short, the project will conform all parcels, except the two south of the railroad, to the 100-acre zoning designation and minimize the potential for residential footprints to spread across the agriculturally productive land by designating residential development envelopes, within which a potential owner will be required to choose two (2) contiguous acres in which to construct a home and appurtenant residential structures and improvements.<sup>1</sup> The parcels south of

<sup>1</sup> Although the property has never been enrolled in a Williamson Act contract, Mr. Doheny used the County's Agricultural Preserve Uniform Rules as his guide in arriving at 2 acres as a reasonable limit on residential development. Following approval of this project, all parcels except those south of the railroad will be eligible for inclusion in the Agricultural Preserve Program. With this project, once an owner has

the railroad will continue to be operated for grazing and will be uniform in size, transforming an 11.08-acre parcel, a 94.25-acre parcel, and a 8.35-acre parcel into two parcels, one of 55.0 acres and one of 58.68 acres. Outside the 2-acre building envelopes, grazing activities will continue as they always have, operated as a shared enterprise pursuant to long-term CC&R's.

One existing legal lot, for which a Certificate of Compliance has been recorded, is "Not a Part" of the project and is separated from the project site by a ranch road that follows the route of the former State highway, Calle Real. Although the Doheny family now owns this stretch of Calle Real, what is now a private ranch road will be dedicated as a link in the Coastal Trail upon project approval.

The project began when Timothy Doheny, who was a dedicated rancher and cowboy and loved the Las Varas and Edwards Ranches dearly, decided that he needed to engage in careful estate planning to ensure the long-term viability of the ranches. He was well aware that estate taxes can be the greatest threat to passing a family-owned ranch from one generation to another. Far too many ranches are broken up into smaller parts and sold off after years of family ownership, simply because the heirs cannot afford to pay the taxes. Timothy Doheny was a true visionary who loved the land but wanted to leave a legacy of public trails, provided that the trails didn't threaten the long-term viability of the agricultural operation. He planned the location of the parcels in a manner that would allow the family to maintain ownership of the ranches, keeping them in agricultural production, well into the future, while providing for public recreational opportunities that wouldn't interfere with the agricultural viability of the orchards and grazing lands. He particularly focused on the incredible biological diversity and undisturbed nature of Gato Canyon. He feared that Gato Canyon would be attractive to some future owner for several houses because of its peacefulness, beauty and feeling of remoteness, despite its proximity and easy access to Highway 101. Mr. Doheny conducted a successful cow-calf breeding operation on the bulk of the land, dedicating lands suitable for more intensive agriculture to citrus and avocado production. Despite Mr. Doheny's death in the midst of project processing, Mrs. Doheny remains fully committed to the project and to the long-term agricultural operations on these ranches. Mrs. Doheny has absolutely no plans for sale of the parcels comprising these ranches. She simply wants to complete what Timothy Doheny began – wise long-term planning to preserve the agricultural integrity of the ranches while allowing for reasonable residential development whenever that occurs in the future without impairing the current condition of the ranches. Maintaining stability, both in the agricultural operation and in the natural environment on the ranch, is a major project goal.

The Ranches are bisected by the railroad tracks running in an east-west direction, with three (3) existing parcels lying between the railroad and the ocean. Highway 101 further bisects the property in an east-west direction, with two (2) existing parcels lying between the railroad and the Highway and four (4) existing parcels lying north of the Highway. The project proposes that the three (3) parcels lying south of the railroad be merged and their lot lines adjusted, resulting in two (2) parcels south of the railroad, that the two parcels between the railroad and Highway become three (3) parcels, and that the four (4) parcels north of the highway become two, thereby preserving the most pristine habitat within the ranches as one 1,115-acre parcel with a single 2-acre building envelope.

The Ranches presently have three pockets of residential development – the house and adjacent barns and outbuildings on Proposed Lot 4, the Doheny home and agricultural compound with office, employee houses, and barns and outbuildings on Proposed Lot 5, and the two employee houses with outbuildings on Proposed Lot 6. With a total of seven (7) proposed lots, that leaves four (4) undeveloped lots. As the existing parcels presently are configured, three (3) are developed with residences and other buildings and five (5) are potentially buildable. We exclude existing Parcel A from this number because of its

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designated the chosen 2 acres, the remainder of the designated development envelope ceases to be available for residential development and remains in agricultural production.

narrow width. Perhaps it could be developed, but for the purposes of this "before" and "after" comparison, we have not counted it.

With this project, existing historical buildings will be preserved, an existing culverted crossing over Gato Creek will be replaced with a bridge and the creek habitat restored to enhance Gato Creek's suitability as a migration corridor for fish, amphibians, and a wide range of other animals, and three (3) public trails will be offered for dedication, carefully sited to provide public recreational interests without threatening the long-term integrity of the agricultural operations.

**Although Processed And Analyzed Together, These Are Three Separate Projects**

Because the Dohenys proposed these projects simultaneously, the County wisely analyzed and processed them together to avoid any potential for piece-mealing under CEQA. Mrs. Doheny has no development plans for the ranches, having her own home on proposed Lot 5 and adequate residential housing for her agricultural workers on Proposed Lots 4, 5, and 6, so no residential designs are available to project onto the visual landscape. Future residential development on this property is so far in the future as to be completely speculative. The FEIR includes an Aesthetics analysis that goes beyond any "reasonable worst case" because the visual simulation drops a 30,000 square foot block style house on each building envelope. A 30,000 square foot house would be subject to a development plan, a discretionary approval process that requires CEQA compliance. It's incomprehensible that a future owner would propose, or expect to obtain County and Coastal Commission approval for, a 30,000 square foot home. The visual simulations nonetheless effectively demonstrate that, even with such an outlandish proposal, the resulting buildings would be invisible, or at the worst barely visible, to the general public because of the careful siting of development envelopes. The FEIR proposes further mitigation measures of a residential structural height limit and other aesthetic mitigation measures, with which the applicant generally concurs. The proposals with which the applicant differs are described below.

Because these projects are of such low impact upon the environment, merging the total number of parcels from nine (9) to seven (7) and placing a size limit upon the residential building envelope, there is no rational basis or rough proportionality upon which to base a requirement that the applicant offer to dedicate **any** public trail through this agricultural land. Any such trail would be in direct conflict with the County's Agricultural Element if imposed upon an objecting rancher.

The applicant voluntarily proposes three (3) trail dedications: (a) a vertical, north-south, trail between a parking area at the intersection of the Las Varas Ranch entrance and Highway 101 and the ocean; (b) a horizontal, east-west, trail along the sandy beach; and (c) a horizontal trail, east-west, trail immediately north of Highway 101, roughly along the historic route of Calle Real.

Mr. Doheny selected these trail locations with great care. He was cognizant of the lack of public accessways from Highway 101 to the ocean in the vicinity of these ranches. He also was aware that surfers risk their lives during high surf events, running with their surfboards and paraphernalia across Highway 101 and walking on the railroad tracks, creating a public safety hazard and trespassing on private ranchland to reach surfing destinations. The Doheny land is one of the few ranches that have tunnels under the railroad tracks. The tunnel on Las Varas ranch can accommodate public passage and avoid at-grade crossings that would expose trail users and the traveling public to extreme danger from collisions. Not surprisingly, Mr. Doheny anticipated that any trail with an at-grade crossing would face serious, and well-justified, opposition from the owner of the tracks – the railroad.

Although allowing public access adjacent to an orchard can be an invitation to poaching, vandalism, theft, and trespassing, Mr. Doheny was willing to offer the vertical trail if he could adequately fence

between the trail and the orchard to protect his crops from poaching, his equipment from damage and theft, and his trees from potential contamination. Root rot and other diseases affecting orchards are spread by spores from dogs, horses and people, so the public and their dogs must be carefully excluded from the orchard areas. With the recent outbreaks of illness from fecal contamination of crops, orchard owners are finding it increasingly necessary to fence in order to market their fruit. For those reasons, the offer of dedication includes a requirement that the parking area be closed from dusk to dawn. That discourages poachers, thieves, and vandals who otherwise could use the trail as easy access to strip the trees of fruit and steal or vandalize equipment. The offer of dedication also includes the right to install exclusionary chainlink fencing. Mitigation Measure AES 5 (FEIR page 4.1-38) is not acceptable as written because it precludes the Dohenys from protecting their crops. Thinner wire and larger openings make the fencing less secure. While the Dohenys are willing to try alternative fencing, they reserve the right to restore the fencing to chainlink or other fencing if breaches occur. Thinner gauge wire is easier to cut and larger openings make fencing easier to climb – both of these defects invite poachers, thieves, and trespassers. Mitigation Measure AES 5 must be deleted as to the vertical trail and the easterly portion of the horizontal trail (adjacent to the orchard) or the offer of dedication of these trail segments will be withdrawn due to incompatibility with the agricultural operation. This mitigation measure could be retained as to the westerly end of the horizontal trail dedication north of Highway 101, excluding the portion of the trail that runs adjacent to the orchard. CLUP Policy 8-2 prohibits conversion of rural agricultural land to a non-agricultural use (such as recreation) unless a finding can be made that the "conversion shall not be in conflict with contiguous agricultural operations." Coastal Act section 30212 requires vertical access for new development projects (this project proposes no new development and, in fact, reduces the potential for new development by reducing the total number of buildable parcels) except where "agriculture would be adversely affected."

**The Project Respects And Protects Fragile Natural Resources While Preserving Agriculture**

The Las Varas and Edwards Ranches provide a broad range of habitat, historic resources, and cultural resources. The habitats alone include: (a) California red-legged frogs, (b) southwestern pond turtles, (c) coast range newt, (d) two-striped garter snake, (e) native grassland; (f) streams and riparian habitat; (g) wetland habitat; (h) monarch butterfly habitat, and (k) raptor habitat.

The Dohenys have no idea when new residential development will occur on the property or what the status of the habitat at each development site will be when the development is proposed. This kind of development might not occur for 20-30 years or more. The proposed project ensures that new residential development is limited and located in a manner that respects the non-human residents of the property while continuing the agricultural use of this agriculturally-zoned land. Contrary to the suggestion in the FEIR (page 4.12-10), with the development envelopes located as proposed, there will be no flood hazard to or resulting from the ultimate residences, regardless of when they are constructed because all development envelopes are located at a substantially higher elevation than the drainages nearby. All components of the proposed water system will be located outside creek setbacks and ESH, and contrary to the statement on page 4.1-10 of the FEIR, the water treatment facility will not be visible to travelers on Highway 101.

The FEIR expressed concern about the size of the residential development envelopes, contending that a size reduction in these envelopes (not necessarily in the size of the ultimate development envelope, which remains at 2 acres) reduces potential impacts. We strongly disagree. In fact, we believe that the evidence in the record, and common sense, dictate the greatest possible flexibility in siting a future residence, within the confines of the designated building envelopes. Mr. Doheny's objective with the larger development envelopes was to provide the maximum degree of flexibility for locating the 2-acre envelope for a house. This would allow the house design to best fit topographic, visual, and environmental constraints of the site. It also would acknowledge that environmental elements change

over time. A wetland located in one area may dry up there but appear nearby as a result of earthquake or changing drainage patterns. A riparian habitat or eucalyptus grove may change configuration as the creekbed meanders or if the trees suffer from parasites, blight, climate change, or other natural environmental factors. In short, providing the maximum development envelope size, while holding firm on the 2-acre limit for the ultimate building area, provides to an architect maximum opportunity to work within the environmental constraints and to tailor the house design to those constraints. Limiting that creativity serves neither the environment nor the property owner. Preserving flexibility honors sensitive resources as they exist at the time of development, while the 2-acre limit preserves habitat as well as agriculture. Further, given the reduction in the number of lots and the limited 2-acre development area within each lot, this project can hardly be characterized as growth-inducing or a catalyst for other properties to develop or convert agriculture. Each agricultural property is allowed a primary residence by right, and other properties in the vicinity already have submitted for development as shown on the cumulative projects list for Gaviota.

**The FEIR Discussion Of Alternatives Generally Is Accurate, But It Requires Clarification**

The FEIR discussion of the No Project Alternative correctly identifies existing Parcel C as a legal parcel. Although initially created by an illegal conveyance prior to the Doheny family's acquisition of the ranches, the illegal creation was remedied by the County's issuance of development permits for a gas processing facility on the parcel in 1961, also before the Doheny purchase. Because of the County permitting, Parcel C is a legal parcel entitled to an unconditional certificate of compliance pursuant to Government Code section 66499.35 (c). To provide the developability of Parcel C for lot line adjustment purposes, the applicant had a licensed engineer conduct successful percolation testing for a leachfield in a location far enough from Gato Creek to meet County standards. With project approval, however, this area would not be used for residential development.

Other obvious shortcomings of the No Project Alternative would be the complete abandonment of Timothy Doheny's goal of defining development envelopes to protect the public viewshed and maximize preservation of agriculturally productive land, and his proposal to offer to dedicate three (3) public trails.

Various project alternatives analyzed in the FEIR reflect the erroneous conclusion that limiting development envelope size per se limits or avoids environmental impacts. The applicant asks that you reject such a conclusion. Development envelopes should be reduced in size solely for the purpose of directly addressing an identified potentially significant impact.

The applicant concurs with identification of Alternative 3C as the Environmentally Superior Alternative, with certain revisions that have minor environmental implications but respects the rights of the private property owners, particularly the person who ultimately will build a home on Parcel 2. The applicant agrees to moving the Parcel 2 development envelope for the main residence to the northwest, despite its proximity to the railroad tracks and its distance from the ocean. This is a major concession that has been made only after substantial reflection. The applicant reserves the right to construct an 800-square foot cabana, with plumbing and electricity but no toilet facilities, in the southern part of the development envelope that the applicant proposed. Therefore, the southern knob of the applicant-proposed envelope would be retained, giving the landowner the option of siting the cabana somewhere within the envelope, consistent with County and Coastal Commission requirements. Consistent with CLUP Policy 4-5, the cabana would be setback sufficiently enough so as not to impose an impact on public views from the beach. This will allow the property owner to enjoy the oceanfront that he/she owns by having a place to shower, store beach supplies, and prepare and enjoy lunch and other refreshments while enjoying the beach. It's a reasonable request in exchange for moving the residential site very far from the ocean and very close to the noise of the railroad tracks.



The applicant concurs with the suggestion that the Parcel 3 development envelope be reduced as indicated to avoid CA-SBA-80, as shown on Alternative 3C.

The applicant also concurs that the relocation of the Parcel 4 development envelope to the new site shown in Alternative 3C makes far more sense than the Alternative 2A, 2B, or 3A approaches to future residential development on Parcel 4 because Alternative 3C allows any future residence to be tucked behind an existing knoll where it won't be visible from Highway 101 or proximate to the railroad.

The applicant rejects the concept that reducing the Parcel 5 development envelope will reduce biological impacts, as shown in Alternative 2A, 2B and 3C. The various wetland areas dotted around Parcel 5 change location from time to time and some result solely from manmade conditions that could cease or change at any time. Perhaps most relevant is the fact that the Doheny personal residence is located within the applicant-designated development envelope with a southerly orientation to enjoy the view of the open pasture and ocean. If the Doheny family were to desire expansion of this dwelling, they would want to move to the east, not to the south. Moving to the south blocks the pasture and ocean view from the existing residence! The FEIR-identified ample biological mitigation measures and existing County development standards would preclude residential construction within the Parcel 5 development envelope if it adversely impacts biological resources. The applicant does not accept the modification of the Parcel 5 development envelope proposed in the FEIR.

#### **The Applicant Proposes Additional Responses to Public Comment in the FEIR**

Some commenters called for an arbitrary limit on the size and number of structures allowable on the Las Varas and Edwards Ranches as a condition of approval. The County has no policy basis or historical practice that would provide the grounds for an arbitrary limit on the size and number of structures, provided that they fit within the 2-acre development envelope. Such a restriction on this project would be discriminatory, arbitrary, and capricious. Any such structures must satisfy all project conditions and County requirements applicable at the time the structures are proposed, including CBAR review and any future Gaviota Plan provisions.

Other commenters called for site-specific bluff retreat studies, stating that the development envelope setbacks for Parcels 1 and 2 were inadequate to address increased bluff retreat rates from climate change. These commenters are confusing the impact of the project upon the environment, which is a proper subject for environmental analysis, with the impact of the environment on the project, which is **not** a proper basis for environmental analysis. (*Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455 [finding that an EIR was not required to discuss the impact of sea level rise on the project because "the purpose of an EIR is to identify the significant effects of a project on the environment, not the significant effects of the environment on the project...[I]dentifying the environmental effects of attracting development and people to an area is consistent with CEQA's legislative purpose and statutory requirements, but identifying the effects on the project and its users of locating the project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes."]; see also *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604; *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, 1468.)

One commenter called for unprecedented conditions applicable to any new residence built on the Ranches, including zero water usage for landscaping, no pesticide use, use of a minimum amount of post-consumer waste products, use of solar or wind power for at least 33% of the power consumed by the residence, mandatory rainwater collection cisterns, permeable access roads, and daily fines for violations. The County has no policy basis or historical practice that would provide the grounds for singling out these Ranches for requirements not imposed upon any other properties. Such a restriction on this project would be discriminatory, arbitrary, and capricious, particularly given the fact that this

project reduces the number of parcels within the Ranches, thereby reducing the number and location of new principal residences. The project has fewer environmental impacts than those that would occur with the existing lot configuration.

The California Department of Fish and Game expressed concerns as follows:

(a) Incremental habitat loss from development, particularly the Parcel 2 development envelope impacts upon Gato Creek habitat – the applicant proposes a project that will minimize habitat loss by carefully siting potential new residences and limiting their envelope to 2 acres. The Gato Creek habitat impacts are avoided with the applicant's acceptance of a modified Alternative 3C as described above, reserving the right to a cabana site that is not proximate to the creek.

(b) Aquatic ecosystem degradation – any residential development on these very large parcels can direct drainage in a manner that avoids aquatic ecosystem degradation. The development envelope locations provide additional protection. The mitigation measures proposed in the FEIR for biological preservation will provide particular protection to aquatic habitats. Proposed mitigation measures require avoidance of impacts of fuel management measures upon sensitive native habitat.

(c) Invasive species – the Ranches already have some invasive species, introduced decades ago in association with the agricultural activities. Many of these plants (e.g., mustard, wild oats, rye grass) first were introduced during the Mission period, with others being introduced as white settlers farmed the land. The mitigation measures proposed by the FEIR require County approval of landscape plans for new residences, although Mitigation Measure BIO 7-1 goes too far. It should be limited to prohibiting invasive species, not requiring all locally collected native species. This would prevent a homeowner from planting roses, camellias, orchids, and other non-invasive colorful species and is an unjustified limitation upon already limited yard areas in very large parcels. BIO 7-2 requires revegetation of areas disturbed by construction activity and monitoring to ensure that weedy invasive species are eradicated.

(d) Altered fire regimes – the fuel management mitigation measures in the FEIR are more than adequate for such small residential areas within such large parcels. The agricultural activity will continue, so vegetation heights and density on the Ranches will remain unchanged, reducing the likelihood of any change in the existing fire regimes.

(e) Recreational pressures – by offering to dedicate the three (3) public trails in areas that minimize conflict with the agricultural operations on the Ranches, the applicant not only has provided safe outlets for recreational pressures, but has provided opportunities for additional public use of the Gaviota Coast while preserving agricultural integrity. This balance ensures that both uses can continue for the indefinite future without fear that one use will extinguish the other.

Finally, the California Department of Fish and Game proposes that the applicant dedicate all of Lots 1 and 2 as open space. There is no rational nexus or rough proportionality between this proposal and the impacts of the project. Requiring such a drastic alternative not only would be contrary to the principal project goals, but would constitute an unconstitutional taking of private property rights without compensation. It also is completely unnecessary, given the care with which the project has been planned to preserve native habitats while also providing for human activity, including recreation.

Caltrans expressed concern about increased use of the at-grade intersection at the main ranch entrance and has requested that the median be closed. This is reportedly consistent with a State initiative to eventually shutdown all medians along Highway 101 due to anticipated increased traffic levels and interest to reduce potential traffic incidents. Closure of the median at this location would be

significantly detrimental to the ranch agricultural operation because the crossing provides direct access from the ranch headquarters on the south side of the highway to the orchards on the north side of the highway. To continue a spraying operation, fix an irrigation line or perform any other daily chore, using the existing at-grade crossing is quick and easy and maintains continuity in the ranch's operational duties. Requiring the ranch workers to get on the freeway and travel down to and back from Dos Pueblos overpass to get to the northern orchard, and then to travel up to and back from El Capitan would add 2 to 3 miles to what is a short trip of only a few yards now. This would greatly increase the time, cost and inconvenience factor for the ranch operations and would certainly interfere with the existing successful agricultural operation and impact their economics by increasing labor and fuel costs. This would also be detrimental to other agricultural operations located in the northern canyon accessed by this crossing. For example, both the Las Varas Ranch orchard on the north side of the freeway and the Glenn Parks operation (with approximately 300 acres of mature, producing avocados) located off of Las Varas Canyon Road truck their fruit south. For Las Varas and Parks to require their truckers to turn right and travel all the way to El Capitan, then double back to the south, or vice versa if crews and/or truckers are coming from Santa Maria, would be a very costly and inconvenient change in operations.

The cumulative impacts analysis urged by certain commenters is inaccurate because it concludes that the project has a cumulatively significant adverse impact upon recreational opportunities. Quite the opposite is true. The project reduces the total number of lots on the Ranches, while at the same time offers for dedication three (3) new public trails and construction of a beach trail parking lot at the time that construction of the first new residence south of the highway is completed.<sup>2</sup> The trail dedications included with this project will **mitigate** cumulative impacts on recreation resulting from other projects, not contribute significantly or otherwise to those impacts.

One commenter suggested that smoke, particulates, and chemicals from emissions from new residences on the Ranches will alter micro-climates within the Ranches. There are many different micro-climates within this 1,800-acre property, but even at full buildout the homes will be so widely spaced that a suggestion that they would alter the micro-climates in which they are located is purely speculative and not based upon any evidence in the record.

Some commenters noted a concern about the visual/aesthetic impacts on trail users from chain link fence along the stretches of trail adjacent to orchards. Chain link fences are used universally for orchard perimeters because they are so effective at protecting them from poachers and vandalism. As stated above, the applicant is open to exploring alternative fence types as long as the orchards are protected. If the alternative fence type is not effective, the owner reserves the right to change the fence to chain link along the orchards. Other types of fencing are acceptable along the grassland parts of the vertical trail.

One commenter raised a concern that there hasn't been adequate analysis of unstable soils and landslide potential in the area north of Highway 101. In fact, numerous tests were performed and two reports were generated, particularly for Parcel 7 and the access road for Parcel 7. Those reports are in the administrative record. As a further safeguard, mitigation measure GEO-2 requires site-specific engineering geology/geotechnical reports and soils engineering studies for future residential development.

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<sup>2</sup> Mitigation measure TRANS 1 (FEIR, Page 4.11-10) misstates the timing for parking lot construction. The applicant is willing to construct the parking lot at the time of final occupancy clearance for the first new residence constructed south of the highway, not when the CDP is issued. This must be clarified. Of course, the County could construct the parking lot at its own expense if it chose to open the vertical trail earlier than occupancy of the first residence.

Several commenters asked how CC&R's could ensure continued agricultural operations on the Ranches. Others called for a mitigation measure for the handful of acres that one day will host residences. Not only have the Dohenys demonstrated their long-term commitment to successful and viable agriculture on these Ranches, but the operations themselves are profitable. The CC&R's that do not succeed in preserving a long-term agricultural cooperative operation are CC&R's with a very short term. At the end of that term, owners may have tired of the usual architectural and other limitations imposed upon them and elect not to renew the CC&R's. With the deletion of architectural controls, the agricultural operation defaults to the individual landowners, who may stay in cattle grazing or convert to another agricultural pursuit. This applicant has demonstrated the commitment to long-term agriculture by volunteering CC&R's that will remain in effect for a minimum of 50 years, automatically renewing each year unless a vote of 2/3 of the parcel ownership terminates them. Getting 2/3 of any group of owners to agree to anything is next to impossible so the initial 50-year term is likely to continue for many additional years. Hollister Ranch is a prime example of CC&R's that require parcel owners to make the lion's share of their land available to the cattle cooperative, which runs an efficient, high quality cattle operation. Only one (1) Hollister Ranch parcel owner has attempted to resist the CC&R's requirement for running cattle on their land and that owner has relented in the face of strong pressure from the Association.

Critics of the Alternatives analysis in the FEIR fail to acknowledge that this project provides vastly superior potential development sites for future residences, whenever they are constructed. No current regulations limit the footprint or location of residences on the lots as presently configured. The reconfiguration results in reduced potential visibility of future residences and confines the residential development to locations where they will not have significant impacts.

The FEIR mentions the likely presence of badger on the Ranches. While any badgers most probably are in the canyon area of Parcels 6 and 7 where no development envelope will be developed, the applicant proposes the following mitigation measure to address potential impacts to badgers:

"Prior to the start of grading for new residential construction, a County-approved biologist shall conduct a pre-construction survey for American badger dens. If badger dens are found in the grading and construction disturbance area, the biologist shall notify P&D and the following measures shall be implemented:

- a. The entrances to potential den sites shall be smoothed, including an area approximately one square meter in front of the entrance. Diatomaceous earth or other suitable substance shall be evenly spread over the smoothed areas. The biologist shall inspect the entrance for the next three mornings for badger tracks. If no tracks are observed, it can be assumed that the den is no longer occupied. Then, to assure no loss of badgers, the den shall be excavated completely and backfilled to prevent re-occupation.
- b. If tracks are observed, the biologist shall progressively block the entrance, using soil and other nearby materials (sticks, etc.) to discourage continued occupation. The entrance shall be rendered progressively more difficult to enter and exit over the following three days. Then, to assure no loss of badgers, the den shall be excavated by hand completely and backfilled to prevent re-occupation."

Some commenters criticized the FEIR's use of the Environmental Thresholds and Guidelines Manual for the analysis of potential project impacts upon agriculture. Such criticism is ill-founded and contrary to existing case law, which supports a public agency's use of an adopted methodology for determining the potential for environmental impacts, regardless of whether or not that methodology is adopted by ordinance or incorporated in to the Local Coastal Plan. When formulating thresholds of significance for

a CEQA analysis, agencies can use formally adopted thresholds, or they can formulate specialized thresholds for a certain project or rely on other ordinances, regulations, or plans (such as a general plan) adopted by the lead agency. (See CEQA Guideline § 15064.7; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 341; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612 [city properly based its determination that traffic increase would not be significant on standards in general plan.]; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 593 [design review process served to establish that project would not degrade visual character of the area despite contrary views of project opponents].) The commenters' criticism also fails to acknowledge that, when determining a project's contribution to potential cumulative impacts upon agriculture, the analysis must focus on the degree to which the project makes a cumulative contribution. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 173 [finding the number of consumers in the City of Manhattan Beach "is small enough that the increase in the regional solid waste stream caused by discarded paper bags [resulting from consumers switching from single-use plastic to single-use paper bags] would be insignificant."].) The California Supreme Court has found, as should be found here that "common sense" dictates a finding that where the contribution is minimal when compared to the total universe of the cumulative impact, the potential impact cannot be found to be significant. (*Id.* [finding that given the City of Manhattan Beach's small potential for impacts, "the cumulative effects of its ordinance would be negligible."].)

The Coastal Commission letter raises many of the same issues rejected by the County Board of Supervisors during the battle over the Land Use Development Code adoption in the Coastal Zone. The applicant disagrees with the Coastal Commission staff's position that issuance of a certificate of compliance constitutes creation of a new parcel. Under the Subdivision Map Act, a certificate of compliance is a ministerial act that simply acknowledges the prior existence of a parcel. A conditional certificate of compliance entitles the County to impose conditions upon a certificate of compliance that formally recognizes a pre-existing, not yet recognized parcel, which was not originally created by any fault of the present owner. The Coastal Commission staff's proposal that the FEIR must include analysis of a clustering alternative flies in the face of existing zoning law and the Local Coastal Plan. The agricultural zoning applicable to the project site does not allow for clustering and the County has no agricultural clustering ordinance, inside or outside the Coastal Zone.

Caltrans objects to the parking lot and vertical trail based upon the potential for the public using the existing at-grade crossing to turn left into the ranch entrance and adjacent parking lot. In its letter, County Parks suggests a potential safety issue from people using the trail north of the freeway attempting to run across the freeway to reach the vertical trail (a highly unlikely possibility given the higher potential for beach access via the northerly trail at its terminus at El Capitan State Beach or Refugio Beach). The applicant proposes two alternative mitigation measures to address the Caltrans concern about increased potential for collisions and County Parks' fear of pedestrians on the freeway:

1. The County shall post signs at the entrance/exit for the parking lot, advising the public that they are prohibited from turning left onto Highway 101 and warning that if there are repeated violations of this prohibition, the parking lot will be closed, either temporarily or permanently, at the County's discretion; or,
2. The County shall not open the parking lot and vertical trail unless and until the County acquires a public vehicular access to the parking lot on the south side of Highway 101 from the Dos Pueblos interchange.

The Cardno ENTRIX comment letter describes in detail on Page 2 how the development envelope on Parcel 2 can be relocated and conditioned in a manner that reduces its impacts to Class II, significant but mitigable. The applicant is agreeable to moving the residential portion of the envelope to the new location suggested by Alternative 3C, but cannot accept the complete abandonment of the lower portion of the development envelope as the applicant proposes it. Instead, the applicant proposes a cabana in

the southerly knob of the applicant's development envelope. The Cardno ENTRIX letter submitted with this letter provides ample support for this compromise.

One commenter states that the project description is flawed and suggests that "piece-mealing" is occurring because the FEIR doesn't include analysis of the precise design, grading quantities, location and layout of future residential development and the potential erosion and sedimentation resulting from grading and constructing the residences. Because Mrs. Doheny is completing this project for estate planning purposes, she has absolutely no design plans to offer to the County for environmental analysis. The FEIR cannot analyze that which is completely speculative. (*Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1362 [finding EIR for airport expansion did not need to include other anticipated projects at the airport because they were not shown to be a foreseeable consequence of the project under review]; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, ["when future development is unspecified and uncertain, the EIR is not required to include speculation about future environmental consequences of such development."].) In *Save Round Valley Alliance*, project opponents claimed that with the issuance of a tentative map and CC&Rs, it was reasonably foreseeable that buyers would build second units on their properties. The Court of Appeal rejected the notion, finding that "[a]lthough a conditional use permit can be sought for a second unit, there is no factual basis for believing that a future lot owner is likely to do so. Any conclusions about their intentions to build second units would therefore be pure speculation." (*Id.*)

#### **Potential Detail to Supplement Policy Analysis in FEIR**

In describing the project, the Policy Consistency Analysis (section 5.0 of the FEIR) at times references proposed development and other times references proposed development envelopes. It should be clear throughout that the project includes designation of development areas, but no development is proposed as part of the project, except for the water system, road improvements and Gato Creek bridge crossing. It also should be clear that the ultimate residential development envelopes will be limited to no more than 2 acres, regardless of the size of the designated development envelopes.

**Bluff Protection** – The analysis acknowledges a bluff setback for proposed Parcel 1 and states that the bluff setback does not apply to Parcel 2 given its location at the mouth of Gato Creek. The analysis should acknowledge that the proposed relocation of the residential site on Parcel 2 under Alternative 3C would also be set back a minimum of 150 feet from the bluff and would therefore be consistent with the policy.

**Environmentally Sensitive Habitat** – Development envelopes have been carefully sited to avoid impacts to sensitive resources and are setback 100 feet from ESH areas, except for Parcel 5 which has an existing residence proximate to existing ESH. The 5-acre development envelopes designated for most lots are designed to reserve flexibility for siting future improvements, with the ultimate building area being restricted to 2 contiguous acres, to avoid impacts to ESH and reserve maximum protection of resources. With the uncertainty as to when development will occur on the property and that the fact that environmental conditions change over time, maximum flexibility, not minimum flexibility, is the key to resource protection. Once a parcel owner is hemmed in, he or she has an absolute right to construct a home, regardless of the presence of sensitive habitat. The analysis states that "native vegetation would remain as part of the proposed project." This should be stated more clearly to say "native vegetation within the ESH will remain as part of the proposed project," except for temporary construction impacts relating to the Gato Creek bridge crossing and installation of a new waterline across Gato Creek, as noted in the analysis.

**Hillside/Watershed Protection** – The proposed project would involve limited grading activities on hillsides. The development envelopes have been located on relatively flat areas to minimize grading

and are out of view or minimally visible from public viewing places without grading modifications. There is limited hillside grading associated with the proposed access road serving Parcel 7. Grading for this road will be minimized to the greatest extent feasible and erosion and vegetation plans will ensure restoration of any temporary construction impacts. The analysis should be clarified to state that "the creation of new areas of disturbance" would be minimized.

**Historical and Archaeological Resources** – The analysis focuses on cultural sites, but also acknowledges the Rural Historic Landscape without a discussion of the siting of the Parcel 4 development envelope, which is sited amongst the cluster of historic buildings. Clustering of potential development within this area would be mitigated through height restrictions, Board of Architectural Review and State Guidelines for Historic Preservation. Alternative 3C, which relocates the development envelope on Parcel 4 to behind an existing knoll and at a greater distance from the historic structures, removes potential development from public view and preserves the Rural Historic Landscape in its existing condition.

**Visual Resources** – Extensive measures have been taken to locate proposed development envelopes outside of view corridors in locations that minimize potential visibility from Highway 101, and other public viewing areas, and preserve expansive unobstructed views of the ocean and mountains. Since no development is proposed as part of the project, the visual analysis used a 30,000 square foot block building to represent development in each envelope. Even though this square footage is unrealistic for the Gaviota Coast, the visual simulations effectively demonstrate that the resulting buildings, even on such a gross scale, would be barely visible due to careful siting and design standards. The project provides predictability in potential future development of the property by designating development areas outside of public viewing areas, while also protecting sensitive resources and agricultural resources.

**View Corridor Overlay** – Alternative 3C, which relocates the development envelope on Parcel 4 to behind an existing knoll, eliminates obstruction of views from public areas and preserves the Rural Historic Landscape in its current condition. As stated above, the development envelopes provide predictability in the future development of the property by designating development areas that do not obstruct public viewsheds of the ocean and mountains.

**Agricultural Preservation** – Residential development is limited to two acres to protect agricultural and sensitive resources on the property. The intention of the Doheny family, as described above, is to support a thriving historic agricultural operation, with cattle grazing and orchards, and to preserve, to the maximum extent feasible, the existing rural landscape in its current condition. Agriculture on the property will be governed by CC&Rs, which are proposed to have an initial life term of 50 years. Development envelopes have been sited so as to not interfere with the agricultural operation, including location of the public trails. Fencing, signage and limitations of use between dusk and dawn are essential measures to ensure that the property is protected from trespassing and poaching, as well as to ensure public safety from the agricultural operation.

**Wetlands** – Development envelopes have been carefully sited so as to avoid impacts to sensitive resources and are setback 100 feet from ESH areas, except for Parcel 5 which has an existing residence in proximity to existing ESH. To retain the maximum level of flexibility for future development on this parcel, the five acre development envelope should be reserved for flexibility for siting future improvements to avoid potential future impacts to ESH. Environmental conditions change over time, and this would allow for flexibility in response to these changing environmental conditions.

**Additional Comments on the FEIR and Mitigation Measures**

On page 4.2-2, it is noted that supplemental feeding is provided to the cattle during calving season. It should be clarified that the cattle would survive just fine without the supplemental feeding because the grazing land supports the herd needs. The supplemental feeding is provided as a management tool to enhance weight gain in calves, and because cows and calves experience less stress at calving time if the mothers receive supplemental feed early in the calves' life, which in turn contributes to higher survival and growth rates for the calves. Cattle ranchers constantly seek a balance between manageable calf size at birth (overly large calves result in birthing problems that can be fatal to cow and calf) and maximum weight gain for healthy, marketable calves.

On ES-32, mitigation measure WAT 2-5 requires a limit of disturbance area to be shown on the grading plans. Given that the grading plans will depict precisely what area is to be graded, and that the parcels for development are large, such a constraint is surplusage and inapplicable. Please remove this condition from WAT 2-5.

Mitigation measure CULT 5 proposes that future residential development within Lots 1, 2, 3, 4, and 5 will need to be reviewed by a "County-qualified" architectural historian contracted by the owner/applicant and that the report prepared by this historian will be subject to a third party peer review. First, the mitigation measure fails to define "County-qualified" versus the customary term, "County-approved." Applicants customarily are required to submit historic reports, prepared by County-approved architectural historians. We are unfamiliar with the term "County-qualified." This term is also used in CULT 2-3. Second, having first required the applicant to select a historian on the County-approved list, requiring that a third party perform peer review on the approved historian's report is onerous and unjustified. This is particularly so because the development envelopes have been located out of public view so as not to obstruct the rural historic landscape viewshed as seen from Highway 101 and the FEIR proposes relocation of the development envelope on Lot 4 away from the cluster of historic structures, as shown on Alternative 3C. The applicant doesn't oppose this relocation. The peer review requirement should be deleted.

On page 4.10-6, the FEIR discusses the surf point at Edwards Point and the unauthorized access through the ranch to access the point. It should also be noted that access to the Point requires unauthorized and unsafe trespassing over and along the railroad tracks.

On page 4.12-18, the FEIR states that Gato Well #1 and #2 are used as supplemental water sources to the existing reservoir and creek diversions during drought years. This is incorrect. These wells are non-operational and so there is no plan to use them as back-up wells.

The proposed language for AES-5 related to fencing type and design along the trail is missing from page ES-9. Please revise AES-5 per our comments.

On page ES-20 please clarify that rodenticides are not allowed outside of actively farmed and grazed areas by incorporating the following revision: "Rodenticides, pesticides, and other chemical and/or mechanical control of insects and rodents shall be prohibited outside of development envelopes and outside actively farmed and grazed areas as required..." "

Varying numbers were provided in the FEIR regarding the number of acres that ultimately will be taken out of agriculture related to potential development in the 2-acre development envelopes, construction of the roads and construction of the waterline. Please confirm a single calculation and revise throughout.



Conclusion

Mrs. Doheny has completed the processing of this application to carry out Timothy Doheny's dream for his beloved ranch. The dream not only conforms with County and Coastal Act policies, but it provides a mechanism for preserving these Ranches as a single operational entity for decades into the future. By ensuring that the agricultural operations continue and that all parcels north of the railroad are no smaller than 100 acres in size, the Dohenys have made it possible for the owners of these parcels to be eligible for inclusion in the Agricultural Preserve Program. They also have protected Gato Canyon, which provides such a unique and rich pristine habitat, by incorporating the Canyon into one parcel with the only potential residential site being above the canyon where occupants will not disturb the creeks and its sensitive plant and animal species.

The public wins as well. In an area where ranchers are reluctant to allow the public on their ranches at all, the Dohenys offer three trail segments as alternative "braids" to the California Coastal Trail. The trail north of Highway 101 provides incredible vistas and its topography and width invites all users, not just experienced hikers, to enjoy it.

There is no rational basis for denying this project or for imposing conditions that impose regulations on the Dohenys that are not justified by environmental conditions or imposed upon other applicants. Of equal importance – without the approval of this project, public trails simply won't be granted and the many conditions and project restrictions that the applicant is agreeable to accepting simply won't be applied to this property. The Dohenys cannot agree to some conditions, listed in the attachments to this letter, particularly the requirement that they move their Parcel 2 building site so far from the ocean and not even be allowed to have a cabana for their personal use on the existing flat land near Edwards Point. They consider it unfair for them to welcome the public to their property while not being able to enjoy a small structure closer to the ocean. The cabana will have no adverse environmental impacts, as described in the Cardno ENTRIX letter, so we urge the Commission to modify Option 3C to allow for the cabana.

Other proposed changes to findings and conditions and an update of the projects that truly are cumulative are set forth in the attachments to this letter.

Sincerely,



Susan F. Petrovich

Attachments    Letter from Cardno ENTRIX dated December 13, 2012  
                     Requested Revisions to Conditions of Approval  
                     Requested Revisions to Planning Commission Findings  
                     Comments on Cumulative Project List for Gaviota (Table 3-1, FEIR)



13 January 2012

Cardno ENTRIX

Santa Barbara County Planning Commission  
123 Anapamu Street  
Santa Barbara, CA 93101

201 N. Calle Cesar Chavez  
Suite 203  
Santa Barbara, CA 93103  
USA

**Subject: Las Varas Ranch Project**

Phone 805 962 7679  
Toll-free 800 368 7511  
Fax 805 963 0412  
[www.cardno.com](http://www.cardno.com)

Dear Honorable Commissioners:

[www.cardnoentrix.com](http://www.cardnoentrix.com)

The following is my independent assessment of biological effects associated with:

1. Revisions of the Lot 2 Development Envelope (DE), and
2. A coastal trail south of U.S. Highway 101 as proposed by certain trail users.

The potential for project effects on the following species are also assessed:

1. Sandy beach tiger beetle (*Cicindela hirticollis gravida*)
2. Pinnacles optioservus riffle beetle (*Optiocervus canus*)
3. Ringtail (*Bassariscus astutus*)
4. Benthic macroinvertebrates in streams

These analyses are based on information in the Final EIR (FEIR) project description and biological resources section as well as prior site visits to Gato Creek south of U.S. Highway 101 and DE#2. No site visits or field surveys were conducted for the trail analysis because of our prior knowledge of the property from multiple site visits. Literature information was used for the three species listed above. Effects on benthic macroinvertebrates are based on experience sampling in streams along the Santa Barbara coastline and preparation of numerous CEQA documents.

**Lot 2 Revisions**

Potential changes in the Lot 2 DE include moving the main DE up onto the terrace to the west of the applicant-proposed location analyzed in the FEIR. This relocation would avoid the potential for impacts to special-status species in Gato Creek and interference with westward movement of such species from the creek (e.g., California red-legged frog and southwestern pond turtle). The applicant could still have a small structure, such as cabana, near the beach on the west side of Gato Creek with no impacts to special-status species in Gato Creek if the following measures are implemented.

- Access to the cabana from the residence would be by unpaved path suitable for light vehicles such as a golf cart.

- The access path would be located so that native grassland on the low terrace is not affected. It would follow the existing, already disturbed road in this area (see attached figure).
- Path would have no curbs or gutters but could have low "water bars" to distribute runoff so that it does not concentrate and cause erosion.
- Any utility connections to the cabana would be buried under the path.
- The path would be wide enough for emergency vehicle access to the vicinity of Edwards Point, if needed.

### Coastal Trail

A lateral (east-west) trail easement located on the north side of U.S. Highway 101, as well as a vertical (north-south) easement on the west side of Las Varas Creek, are analyzed in the FEIR (Figure 2-3). Certain trail users have proposed a lateral trail, different from that analyzed in the FEIR, on the south side of the highway. This trail would extend along the north side of the railroad from the eastern property boundary to Gato Creek where it would cross the railroad tracks at grade and then across the Gato Creek near its mouth, cross the terrace to Drainage 4, turn north to cross the railroad tracks again at grade, and then go westward to the western property boundary. This proposed trail alignment has the potential for a number of adverse effects on biological resources. Assumptions made in the following analysis include:

- Trail proposed by certain trail users would be fenced on at least one side, except at the Gato Creek crossing. Fencing along orchards would be 6-foot chain link while fences in grazing areas would be approximately 4 feet high and of a woven-wire type to exclude dogs.
- Trail would be in existing ranch roads or access tracks where feasible.
- Gato Creek crossing would be at grade (not bridged).
- Drainages 1 and 2 crossings would be bridged.

Based on Figure 4.4-1 from the FEIR and 2010 aerial photographs on Google Earth, the trail would pass through areas of California Sagebrush Scrub in three locations between Las Varas Creek and Drainage 1. This includes up a steep slope at the western side of the orchard near Las Varas Creek. Then it would pass through Eucalyptus Woodland along Drainage 1 that is monarch butterfly wintering habitat (FEIR Figure 4.4-6). This drainage is deeply incised and would need to be bridged as would the crossing of Drainage 2, also in Eucalyptus Woodland. The Gato Creek crossing would be through Lemonadeberry Scrub and the stream/lagoon bed. On the west side of Gato Creek, it passes through or immediately adjacent to four mapped areas of native grassland, along an existing ranch road, and after crossing the railroad tracks goes through Eucalyptus Woodland at Drainage 4 that is monarch butterfly autumnal habitat. Near the western property boundary, the trail would pass through more California Sagebrush Scrub and possibly Coast Live Oak Woodland or Arroyo Willow Thickets/Seeps in an incised tributary to Las Llagas Creek. The latter area is likely a wetland. Bridging the deeply incised Drainage 1 could result in removal of several eucalyptus trees, affecting the monarch butterfly habitat.

The trail would also be constructed in areas mapped as California Annual Grassland. It is not clear from the methods described in the FEIR if all of these grasslands were visually surveyed or if some of the areas were mapped using aerial photographs with no ground-truthing. Therefore, it is possible that the trail may result in loss of native grassland at some locations.

The crossing of Gato Creek at the lagoon has the potential to affect California red-legged frog individuals and habitat and steelhead critical habitat. Gato Creek lagoon has a steep bank on the west side that would need to be cut/filled for trail installation with the potential for erosion and sediment runoff to the creek, especially if the trail is

not paved or regularly maintained. Such runoff could adversely affect the aquatic habitat through sediment deposition, loss of aquatic invertebrates, and turbidity.

An at-grade trail crossing at Gato Creek with no fence would allow people, bicycles, horses, and pets (primarily dogs) to trample the streambed and banks. If the trail along the east and west sides of the creek is not fenced on the creek side, it will allow human and pet access into the upstream riparian corridor and streambed with adverse effects on riparian understory plants (and soil stability), creek banks, and streambed. Habitat degradation would affect California red-legged frog habitat and steelhead critical habitat. Human, horse, and pet waste as well as trash would likely pollute the stream. Increased human and pet activity in the riparian corridor also could adversely affect nesting birds. A trail that is not fenced on both sides would allow human access throughout much of the coastal terrace south of the railroad, including native grasslands on the terrace and along the west side of Gato Creek as well as to the creek lagoon.

In addition, allowing access to the streambed increases the potential for introduction of invasive species such as weeds, New Zealand mudsnails, and chytrid fungus (*Batrachochytrium dendrobatidis*) through mud from contaminated locations on footwear, bicycle tires, dog fur, and horse hooves. Chytrid fungus is known to adversely affect amphibians such as the California red-legged frog, and the mudsnails affect the ecology of the stream.

As noted above, we did not survey the trail route, and its exact location is not known. Therefore, impacts could be greater or less than described here. However, it is likely that impacts would be significant for biological resources.

### **Project Effects on Species**

The following analysis is based on literature information for the species and expertise of Dr. Thompson.

#### ***Sandy Beach Tiger Beetle***

The sandy beach tiger beetle is not state or federally listed as threatened or endangered (NatureServe 2011). It inhabits moist sandy areas above the high tide line, such as in swales behind sand dunes. This habitat does not occur along the Las Varas Ranch coastline as high tides reach the base of the bluffs. Thus, the project would have no effects on this species.

#### ***Pinnacles Optioservus Riffle Beetle***

The Pinnacles optioservus riffle beetle is not state or federally listed as threatened or endangered (USFWS 2012, NatureServe 2011). It is endemic to Chalone Creek in Pinnacles National Monument (NPS 2008) and is found in Monterey and San Benito counties (NatureServe 2011). The species prefers rocky streambeds.

This species is not likely to be present in Gato Creek since this is outside the known range of the species. Furthermore, proposed project disturbances in or near the creek would not affect suitable habitat, and no impacts would occur.

#### ***Ringtail***

The ringtail is a fully protected species in California (CDFG 2012). Preferred habitat is rocky areas within 0.6 mi of permanent water and includes riparian canyons (Ahlborn 2005, Arizona-Sonora Desert Museum 2008). Ringtails grow to about 24 inches in total length, have a long tail with alternating black and white rings, and are primarily nocturnal (Arizona-Sonora Desert Museum 2008).

Ringtails have the potential to use Gato Canyon, particularly at higher elevations where rocky habitat is present. The proposed project would not adversely affect any habitat for this species, and increased human activity in the riparian canyon at night is unlikely. Therefore, the project would have no impacts on this species.

### ***Benthic Macroinvertebrates***

A variety of benthic (bottom dwelling) invertebrates are present in coastal streams and can be found burrowed into soft sediments as well as on or under rocks. Other invertebrates use the water column and water surface. The species composition and abundance of these invertebrates depends on factors such as substrate type (silt/sand, gravel to boulders, or bedrock), water regime (duration of flow over a year), water depth and velocity, water quality (e.g., temperature, salinity, pH, pollutants), and presence or absence of aquatic plants (submerged and emergent). Aquatic invertebrates may spend their entire life cycle in the water or only pre-adult life stages. Common taxa present include dragonfly and damselfly nymphs, caddisfly larvae, black fly larvae, water boatmen, leaches, mayfly and stonefly nymphs, water striders, snails, and a number of aquatic beetles.

Effects of the proposed project on aquatic invertebrates are expected to be negligible. Disturbances in the creek bed for removal of the at-grade road crossing would temporarily affect a small area, and replacement of that crossing with a bridge would improve habitat for invertebrates. Measures to prevent runoff of sediment to drainages from soil disturbance during construction within the DEs would minimize the potential for indirect effects on invertebrate habitat. Thus, impacts would be less than significant.

### **References**

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Sincerely,



Rosemary Thompson, Ph.D.  
Senior Consultant  
for Cardno ENTRIX  
Direct Line 805 979 9413  
Email: [rosemary.thompson@cardno.com](mailto:rosemary.thompson@cardno.com)



File: letter to SB Planning Commis-Las Varas Rnch DE#2 & Trail.docx

## REQUESTED REVISIONS TO CONDITIONS OF APPROVAL LAS VARAS RANCH PROJECT

**PROJECT DESCRIPTION – LOT RECONFIGURATION** – The applicant does not concur with the recommendation that the Parcel 5 development envelope be reduced in size. We request that the fourth paragraph be modified to delete a reference to reducing this development envelope. As noted in our letter, reducing the development envelope constrains flexibility in addressing environmental conditions as they exist at some future unknown date when someone may want to modify or replace the Dohenys' existing home. Because environmental conditions change, maximum flexibility to shift the house site should be retained so those conditions can be addressed as they exist at the time. Forcing the owner to build toward the coast deprives them of ocean views that they otherwise should be allowed to enjoy because the house itself would block the view from the existing windows. The structure already has a height limit so preventing someone from designing a house on an east-west axis to maximize the view is punitive when it can be designed to avoid sensitive resources.

### **PUBLIC TRAIL EASEMENTS**

Paragraph 2 – there seems to be confusion as to the ownership of the former Calle Real as it passes through the portion of the ranch north of Highway 101. This route now is owned by the property owner, so references to Calle Real more accurately should be to the route of the former Calle Real.

Paragraph 4 – The first sentence should read: "In addition to dedicating these easements to the County, the project also includes construction of the parking lot (which would have a gravel surface and include a bicycle rack), which would occur concurrently with issuance of final occupancy clearance for the first residential development south of Highway 101. The third and fourth sentences should be revised to refer to "fencing is proposed by the applicant along the orchard and grazing sides of both the vertical and lateral trail easements. Where protecting orchards, the fence is proposed to be approximately six feet high of a chain link material, although the property owner is willing to try a different fencing material initially, reserving the right to install chain link or other material that will exclude humans and their animals from the orchards. Where protecting grazing areas, the fence is proposed to be approximately 4 1/2-foot high wire (likely a combination of hog wire, deer fencing, and barbed wire)." The remainder of the paragraph is accurate.

### **MITIGATION MEASURES FROM 10EIR-00000-00005**

**6. AES 5 Fencing** – This condition is not acceptable. It does not provide sufficient capacity on the part of the landowner to protect the agricultural operations from trail users and their animals. Poaching, vandalism, theft, and trespass are devastating to agricultural operations. Orchard fruit is a temptation to most people. The property owner is willing to work with an alternative, less urban-appearing, fencing on an experimental basis, but reserves the right to install chain link or any other necessary fencing to exclude people and animals from the orchards. In the grazing areas, the property owner is willing to try fencing that is approximately 4 1/2 feet high, likely a combination of hog wire, deer fencing, and barbed wire as necessary to keep people and dogs outside and livestock inside the fencing. As written, the mitigation measure results in trail impacts to agriculture that are completely unacceptable and contrary to Coastal Act and County policies for the protection and preservation of agriculture. The decision as to what is necessary cannot be left to Planning & Development – it must be made by the property owner.

**17. BIO 5 Buffer from Sensitive Habitat** – the condition is appropriate, but not the timing. It makes no sense to map sensitive habitat boundaries prior to map recordation because these areas shift from time to time. The project doesn't include construction of any residences and no one can predict when a residence will be constructed on any of these lots. Timing for mapping the sensitive areas and depicting the setback should be at the time of CDP or LUP application. Because the building area will move around within the designated development envelope, the then-applicant should be designing the home based upon field conditions then present, not present-day field conditions. The required Exhibit Map not only could be useless, but it could be less protective of sensitive resources than necessary. It also creates a

bureaucratic nightmare if the sensitive resources have shifted away from the building envelope but there is an Exhibit Map, recorded as part of the Parcel Map, that shows the former location. That requires a map modification, which is an expensive undertaking.

**18. BIO 6-1** – the same objection applies to this condition as for BIO 5.

**20. BIO 7-1** -- Requiring Planning & Development review of every landscape plan for a private residence is excessive and unduly burdensome, especially where the development envelopes already have been sited to avoid sensitive resources. We suggest that the approach proposed by the GavPAC be adopted – that the residential envelopes shall not be planted with any vegetation included on the County Agricultural Commissioner's Noxious & Invasive Weed list. This list is modified on a regular basis as new species are imported so it will be current when any parcel is developed. Landscape plans are reviewed by the BAR when they review the residential design so they can enforce this provision, but we propose a more blanket provision that prohibits these invasive species at any time, not just when the landscape plan is approved.

**24. BIO 12-1** –

b. Fencing – in the first sentence, change "cattle operation" to "livestock operations" because the ranch also has horses and may change to additional livestock over time. The last sentence should be deleted entirely or commence with the words, "Construction of non-agricultural". It may be necessary to use wood fencing or similar "non-climbable" material to exclude persistent trespassers from the orchards. Otherwise, the trails will cause significant, unmitigable impacts to the agricultural operations.

c. Rodenticides prohibited. Please reword the first sentence to read as follows: "Rodenticides, pesticides, and other chemical and/or mechanical control of insects and rodents shall be prohibited outside of development envelopes and outside farmed and grazed areas as required in order to avoid impacts to prey populations on which raptors and carnivores depend for food."

**25. BIO 12-2.a.** – again, we object to the reduction in development envelope size except where specifically justified by environmental conditions. This blanket reduction cannot be justified on any biological grounds now that the development envelopes have been relocated.

**34. CULT 2-2** – this broad prohibition on ground disturbance is unjustified. Parcel 3 is large and the cultural resource area is very small. This condition needs to be reduced in scope to meet the objectives of resource protection without unnecessarily restricting the landowner's rights and even preventing expansion of the orchard on the property.

**57. WAT 2-5 Grading Limits** – the imposition of a "grading limit" designation on the grading plans is excessive and unwarranted for such large permitted building sites. Why is this applicant being singled out for this additional restriction?

**74. Rules-12 CUP Expiration** – we request that the CUP for the private water system either be for an initial term of 10 years, or be for as long as possible with a provision allowing the owner to request a 5-year extension. The owner has no plans for residential construction on these lots and would not construct the private water system unless and until those plans changed. Otherwise, the system would sit idle and deteriorate over time.



## REQUESTED CHANGES TO FINDINGS LAS VARAS RANCH PROJECT

The applicant concurs with the findings, but requests that the following changes be made:

### CEQA FINDINGS

1.4 – because the applicant accepts Option 3C solely if it includes the right to construct a modest cabana in the lower “knob” of the applicant-proposed development envelope, we request that the last two sentences of this finding include a reference to Option 3C as modified to allow for the cabana with cart path leading to it from the relocated residential development envelope.

### FINDINGS THAT CERTAIN IMPACTS ARE MITIGATED TO INSIGNIFICANCE BY CONDITIONS OF APPROVAL

*Biological Resources* – Requiring review of every landscape plan for a private residence is excessive and unduly burdensome (subsection 5 of the finding). Instead, we suggest that the approach proposed by the GavPAC be adopted – that the residential envelopes may not be planted with any vegetation included on the County Agricultural Commissioner’s Noxious & Invasive Weed list. This list is modified on a regular basis as new species are imported so it will be current when any parcel is developed.

*Cultural Resources* – Please clarify the finding regarding “prohibiting ground disturbance outside of the Parcel 3 development envelope.” This is not what the archaeologist recommended. He recommended relocating the shared water pipeline route to avoid the area where cultural deposits were discovered. Other areas of Parcel 3 are acceptable for the access driveway, utilities, etc.

*Land Use* – The mitigation measures noted should include acknowledgment that, with the height limits and development envelope locations, future residential structures will be almost entirely invisible from public viewing areas.

*Recreation* – The finding referencing future residential development having the potential for degrading the experience of the nearby recreating public should be modified to acknowledge that the recreating public would not have access to be nearby the development envelopes were it not for the property owner’s voluntary offer of trail dedications.

*Transportation* – Additional mitigation for traffic at the at-grade crossing is installation of signage at the trailhead parking lot that prohibits drivers not to cross the freeway at the median, including the potential for closing the parking lot if drivers violate the prohibition, resulting in a traffic hazard.

### 1.6 FINDINGS THAT IDENTIFIED PROJECT ALTERNATIVES OR MITIGATION MEASURES ARE NOT FEASIBLE

Please add at the end of the final sentence in this section the following: “and Class II impacts have been mitigated to the extent feasible.”

### 2.2 CUP FINDINGS

**A.7 That in designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area** – Please add the following sentence: “The components of the shared water system will not be visible from public viewing areas.”

**B.7. Within Rural areas as designated on the Comprehensive Plan maps, the proposed use will be compatible with and subordinate to the rural and scenic character of the area** -- Please add the

following sentence: "The components of the shared water system will not be visible from public viewing areas."

**2.3 LOT LINE ADJUSTMENT FINDINGS (COUNTY CODE CHAPTER 21, ARTICLE II, AND COUNTY LUDC)**

**A.3** Change the 6th sentence in the text to read: "These parcels are located within the Goleta Water District's service boundary, so water service could be obtained from Goleta Water District as well as from the proposed private water system."

**2.4 TENTATIVE MAP FINDINGS (COUNTY CODE CHAPTER 21)**

**A.3** Add the following to the text: "The access roads to the designated development envelope on Parcel 7 will follow the route of the existing ranch road. The potential development envelopes on Parcel 6 could be accessed either from the existing access road to the adjacent avocado orchard or from other available routes following the topography."

**Review of Cumulative Projects (Per Table 3-1 of Las Varas Ranch FEIR)**

Map Key	Project Name/Address	Description	Status	Comments
1	Ballantyne Single Family Residence – 500 Farren Road, one mile west of Goleta and one-third mile north of U.S. Highway 101	<ul style="list-style-type: none"> <li>• Approximately 17 acres</li> <li>• 13,333 sf dwelling (includes 2,112 sf basement and 1,798 sf garage), 800 sf guest house with 568 sf garage, 1,200 sf barn, municipal waterline and accessory structures</li> </ul>	<ul style="list-style-type: none"> <li>• Staff denied project June 2006; inconsistent with Visual Resources Policy 2. Applicant appealed decision.</li> <li>• Planning Commission approved project November 2006. Gaviota Coast Conservancy appealed decision.</li> <li>• Board of Supervisors hearing June 2007; Board determined project was subject to CEQA.</li> <li>• Board of Supervisors denied appeal, adopted Mitigated Negative Declaration and approved project July 2008.</li> <li>• Superior Court order that requires preparation of EIR, April 2009.</li> <li>• Application closed.</li> </ul>	Application withdrawn July 2010.  <b>NOT A CUMULATIVE PROJECT.</b>
2	Bean Blossom Lot H Single Family Residence – 14200 Calle Real, one mile west of Refugio State Beach and north of and adjacent to U.S. Highway 101	<ul style="list-style-type: none"> <li>• Approximately 106 acres</li> <li>• 13,844 sf dwelling (includes 1,012 s.f. garage), 866 sf guest house, 582 sf cabana and accessory structures, including pool</li> </ul>	<ul style="list-style-type: none"> <li>• Approved (July 2006)</li> <li>• Coastal Development Permit issued January 2008</li> <li>• Grading Permit issued in July 2009.</li> <li>• Building Permit issued.</li> <li>• Project nearing completion.</li> </ul>	
3	Bean Blossom Lot X Single Family Residence – 14000 Calle Real, one mile west of Refugio State Beach and north of and adjacent to U.S. Highway 101	<ul style="list-style-type: none"> <li>• Approximately 287 acres</li> <li>• 17,605 sf dwelling (includes 4,895 sf basement and underground garage), 1,339 sf guest house and</li> </ul>	<ul style="list-style-type: none"> <li>• Project Approved August 2010.</li> <li>• Coastal Development Permit issued August 2010.</li> <li>• Grading Permit issued February 2011.</li> <li>• Building Permit issued April 2011.</li> <li>• Project under construction.</li> </ul>	

			accessory structures including pool and driveway of approximately 4,200 linear feet (Statistics are gross floor area.)		
4	BP10 Trust Planner Consultation (El Capitan Ranch) – North of and adjacent to U.S. Highway 101, one mile east of El Capitan State Beach (*Note: project closed – new application named Zacara Ranch in process)	<ul style="list-style-type: none"> <li>Approximately 202 acres</li> <li>Planner consultation to identify the permits required to authorize existing, unpermitted development</li> </ul>	<ul style="list-style-type: none"> <li>Project closed</li> <li>New owner submitted Development Plan and CUP in August 2010 for farm employee housing to support private polo training and breeding facility</li> <li>New application deemed incomplete in November 2011.</li> </ul>		
5	Dos Pueblos Naples Residential Development Pre-Application (Makar) – Within Naples Townsite, south of U.S. Highway 101 on the western edge of Santa Barbara Ranch Project	<ul style="list-style-type: none"> <li>Approximately 63 acres</li> <li>Pre-application to merge 25 antiquated lots into 10 new lots and construct a single-family dwelling on each lot</li> </ul>	<ul style="list-style-type: none"> <li>Complete (September 2005)</li> <li>Pre-application meeting and follow-up letter complete. No pending application.</li> </ul>	No activity since pre-app in 2005. <b>NOT A CUMULATIVE PROJECT.</b>	
6	Eagle Canyon Ranch Lot Line Adjustment (Parsons) – North of U.S. Highway 101, approximately one-half mile west of Bacara Resort	<ul style="list-style-type: none"> <li>Approximately 1,060 acres</li> <li>Merge seven existing lots into four new lots and establish a building envelope for a new dwelling on each lot</li> </ul>	<ul style="list-style-type: none"> <li>Pending</li> <li>Application incomplete since March 2005</li> <li>Resubmittal filed September 2009 and deemed incomplete in October 2009.</li> </ul>	P&D sent intent to close letter 12/8/11 with submittal deadline of 12/23/11. <b>NOT A CUMULATIVE PROJECT.</b>	
7	El Capitan Canyon Campground Expansion (Area F) – Eight miles west of Goleta, immediately north of	<ul style="list-style-type: none"> <li>Approximately 196 acres</li> <li>Amendment to 01CUP-00000-00096 to relocate</li> </ul>	<ul style="list-style-type: none"> <li>Project approved May 2009.</li> <li>Coastal Development Permit for kitchen addition issued May 2009.</li> <li>Building Permit for kitchen addition issued September 2010, not yet</li> </ul>	Project is substantially smaller than originally proposed. Presently includes relocation of existing campsites rather than addition of 40 campsites and 382 sf storage area rather than 5716 sf	

	U.S. Highway 101 and El Capitan State Beach	campsites in Area F and expand kitchen storage area by 382 s.f.	<ul style="list-style-type: none"> <li>• Conditional Use Permit Amendment approved November 2010.</li> <li>• Coastal Development Permit issued September 2011.</li> </ul>	service building.
8	Gaviota Holdings Habitat Restoration – South of and adjacent to U.S. Highway 101, west of and adjacent to Bacara Resort	<ul style="list-style-type: none"> <li>• Approximately 60 acres</li> <li>• Application for a Coastal Development Permit to implement a habitat restoration plan. Application submitted to help mitigate the impacts of unpermitted removal of 7.45 acres of eucalyptus trees, coastal sage shrub, native grass and nonnative vegetation.</li> </ul>	<ul style="list-style-type: none"> <li>• Complete (October 2011).</li> <li>• Environmental review in process.</li> </ul>	
9	Gaviota Marine and Oil Storage Terminal Demolition and Rezone – 16899 U.S. Highway 101, approximately one mile east of Gaviota State Park	<ul style="list-style-type: none"> <li>• Approximately 42 acres</li> <li>• Operations ceased permanently in fall 2004. Application for demolition and reclamation Permit for oil facilities.</li> <li>• County-initiated revision to land use and zone district designations from Coastal-Dependent Industry to Recreation</li> </ul>	<ul style="list-style-type: none"> <li>• Approved (July 2008)/ In process</li> <li>• Director approved demolition and reclamation July 2008</li> <li>• Tanks and other aboveground facilities were removed in September 2009.</li> <li>• Revision to land use and zone district designations suspended pending additional information</li> </ul>	Remediation studies and plan to be prepared.
10	Gaviota State Park	<ul style="list-style-type: none"> <li>• Approximately</li> </ul>	<ul style="list-style-type: none"> <li>• In process</li> </ul>	Applications withdrawn April 2011

<p>Backcountry Roads Repair – Within Gaviota State Park west of U.S. Highway 101</p>	<p>1,235 acres</p> <ul style="list-style-type: none"> <li>• Regrade and repair approximately seven 7 miles of existing backcountry dirt roads with seven stream crossings</li> </ul>	<p>Application incomplete since August 2008</p>	<p>(08DVP-00026/08CDP-00184). <b>NOT A CUMULATIVE PROJECT.</b></p>
<p>11 Hart Farm Employee Dwelling – 14610 Terra Vista Drive, immediately south of Tajiguas Landfill</p>	<ul style="list-style-type: none"> <li>• Approximately 20 acres</li> <li>• 1,600 sf farm employee dwelling</li> </ul>	<ul style="list-style-type: none"> <li>• Approved (June 2007)</li> <li>• Final Grading Clearance approved March 2011.</li> <li>• Building Permit issued January 2008, withdrawn April 2010.</li> </ul>	<p>Per online permit status notes, owner is selling property and does not intend to construct employee dwelling. CDP issued in 2007 appears to have expired. <b>NOT A CUMULATIVE PROJECT.</b></p>
<p>12 Hart Single Family Residence – 14640 Terra Vista Drive, immediately south of Tajiguas Landfill</p>	<ul style="list-style-type: none"> <li>• Approximately 24 acres</li> <li>• 4,885 sf dwelling (includes 840 sf attached garage), 797 sf guest house</li> </ul>	<ul style="list-style-type: none"> <li>• Approved (April 2005)</li> <li>• Building and Grading Permits for house expired April 2011.</li> <li>• Grading Permit for access drive issued September 2007, last inspection October 2007.</li> <li>• Building Permit for guesthouse and garage issued October 2007, last inspection June 2009.</li> </ul>	<p>Building permit for house expired April 2011. Last inspection on guesthouse/garage Building Permit June 2009, likely expired. CDP issued May 2005, likely expired. <b>NOT A CUMULATIVE PROJECT.</b></p>
<p>13 Laralde Single Family Residence – 2169 Refugio Road, 4 miles north of U.S. Highway 101 and Refugio State Beach</p>	<ul style="list-style-type: none"> <li>• Approximately 22 acres</li> <li>• 2,914 sf dwelling, cabana, pool, guesthouse/recreati on area/carport and accessory structures totaling approximately 6,700 sf of development</li> </ul>	<ul style="list-style-type: none"> <li>• Approved (August 2007)</li> <li>• Grading Permit issued December 2008</li> <li>• Grading in process</li> <li>• Building Permit issued September 2010.</li> <li>• Construction in process.</li> </ul>	<p>Recorded 4 years ago. <b>NOT A CUMULATIVE PROJECT.</b></p>
<p>14 Melliar-Smith/Moser Lot Line Adjustment and Consistency Rezone –</p>	<ul style="list-style-type: none"> <li>• Approximately 64 acres</li> <li>• Reconfigure two</li> </ul>	<ul style="list-style-type: none"> <li>• Approved (July 2008)</li> <li>• Planning Commission approved February 2008</li> </ul>	<p>Recorded 4 years ago. <b>NOT A CUMULATIVE PROJECT.</b></p>

	<p>North of U.S. Highway 101 and Refugio State Beach, 11 miles west of Goleta</p>	<p>existing lots (20 and 44 acres). One lot includes a dwelling. Applicant proposed a building envelope for one new dwelling on the second lot. Consistency rezone from Ordinance 661 to Land Use and Development Code.</p>	<ul style="list-style-type: none"> <li>• Board of Supervisors approved June 2008</li> <li>• Final Map Clearance completed September 2008</li> </ul>	
15	<p>Morehart Land Company – Within Naples Townsite, south of U.S. Highway 101 on the western edge of Santa Barbara Ranch Project</p>	<ul style="list-style-type: none"> <li>• Approximately 14 acres Merge 12 antiquated lots into nine new lots and construct eight new single-family dwellings</li> </ul>	<ul style="list-style-type: none"> <li>• Pending</li> <li>• Incomplete application since March 2005</li> </ul>	<p>Application closed September 2009. <b>NOT A CUMULATIVE PROJECT.</b></p>
16	<p>Paradiso del Mare Inland Estate (Makar) – South of and adjacent to U.S. Highway 101, one-half mile west of Bacara Resort</p>	<ul style="list-style-type: none"> <li>• Approximately 78 acres</li> <li>• 9,436 sf dwelling (including 1,095 sf basement) with 792 sf detached garage, 280 sf studio and 926 sf guest house with 293 sf garage</li> </ul>	<ul style="list-style-type: none"> <li>• In process</li> <li>• Application deemed complete August 2007</li> <li>• Environmental Impact Report in process</li> </ul>	
17	<p>Paradiso del Mare Ocean Estate (Makar) – South of U.S. Highway 101 and Union Pacific Railroad, one-half mile west of Bacara Resort</p>	<ul style="list-style-type: none"> <li>• Approximately 65 acres</li> <li>• 6,505 sf dwelling (including 671 sf basement) with 680 sf attached garage, 280 sf gym, 861 sf guest house and 506 sf garage</li> </ul>	<ul style="list-style-type: none"> <li>• In process</li> <li>• Application deemed complete August 2007</li> <li>• Environmental Impact Report in process</li> </ul>	
18	<p>Rancho Tajiguas Lot Line Adjustment – 14000 Calle Real, one</p>	<ul style="list-style-type: none"> <li>• Approximately 1,545 acres</li> <li>• Lot line adjustment</li> </ul>	<ul style="list-style-type: none"> <li>• Pending</li> <li>• Application incomplete since December 2003</li> </ul>	<p>Application withdrawn May 2009. <b>NOT A CUMULATIVE PROJECT.</b></p>

19	<p>mile west of Refugio State Beach and north of U.S. Highway 101</p> <p>Santa Barbara Ranch Project – Santa Barbara and Dos Pueblos Ranches, north and south of U.S. Highway 101, two miles west of Goleta</p>	<p>for a total of four lots for four future dwellings</p> <ul style="list-style-type: none"> <li>72 new single-family dwellings on Dos Pueblos and Santa Barbara Ranches totaling 3,254 acres.</li> <li>Includes an equestrian center, agricultural support facilities, a worker duplex, public recreational amenities and creation of conservation easements for permanent protection of open space and agriculture.</li> </ul>	<ul style="list-style-type: none"> <li>Processing suspended at applicant's request since August 2004</li> <li>In process</li> <li>Proposed Final Environmental Impact Report complete</li> <li>Project Approved by Board of Supervisors October 2008 and made further modifications through October 2009</li> <li>Coastal portion of project currently in process before the California Coastal Commission</li> <li>Litigation pending for entire project</li> </ul>	
20	<p>Simon Single Family Residence – 15000 Calle Real, one mile west of the Tajiguas Landfill and immediately north of and adjacent to U.S. Highway 101</p>	<ul style="list-style-type: none"> <li>Approximately 47 acres</li> <li>4,448 sf dwelling (includes 410 sf attached garage) and 783 sf guest house with 460 sf attached garage</li> </ul>	<ul style="list-style-type: none"> <li>Approved February 2009</li> <li>No construction yet</li> <li>Coastal Development Permit time extension to March 2012.</li> </ul>	
21	<p>Stoltman Single Family Residence – 420 Calle Lippizana, approximately one mile east of El Capitan State Beach and north of U.S. Highway 101 within El Capitan Ranch subdivision</p>	<ul style="list-style-type: none"> <li>Approximately 10 acres</li> <li>4,354 sf dwelling with attached 600 sf garage and 644 sf covered porch</li> </ul>	<ul style="list-style-type: none"> <li>Approved (November 2006)</li> <li>Construction complete January 2008</li> </ul>	<p>Construction completed 4 years ago.</p> <p><b>NOT A CUMULATIVE PROJECT.</b></p>
22	<p>Tajiguas Landfill</p>	<ul style="list-style-type: none"> <li>Approximately 743</li> </ul>	<ul style="list-style-type: none"> <li>Approved May 2009</li> </ul>	



<p>Reconfiguration and Baron Ranch Restoration Project – North of and adjacent to U.S. Highway 101, approximately 6 miles west of Refugio State Beach</p>	<p>acres</p> <ul style="list-style-type: none"> <li>Reconfiguration of a portion of the permitted waste footprint at the Tajiguas Landfill and restoration of riparian and California red-legged frog habitat on adjacent Baron Ranch.</li> <li>Reconfiguration would not modify any operational parameters (e.g., refuse capacity, hours of operation, personnel requirements, waste</li> </ul>	<ul style="list-style-type: none"> <li>Restoration and construction activities in process</li> </ul>	
<p>23</p>	<p>Tecolote Preserve (Wallover)</p>	<p>Deleted in FEIR</p>	<p>n/a</p>
<p>24</p>	<p>Kong Lot Line Adjustment and Consistency Rezone – North of U.S. Highway 101 and Refugio State Beach, 11 miles west of Goleta</p>	<ul style="list-style-type: none"> <li>Two parcels of approximately 41 and 67 acres</li> <li>One lot includes a dwelling</li> <li>Building envelope designation proposed for second parcel</li> <li>Consistency rezone from Ordinance 661 (antiquated zoning regulations) to Article II, or LUDC for Coastal Zone if certified.</li> </ul>	<ul style="list-style-type: none"> <li>In process</li> <li>Approved April 2011.</li> <li>Final Map Clearance completed December 2011.</li> </ul>

# WELCOME TO LAS VARAS AND EDWARDS RANCHES

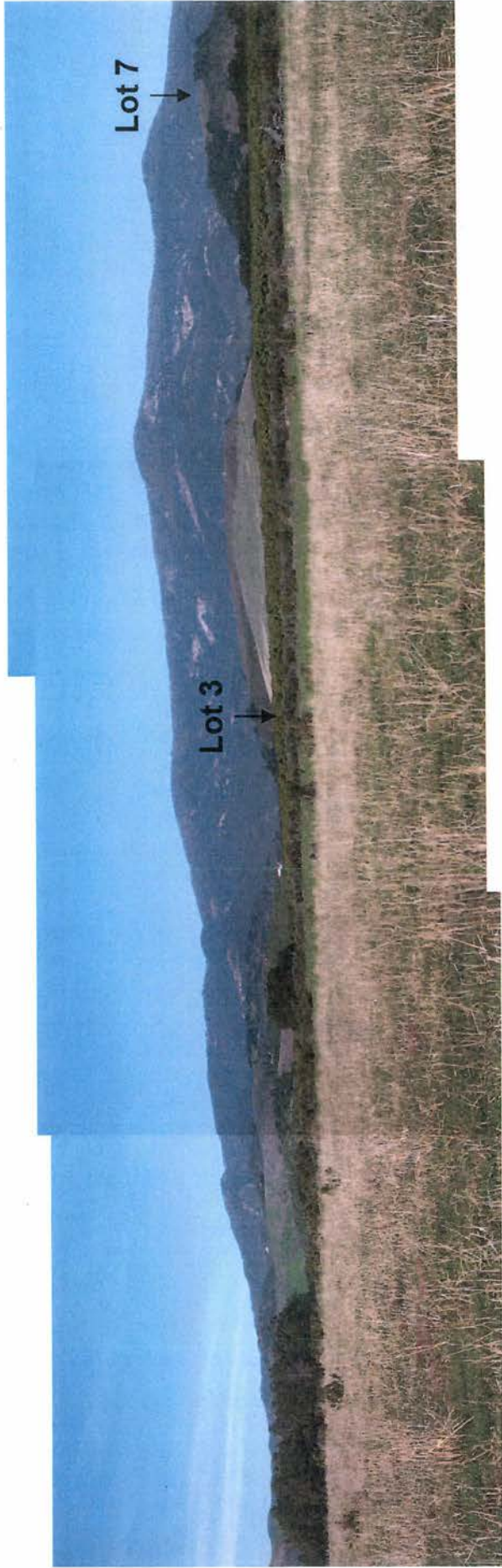
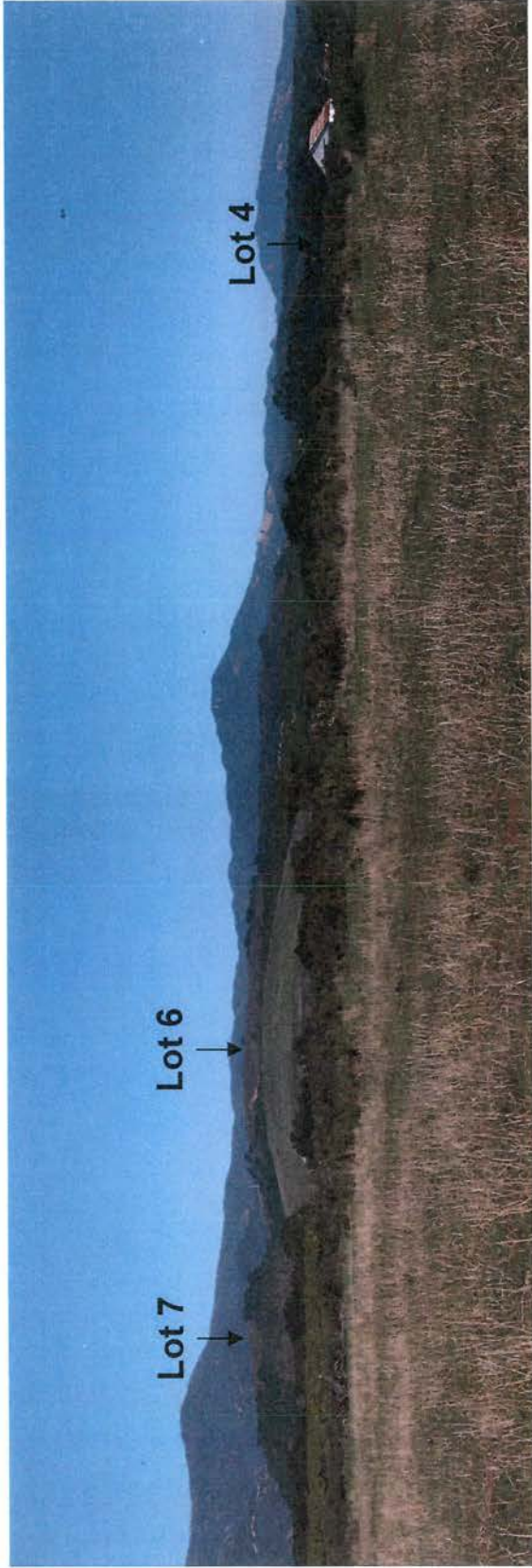


Brownstein | Hyatt  
Farber | Schreck

# Las Varas/Edwards Ranches

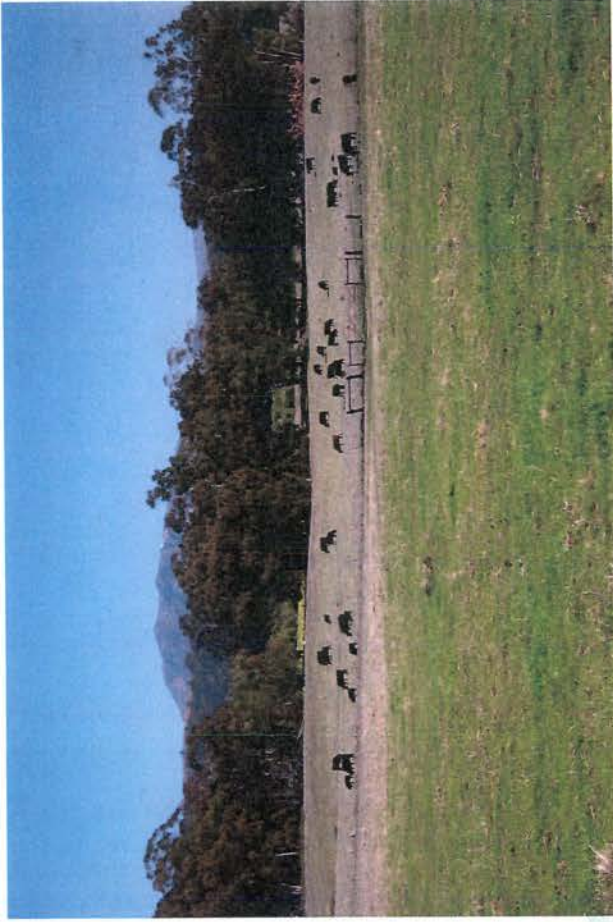


View of Historic Structures and Grazing Pastures (Lot 4)



View from Coastal Terrace (Lots 1 & 2)

# Grazing Lands

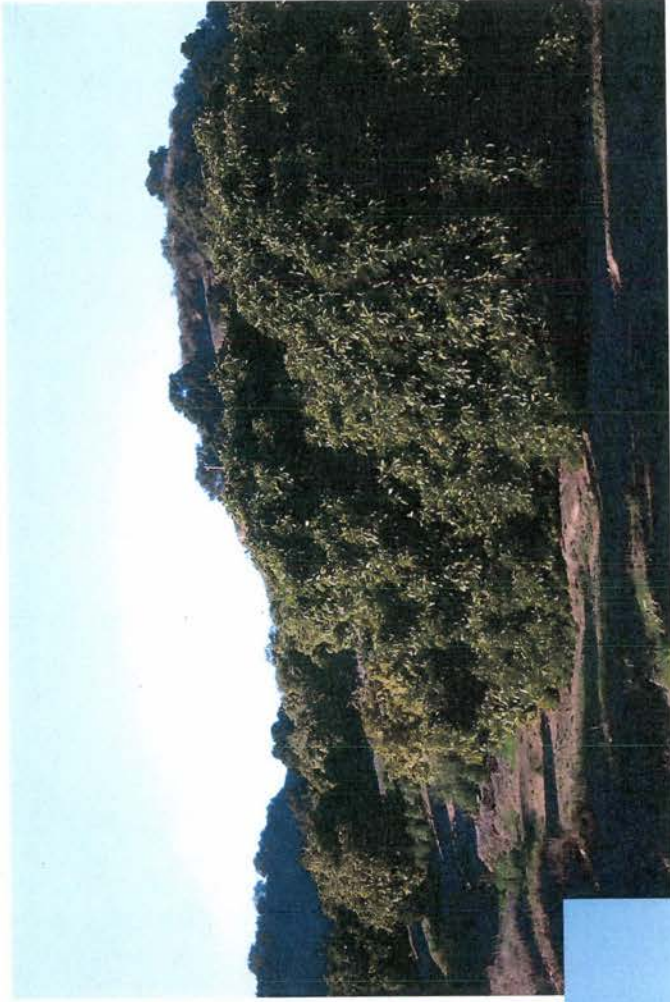


Lot 4

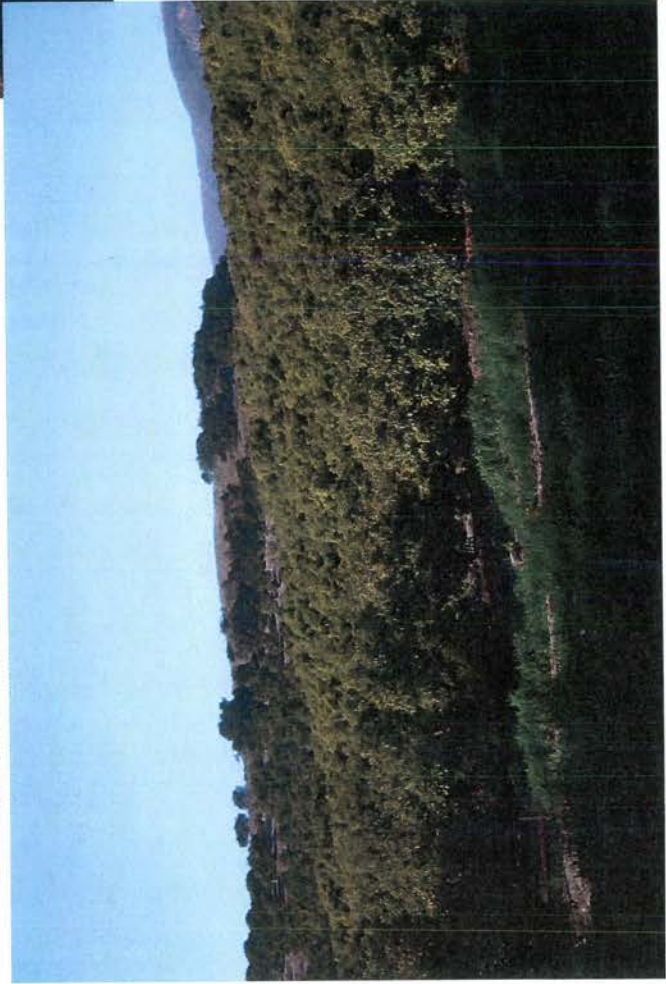


# Orchards





Lot 6

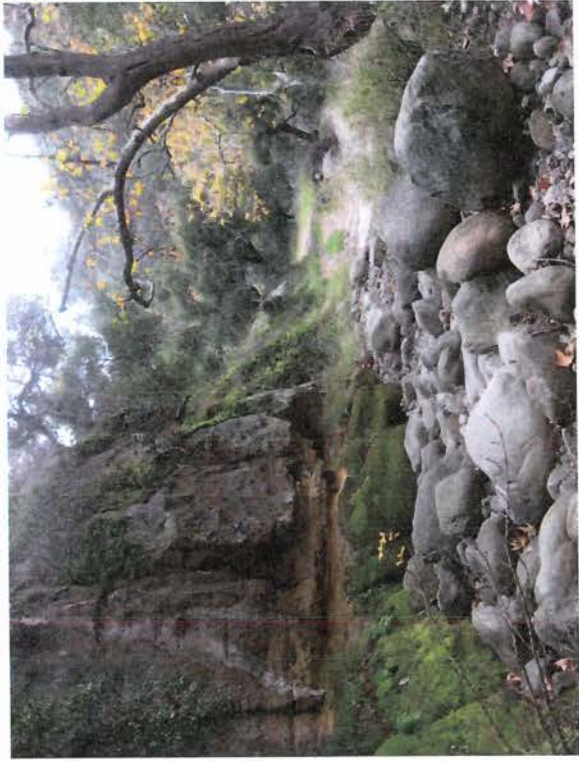


Lot 4

# Gato Canyon

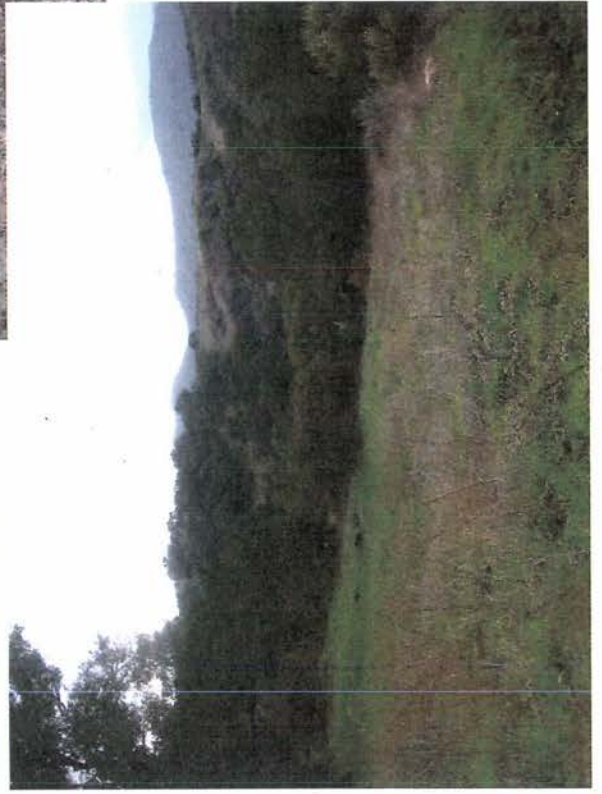


Lot 6





# Upper Gato Canyon Wildlands



Lot 6

# History

- Doheny family purchased the ranches in 1967 and 1969 and has operated them as a combined, viable agricultural enterprise ever since
- Tim Doheny dreamed of keeping the ranches together but knew that, after he and his wife died, the existing parcels could be sold off
- He loved the ranch and built a home there. Tim was an avid cowboy

- Estate taxes can force divestment of a family ranch.
- The parents' death may deprive the children of the opportunity to live on and work the land.
- Situating one parcel for sale to pay taxes can save the integrity of the rest of the ranch.

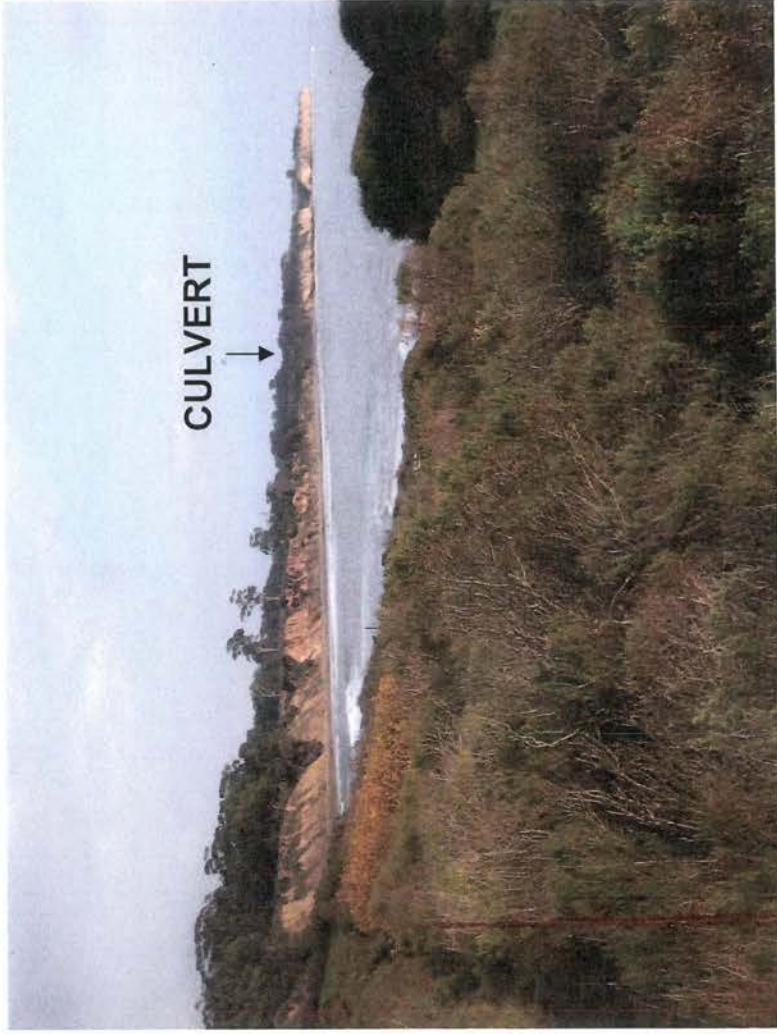
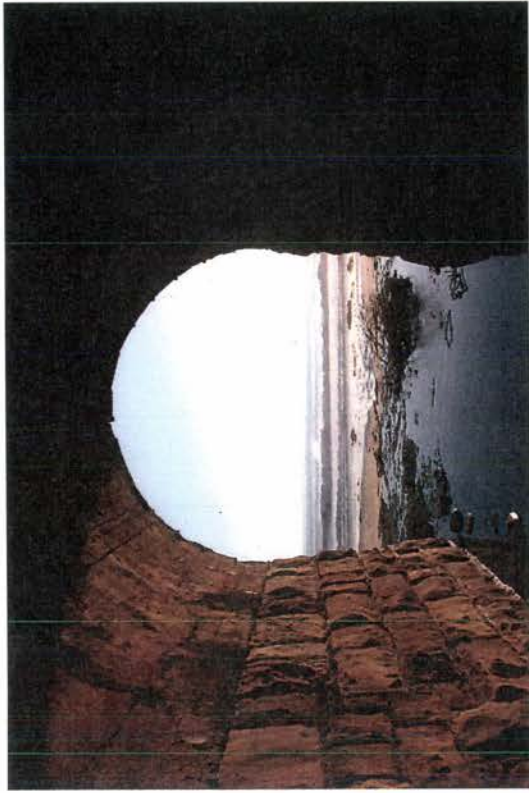
- The Dohenys' solution – this project
- Retain long-term viable agriculture by allowing for reasonable residential development
- Configure parcels so one can be sold if necessary for estate taxes
- Offer of trails but control public access to prevent people from impairing the agricultural operation and damaging resources

- Many trail users are respectful and cause no intentional damage
- Most people are ignorant of agriculture and can cause unintentional damage -- tracking spores into orchards, allowing their animals to defecate in food growing areas -- fecal contamination
- Other trail users are not respectful. No one can police them in rural areas

- People use trails as access to steal fruit and equipment, vandalize, or just wander around on private property
- The trails – and fencing – are designed to accommodate a wide range of people
- The vertical trail to the beach is a long hike– we don't expect baby strollers and beach balls
- Parking lot & trail provide beach access in an area where there is none

- Families hiking and riding bikes from El Capitan State Beach and El Capitan Canyon Campground east can use the trail north of 101
- Beach trail opens up a 2-mile stretch of coastline for use without trespassing
- GavPAC Trails Subcommittee supports these trails

# Vertical Beach Access Trail



View From Edwards Point (Lot 2)

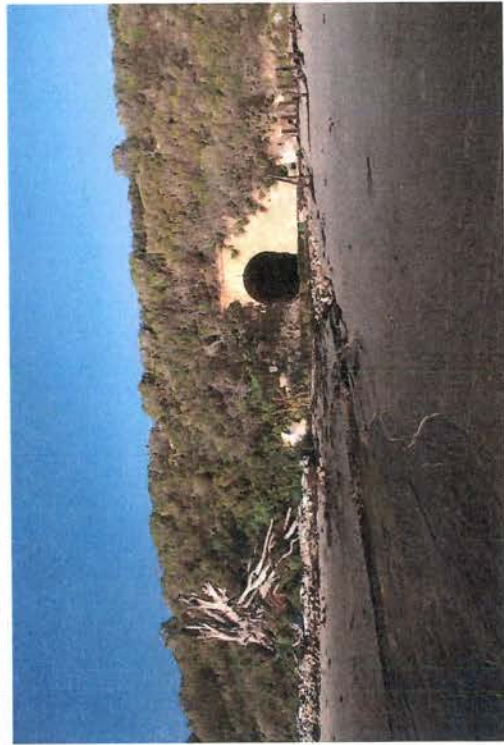
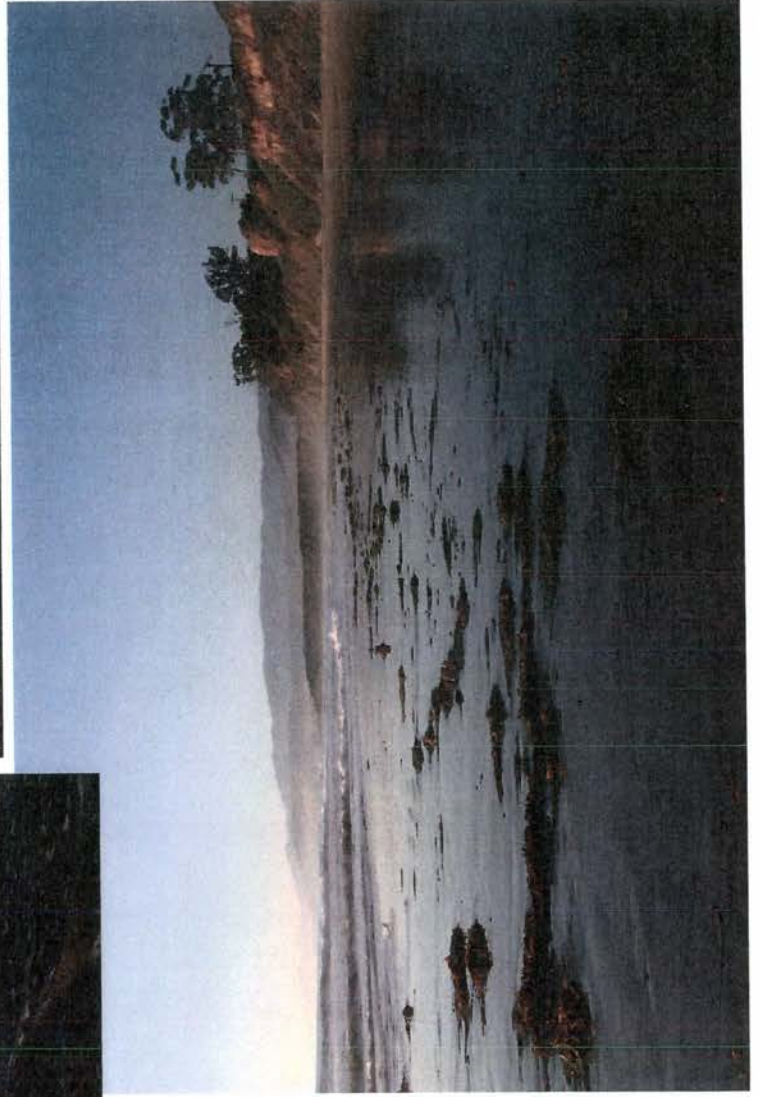
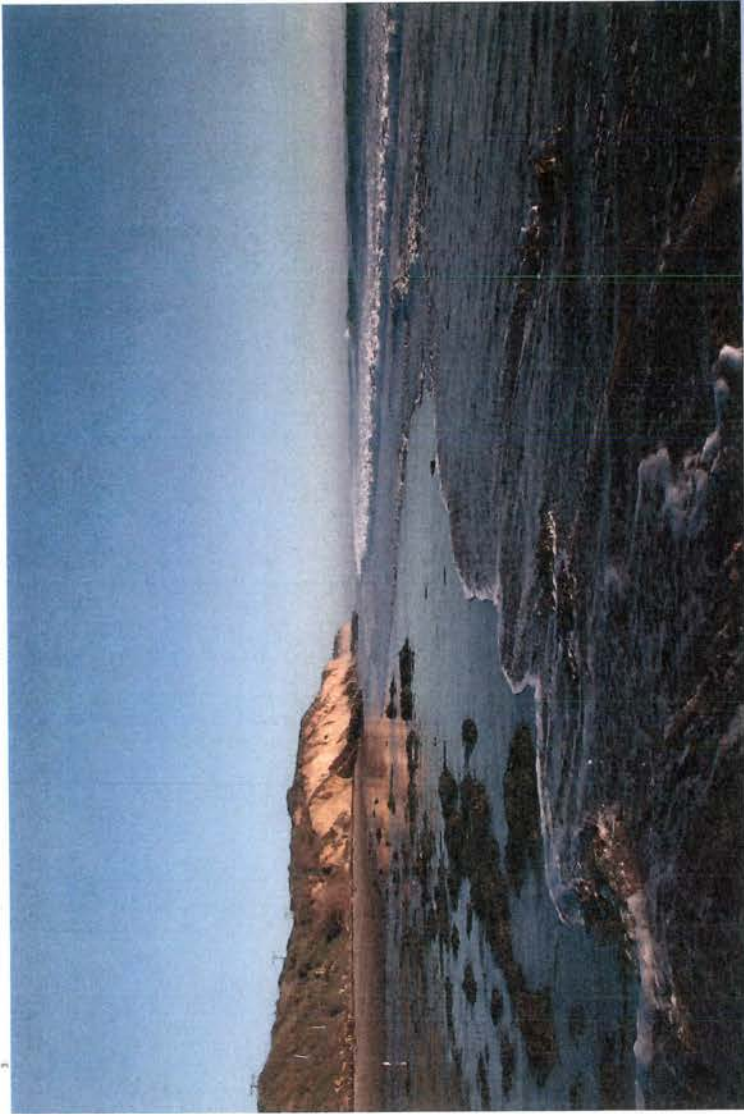




# Beach Trail Near High Tide

- The beach accessed by this trail provides sandy beach even at high tide, and that is true along its entire route except during especially high winter tides.
- These photos were taken 2 hours after a January high tide.
- Even during a +5 high tide last week, where sand was missing, there were cobbles that provided footing above the waterline.

January 5<sup>th</sup>, 2012, Approx. 4:00 pm



2012-01-15 8:38 AM PST 1.59 feet Low Tide  
2012-01-15 2:03 PM PST 3.32 feet High Tide  
2012-01-15 5:11 PM PST Sunset

# Active, Successful Agricultural Operation

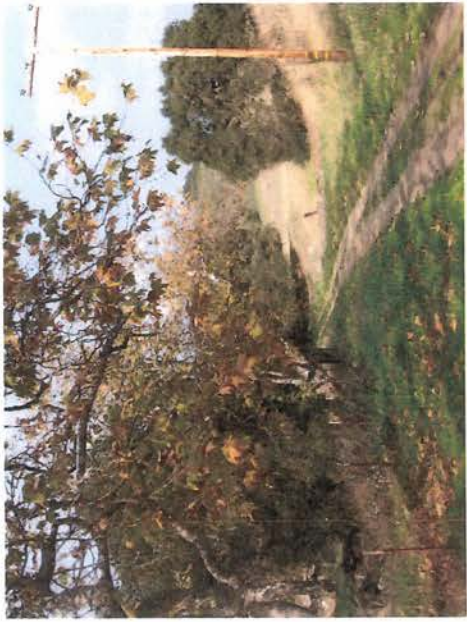
- To further ensure the agricultural viability of the ranches, Dohenys planted the west avocado orchard to increase ranch income
- Purchased 2-inch Goleta Water District meter to ensure adequate irrigation water to supplement their reservoir – they were the only farmers for decades willing to pay the hefty New Water Supply Charge

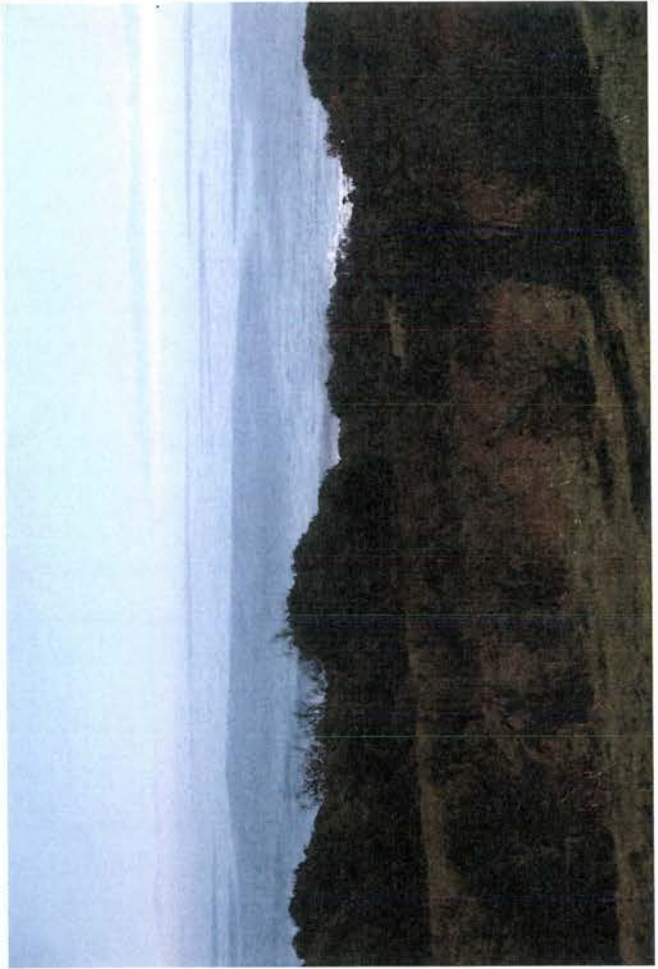
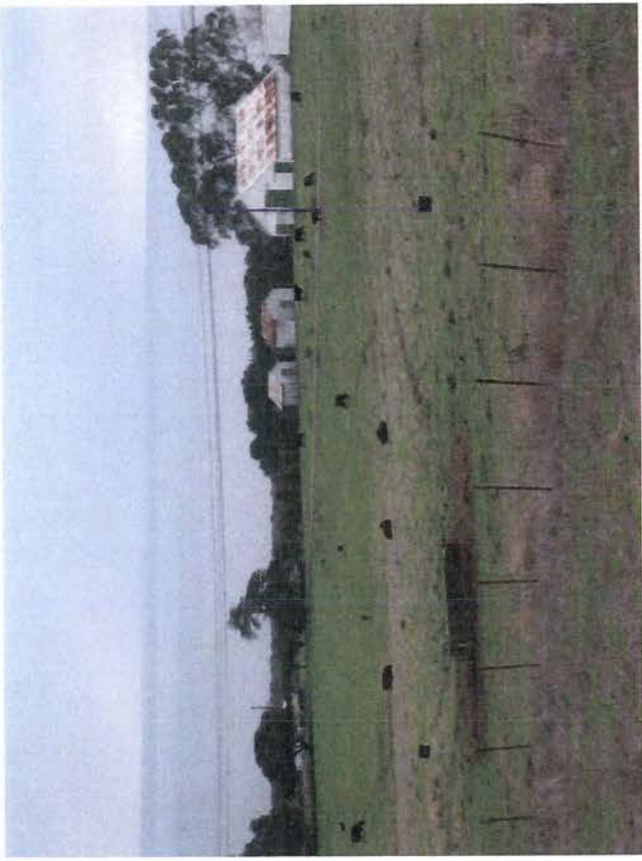
- The orchard is thriving and the ranch is a paying operation under the able management of Paul Van Leer
- Cattle rotation to avoid over-grazing and to use the micro-climates advantageously
- Overseeing orchard picking and pruning





# Ranches' Undisturbed Beauty









# Trail Objectives

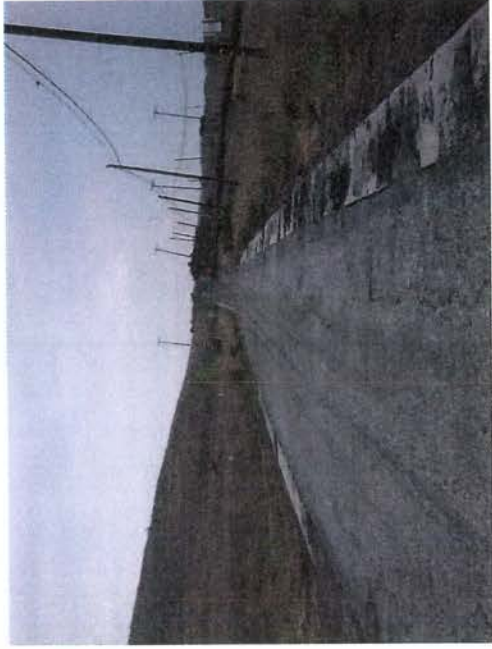
- How to site trails to maximize public access without damaging natural resources, agricultural operations, and owner privacy?
- COASTAL ACT
- – Maximize public access to and along the coast, public recreational opportunities in CZ **consistent with sound resources conservation and private property owners' rights.**

- -- Public access from the nearest public roadway to the shoreline and along the coast consistent with protection of fragile coastal resources and agriculture.
- -- Assure that non-agricultural development doesn't impair agricultural viability.
- SB 908-- Coastal Trail shall be developed in a manner that demonstrates respect for property rights and privacy of owners.

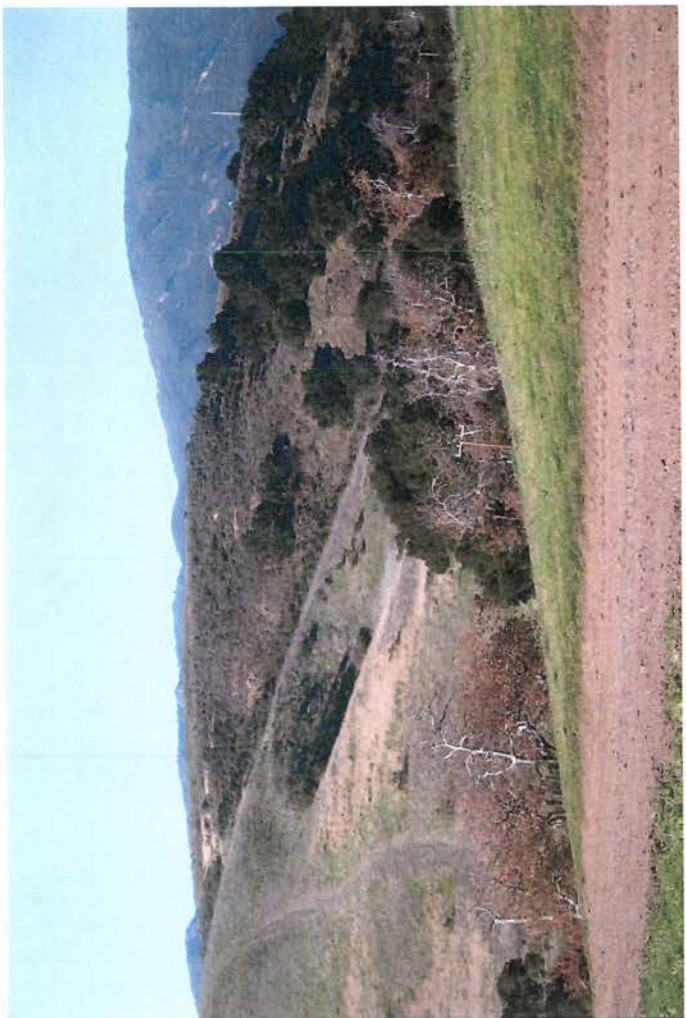
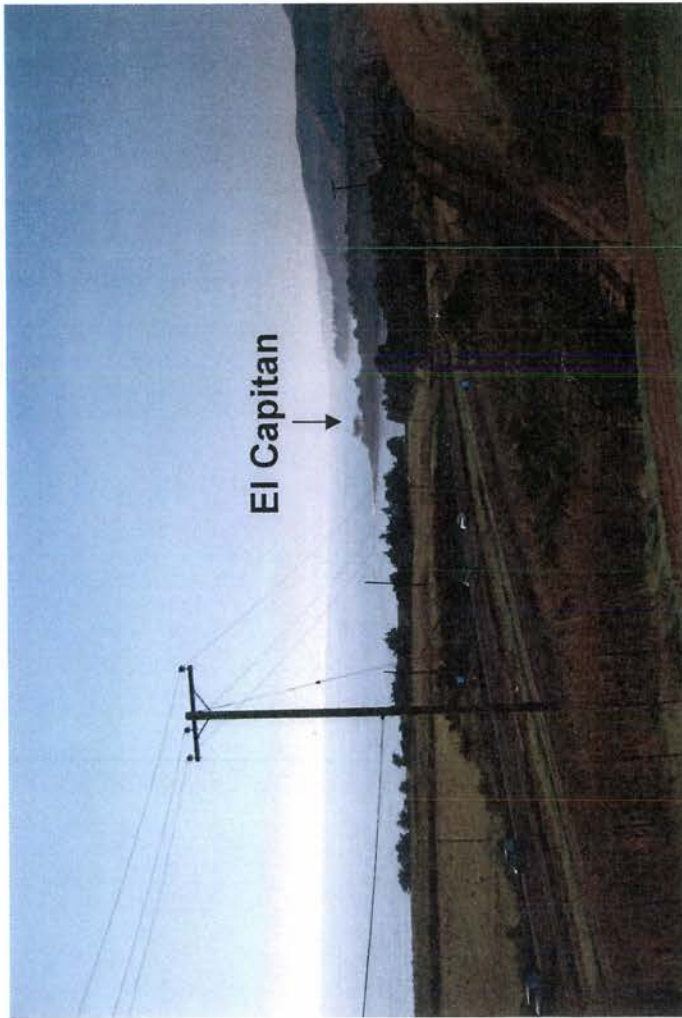
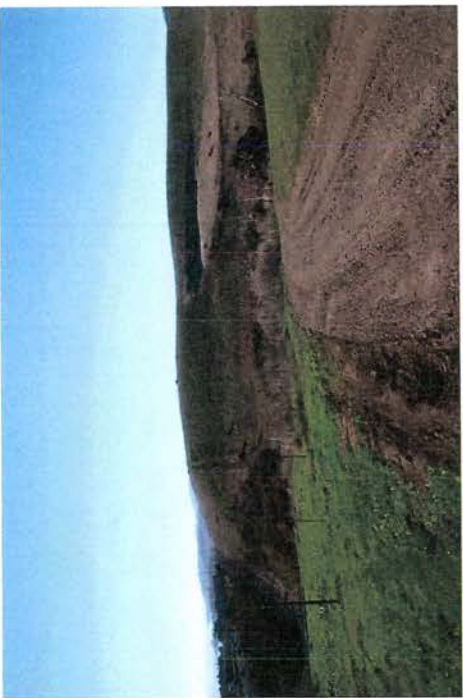
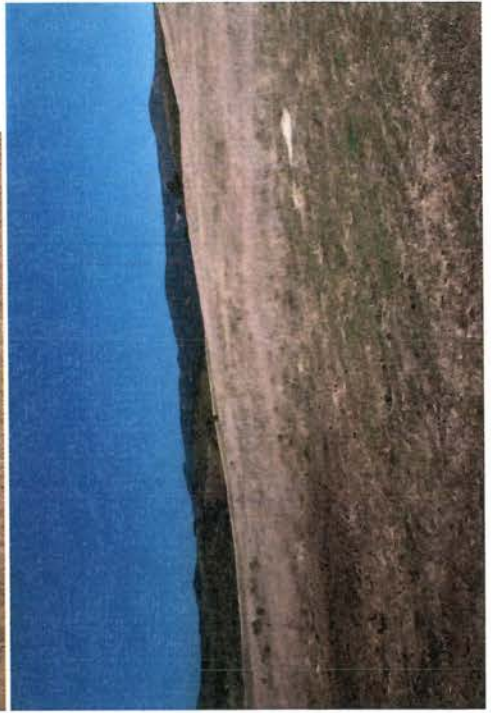
- Case law – long term beach use by groups of people rarely larger than 15 who use it precisely because it's isolated and lightly used does not constitute a public recreational area
- Must have rough proportionality between easement exacted and burden of project on recreational resources

- Mr. and Mrs. Doheny planned these trails as their legacy to the public, not because the County has the right to require them
- But foremost in their minds was protection of the agricultural integrity so this land could remain in agriculture into the distant future
- You've seen photos of the beach access trail and the beach trail. These show the northerly trail that we think can be multi-use

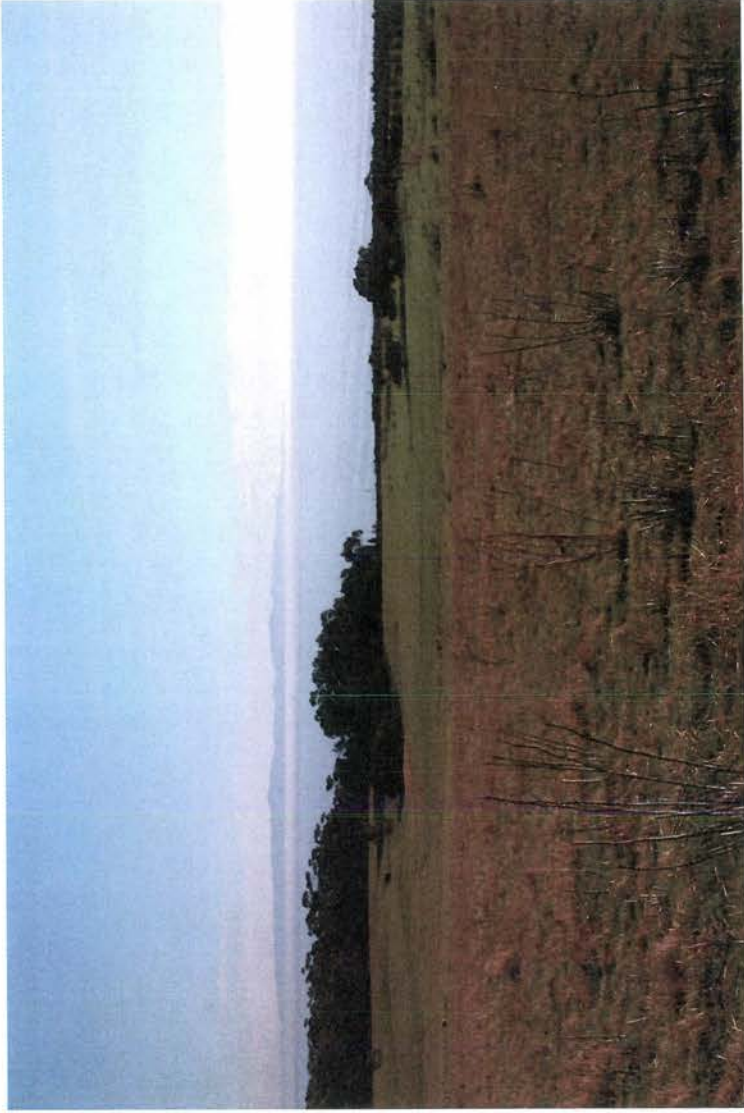
# Lateral Coastal Trail – West to East







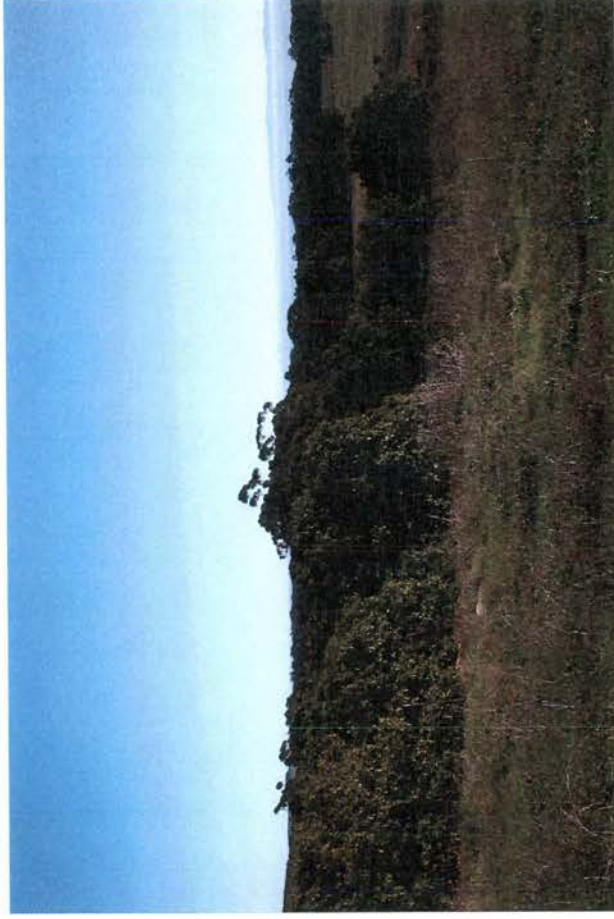




Lot 6

32

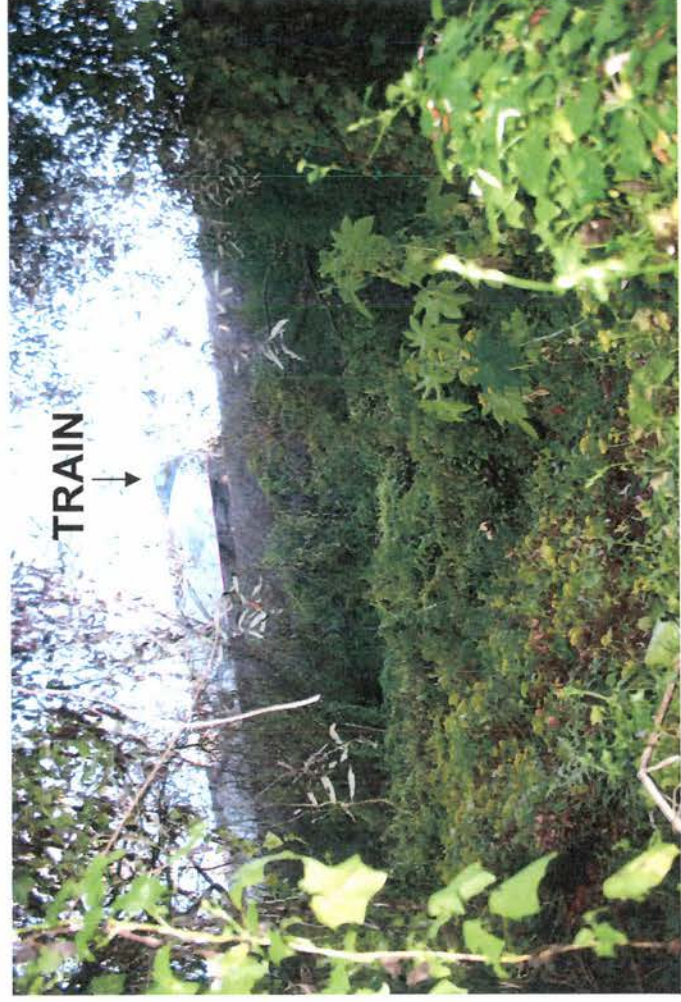
# East End of Trail



- Project opponents aren't satisfied. They say another trail is "technically feasible"
- They want a public trail that crosses pastures & creeks, goes right through monarch butterfly habitat, crosses the RR tracks in 2 places, uses existing ranch roads, and crosses the coastal terrace in Mrs. Doheny's front yard and in front of the building sites for Parcels 1 & 2

## Opponents' Proposed Coastal Trail – From East to West

- Steep slopes/drop off from neighboring property and railroad crossing to Las Varas beach trail



- Use of sole orchard road for access to upper coastal terrace on DE 5; steep RR embankment



Coastal sage scrub between orchard  
and pasture on terrace on DE 5

# Across Calving Pasture in Mrs. Doheny's Front Yard



# Opponents' Proposed Coastal Trail

- Incised Channel and Dense Monarch Butterfly Grove on DE 5



# Opponents' Proposed Coastal Trail



- At-grade Railroad Crossing No. 1 on DE 4 & 2



# Opponents' Proposed Coastal Trail



- At-Grade Railroad Crossing No. 2 at DE 1 & 3
- Eucalyptus Grove with Deeply Incised Channel Along Length of Railroad

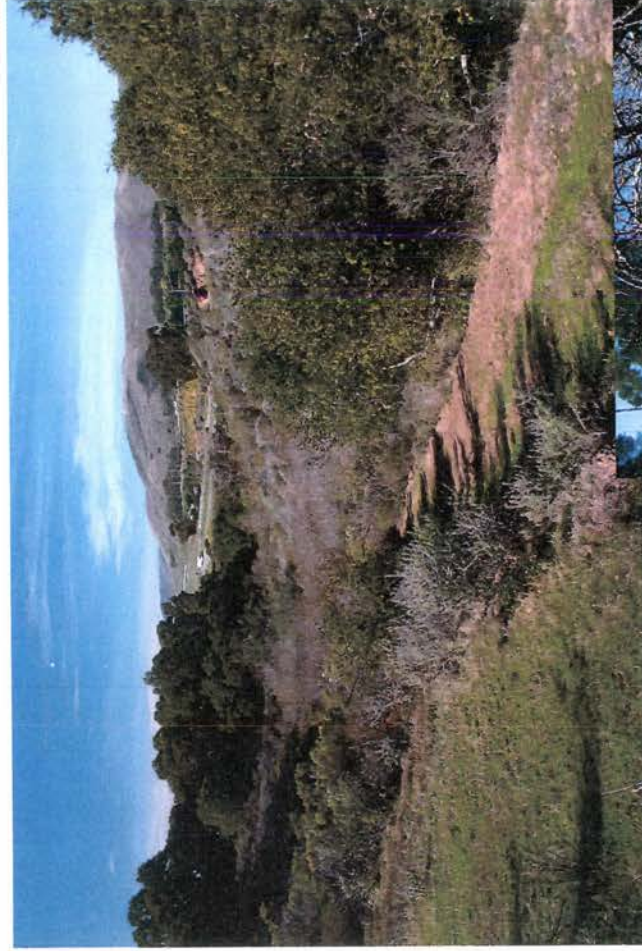


# Opponents' Proposed Coastal Trail



- Requires Passage Through and Across Gato Creek

# Opponents' Proposed Coastal Trail

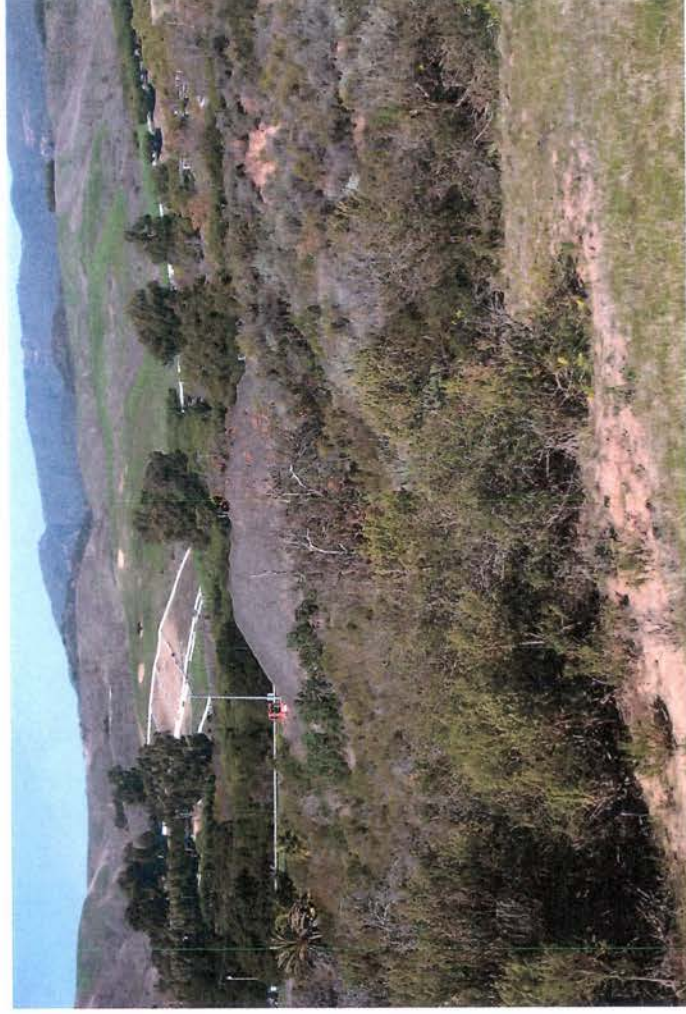


- Passage Through Wetland Habitat



# Opponents' Proposed Coastal Trail

- Passage Through Wetland, Up Steep Slope, Across Caltrans Borrow Pit to Freeway On-Ramp





# Proposed Development Envelopes

# Development Envelope 1

As Originally  
Proposed and  
Consistent with  
Alternative 3C



# Development Envelope 2



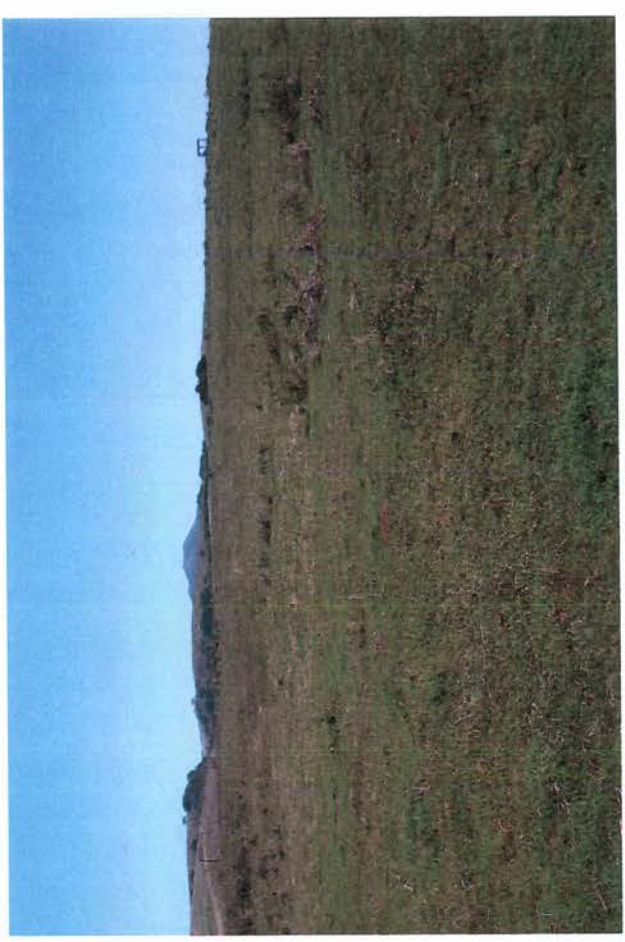
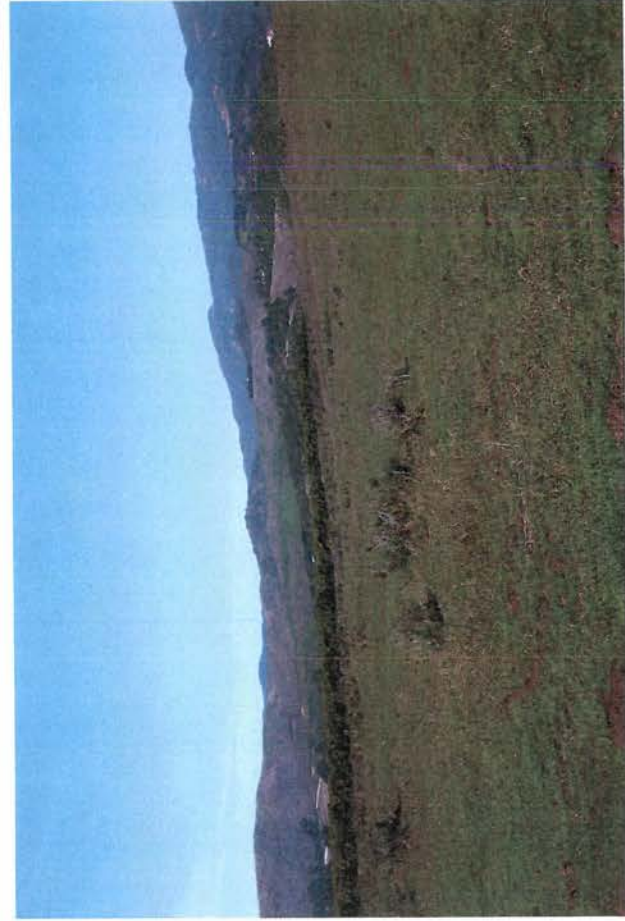
Residence on Upper Terrace per  
Alternative 3C

Consistent with  
Alternative 3C  
with Approval of  
Cabana on Lower  
Terrace



Cabana on Lower Terrace per  
Applicant

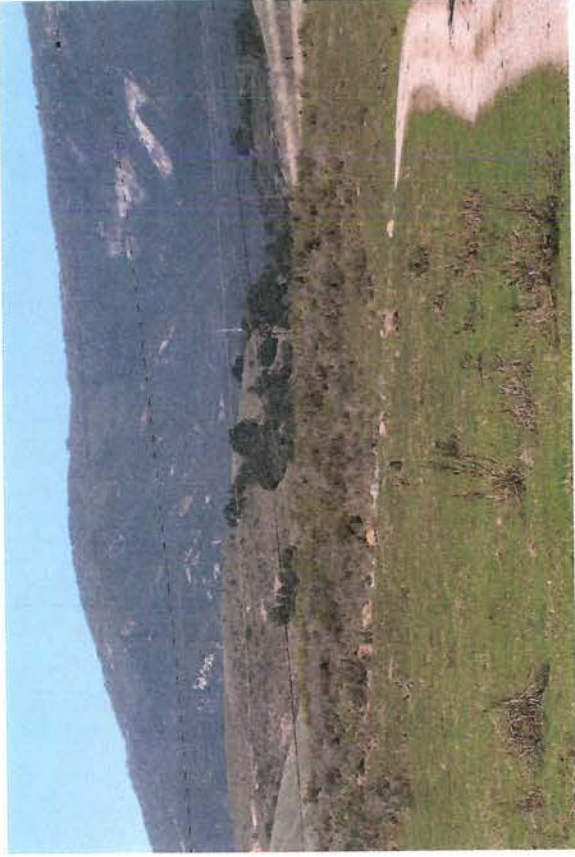
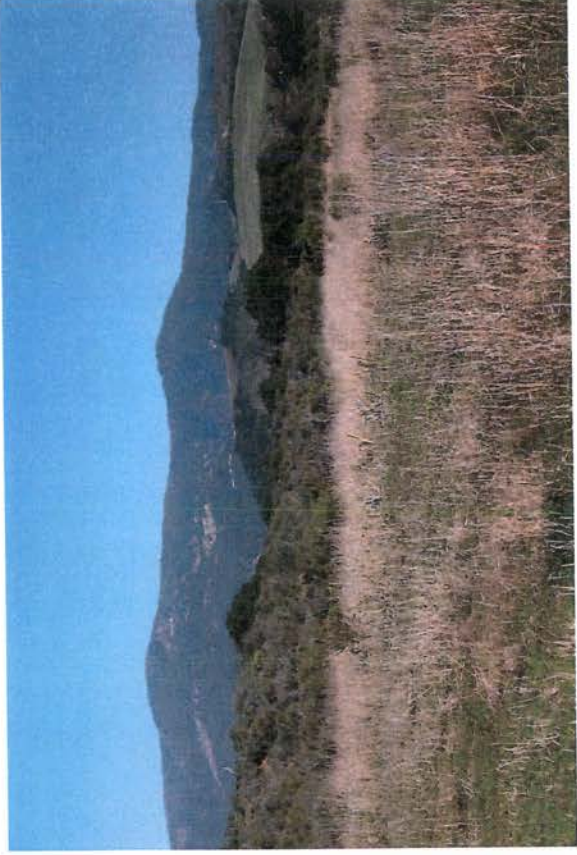
# Development Envelope 3



**Consistent with  
Alternative 3C**



# Development Envelope 4 – Alt. 3C



Consistent with  
Alternative 3C

Site Hidden Behind Knoll



# Development Envelope 5



**As Originally  
Proposed – Need  
for Development  
Envelope  
Flexibility –  
Problem with  
Staff Proposal** 49

# Development Envelopes 6 & 7



**As Originally  
Proposed and  
Consistent with  
Alternative 3C**

**Villalobos, David**

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**From:** Connie Doheny [cdoheny@cox.net]  
**Sent:** Tuesday, January 17, 2012 10:47 AM  
**To:** Villalobos, David  
**Subject:** CPC Public Comment Submission

AGENDA ITEMS

ITEM #: 3

MEETING  
DATE: 1-18-12

3772 Lincoln Rd.  
Santa Barbara, CA 93110  
January 18, 2012  
Santa Barbara County Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

RE: Las Varas/Edwards Ranch Project/05TMP-00000-00002,05LLA-00000-00005-00006  
07CUP-00000-00057,07RZN-00000-00007,10EIR-00000-00005.  
11COC-00000-00001,11CDP-00000-00078

Dear Planning Commissioners:

I was recently contacted by Paul Van Leer in regards to public use at Edwards Point during a swell. I have not only lived on Las Varas Ranch in the past but have camped and surfed at the Point for close to forty years. I personally know just about everybody who walks through the property with unauthorized access in order to surf. Even during a large, well publicized swell, very rarely, if ever, are there more than 10 people, myself included, at one time. In fact, usually there are fewer. When there are more than 5 to 10 cars at the parking area at El Capitan Ranch, people don't bother to walk the mile or so as it is a small surf spot and cannot accommodate a large crowd.

If you have any questions regarding this matter, please feel free to contact me at (805) 569-0925.

Thank you very much.

Sincerely,  
Dennis Doheny

RECEIVED

JAN 17 2012

S.B. COUNTY  
PLANNING & DEVELOPMENT  
HEARING SUPPORT

Ksen~Sku~Mu  
Frank Arredondo ~Chumash MLD  
Po Box 161  
Santa Barbara Ca, 93102

January 6<sup>th</sup> 2012

Santa Barbara County  
123 E Anapamu St.  
Santa Barbara Ca, 93101

AGENDA ITEMS

ITEM #: 3

MEETING

DATE: 1-18-12.

Re: Las Varas Ranch Project (Case Nos.: 05TPM-00000-00002, 05LLA-00000-00005, 05LLA-00000-00006, 07RZN-00000-00006, 07RZN-00000-00007, 07CUP-00000-00057, 11COC-00000-00001, 11CDP-00000-00078)

RECEIVED

[JAN 09 2012

Honorable Chair and Commissioners

S.B. COUNTY  
PLANNING & DEVELOPMENT  
HEARING SUPPORT

I thank you for the opportunity to comment on the above referenced project. My name is Frank Arredondo. I am Chumash/Coastanoan. I am recognized within my community as the Former Director of the Board with the Coastal Band of the Chumash Nation. Currently, I am an active member of the Coastal Band of the Chumash Nation, I am a member of the Native American Heritage commission MLD List for the Chumash Territory and listed on the Native American Contact list for Santa Barbara County. My comments today are of my own.

Being of Native American descendant, from the Chumash territory, I have a strong vested interest in the project. I currently provide comment on several Planning and Development projects in the surrounding areas that have cultural resources impacts. I have been an advocate for the preservation of those Cultural Resources within my community and for several years now as well as placing an emphasis on local governments adhering to policies and procedures. I thank you for taking the time to review my comments.

This letter is in support of the new proposed plans for Las Varas Ranch Project. The recommended project alternative 3C reduces the amount of impact to the identified cultural resources by way of avoidance through redesign. Its revision does this with the reduction of the residential envelope, prohibiting ground disturbance outside of the Parcel 3 development envelope, fencing of the construction site during construction activities, construction monitoring and further analysis proposed in the event that archaeological remains are encountered, including the Utility infrastructure is to be sited so as to avoid significant impacts.

The work done by Paul Van Leer/Applicant and Agent Susan Petrovich, exemplifies the meaning of collaboration to address Native American concerns in a productive manor. This has set the bar for future projects to come and provides a reference to the Native Community that projects can be mitigated based on avoidance when willing parties sit down to explore

alternatives. I will recommend to the Native American community my support for this new design and for support of the projects they propose in the future.

This proposed project is within the true meaning of CEQA Section 21083.2.

*Best wishes, Frank Arredondo  
Ksen~Sku~Mu  
Chumash MLD  
Po Box 161  
Santa Barbara, Ca 93102  
Email [Ksen\\_Sku\\_Mu@yahoo.com](mailto:Ksen_Sku_Mu@yahoo.com)  
805-617-6884*

Cc:  
Paul Van Leer, Applicant  
Susan Petrovich, Agent

February 1, 2012

Planning Commission  
County of Santa Barbara  
143 Anapamu Street  
Santa Barbara, CA 93101

Re: Las Varas Ranch Project/Doheny Family Project

Dear Honorable Commissioners:

My name is Bill King. I have been in the cattle business for 50 years. During these years, I have run cattle on our home ranch and I have leased many ranches throughout the Tri-County area.

I have just heard that, during the review of the Las Varas Ranch project, there are people who desire to hike through the Doheny property and other privately owned ranches. In fact I have heard that some of these people say that, "the public hikes through cattle ranches all over the country." I am opposed to this proposal for several reasons.

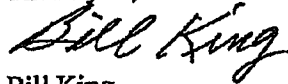
First, all ranches serve the dual purpose of being people's homes as well as their place of business. Surely, there is no one in your hearing room who will claim that they want to be forced to allow strangers to trek through their homes, yards, or work places.

Second, approximately half of Santa Barbara County is publicly owned, e.g., Los Padres National Forest, which consists of thousands and thousands of acres – plenty of area for hiking.

Third, range cattle are only semi-domestic animals. They are not accustomed to humans on foot or on bicycles. I have witnessed many cattle panic at the sight of human beings on foot which, of course, disturbs their normal habitat. In some instances, they have become a threat to the intruder. The disturbance of the cattle results in lost weight, abandonment of new calves, running into fences, and other activity that is a direct detriment to the income of their owners.

While I sympathize with outdoor enthusiasts' desire for areas to hike and enjoy the outdoors, there is plenty of public land to do so. To force upon ranchers the intrusion into their private property, near their homes, and across their place of business is unconscionable.

Thank you,



Bill King