

Public Comment - SSL Law Firm LLP

Brianda Negrete

From: Robert B. Martin III <rob@SSLFIRM.COM>
Sent: Thursday, October 27, 2022 7:03 PM
To: sbcob; Jones, Morgan; Pettit, Brian; Wageneck, Lael; Sneddon, Chris
Cc: MAlvarado@lacumbrewater.com; MManion@ppplaw.com; mhendricks@sblandtrust.org
Subject: FW: Modoc Road Multi-Use Path, State Clearinghouse # 2022090230; Comments by The Land Trust for Santa Barbara County
Attachments: LTSBC comment letter to Draft MND (final) (01224166xA4507).pdf

#6

LATE
DIST

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

All—

My office represents The Land Trust for Santa Barbara County (“Land Trust”). On behalf of the Land Trust, I submitted a comment letter concerning the Modoc Road Multi-Use Path Draft Mitigated Negative Declaration (“MND”) on October 14, 2022. A copy of that letter is attached, and forwarded below is the cover e-mail attaching the letter and directed to Morgan Jones of the Santa Barbara County Public Works, and Brian Pettit of the Santa Barbara County Counsel’s office.

I received notice today of the Board of Supervisors’ agenda for their November 1, 2022 meeting. Although the County made various documents available on their website in connection with the meeting – including multiple comment letters received from other individuals and entities – the Land Trust’s comment letter is not included and does not appear to be part of the agency record.

The Board has an obligation to consider all comments received in response to the draft MND (CEQA Guidelines sec. 15074(b)), and the County’s failure to include the Land Trust’s comments within the record is extremely concerning. The Land Trust requests that the Board (1) include the Land Trust’s October 14, 2022 letter within the record; (2) post a copy of the Land Trust’s letter on its website immediately; and (3) re-issue notice of the November 1, 2022 agenda to acknowledge inclusion of the Land Trust’s letter within the record and on the website. Of course, and as noted above, the Board must also review and consider the Land Trust’s letter before taking any further action related to the MND.

Please feel free to contact me if you have any questions.

ROBERT B. MARTIN III | Attorney | **SSL LAW FIRM LLP** | 505 Montgomery Street, Suite 620 | San Francisco, CA 94111 | Direct: 415.243.2669 | Main: 415.814.6400 | Fax: 415.814.6401 | Email: rob@sslfirm.com

This email and any attachments may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies. Legal Advice Disclaimer: You should recognize that responses provided by this e-mail means are akin to ordinary telephone or face-to-face conversations and do not reflect the level of factual or legal inquiry or analysis which would be applied in the case of a formal legal opinion. A formal opinion could reach a different result.

From: Robert B. Martin III <rob@SSLLAWFIRM.COM>

Date: Friday, 14 October 2022 at 14:01

To: Jones, Morgan <mmjones@countyofsb.org>

Cc: bpettit@co.santa-barbara.ca.us <bpettit@co.santa-barbara.ca.us>, MAlvarado@lacumbrewater.com <MAlvarado@lacumbrewater.com>, MManion@ppplaw.com <MManion@ppplaw.com>, Meredith Hendricks <mhendricks@sblandtrust.org>

Subject: Modoc Road Multi-Use Path, State Clearinghouse # 2022090230; Comments by The Land Trust for Santa Barbara County

All—

Attached is a comment letter to the Draft Revised Mitigated Negative Declaration (Sep. 14, 2022) regarding the Modoc Road Multi-Use Path, submitted on behalf of the Land Trust for Santa Barbara County.

ROBERT B. MARTIN III | *Attorney* | **SSL LAW FIRM LLP** | 505 Montgomery Street, Suite 620 | San Francisco, CA 94111 | Direct: 415.243.2669 | Main: 415.814.6400 | Fax: 415.814.6401 | Email: rob@sslfirm.com

This email and any attachments may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies. Legal Advice Disclaimer: You should recognize that responses provided by this e-mail means are akin to ordinary telephone or face-to-face conversations and do not reflect the level of factual or legal inquiry or analysis which would be applied in the case of a formal legal opinion. A formal opinion could reach a different result.



505 MONTGOMERY STREET, SUITE 620
SAN FRANCISCO, CA 94111
TELEPHONE: 415.814.6400
FACSIMILE: 415.814.6401
business@sslfirm.com

ROBERT B. MARTIN III
DIRECT TEL: 415-243-2669
rob@sslfirm.com

October 14, 2022

Via E-mail and U.S. Mail

Morgan M. Jones
Engineering Environmental Project Team Leader
Santa Barbara County Public Works
123 Anapamu Street
Santa Barbara, CA 93101-2026
mmjones@countyofsb.org

*Re: Modoc Road Multi-Use Path, State Clearinghouse # 2022090230;
Comments by The Land Trust for Santa Barbara County to the Draft
Revised Mitigated Negative Declaration, published Sept. 14, 2022.*

Dear Mr. Jones:

My office represents The Land Trust for Santa Barbara County (“**the Land Trust**”). I write on their behalf to comment on the above-referenced Draft Revised Mitigated Negative Declaration (“**MND**”) concerning the Modoc Road Multi-Use Path (“**Path**”).

Formed in 1985, the Land Trust is a non-profit 501(c)(3) organization working to preserve and enhance Santa Barbara County’s natural open spaces and agricultural heritage for present and future generations. Supported by over 900 members, the Land Trust has helped to preserve over 31,850 acres of natural resource and agricultural land, including the Arroyo Hondo Preserve, Sedgwick Reserve, Carpinteria Bluffs, Coronado Butterfly Preserve, Point Sal, Carpinteria Salt Marsh, and the Modoc Preserve. The Land Trust is accredited by the Land Trust Accreditation Commission¹ and holds itself to the highest industry standards for land trust governance and stewardship, including enforcement of conservation easements.²

The Modoc Preserve (“**Preserve**”) is valued open space undeveloped for community benefit and owned by La Cumbre Mutual Water Company. Critical for our

¹ See www.landtrustaccreditation.org.

² See Land Trust Alliance Standards and Practices, Standard 11, at www.landtrustaccreditation.org/help-and-resources/requirements-manual.

purposes here, it is governed by a Deed of Conservation Easement, recorded September 1, 1999 (“**Conservation Easement**”), and held by the Land Trust. A copy is attached as Exhibit A. As stated in the Conservation Easement, the Preserve “remains in a substantially undisturbed natural condition and ... possesses unique and significant natural, open space, scenic, wetlands, ecological and wildlife habitat values (collectively ‘Conservation Values’) of great importance to Landowner, the people of Santa Barbara County and the people of the State of California.”³ The Conservation Easement requires the Land Trust to “retain[] in perpetuity [the Preserve’s] natural, open space, scenic, wetlands, ecological and wildlife habitat condition, use, and utility, and to prevent any use of the [Preserve] that would significantly impair or interfere with the Conservation Values.”⁴

Alignment B of the proposed Path—Santa Barbara County’s preferred alignment—likely conflicts with the Conservation Easement. Alignment B encroaches upon the Preserve, and Alignment B’s construction and use would likely violate express prohibitions listed in the Conservation Easement.

As discussed further, the Land Trust is legally required and authorized to defend against violations of the Conservation Easement by third parties, including the County.⁵ The Land Trust does not oppose the Path in principle, and it has no interest in unnecessary litigation. But as presented in the MND, Alignment B appears to conflict with the Conservation Easement, and the MND does not contain sufficient information for the Land Trust to evaluate the construction and use of Alignment B and whether acceptable alternatives exist for the Path to be consistent with the Conservation Easement.

Because the MND lacks such information, the Land Trust requests the County postpone approval of the MND. The County must first provide sufficient information to the Land Trust for it to determine if Alignment B or alternatives are consistent with the Conservation Easement. Such information should have been included in the MND. Unless the County first provides that information, or in the absence of appropriate action by the County to take the area of the Preserve affected by Alignment B, the Land Trust cannot agree with Alignment B as described in the MND.

1. **Conservation Easements Are Important Environmental Preservation Tools in California**

The California Legislature authorized conservation easements under state law, finding “that the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California.”⁶ A conservation easement is an interest in real property which restricts the use of the affected land in perpetuity with the purpose of retaining “land predominantly in

³ See Exh. A at 1.

⁴ See Exh. A at 2.

⁵ See Civil Code § 815.7(b)-(d).

⁶ Civil Code § 815.

its natural, scenic, historical, agricultural, forested, or open-space condition.”⁷ Conservation easements may be held by nonprofit land trusts, governmental entities, or Native American tribes.⁸ Civil Code § 815.7 authorizes the owner of a conservation easement—here, the Land Trust—to protect the easement from actual or threatened injury through litigation.

2. The Conservation Easement and the Land Trust Protects the Preserve

Pursuant to the terms of the Conservation Easement and state law, the Land Trust is legally required to protect the Preserve from various prohibited activities. The Land Trust must “prevent any activity on or use of the [Preserve] that is inconsistent with the purpose of this Easement” and restricts use of the Preserve “to open space, equestrian, pedestrian, educational and water company use”⁹ The Conservation Easement prohibits: (a) “[t]he construction of any road or structure within the Easement Area,” (b) the use of any motorized vehicles, and (c) “[a]ny alteration of the general topography or natural drainage of the Easement Area, including . . . the excavation or removal of soil, sand, gravel or rock,” unless such activities are consistent with the Conservation Values of the Easement.¹⁰

The Land Trust is required to enforce the terms of the Conservation Easement. As a nonprofit public benefit corporation, the Land Trust is required by the Corporations Code to prevent loss of or injury to its charitable assets, including the Conservation Easement. The Land Trust’s obligation to appropriately steward its charitable assets is enforced by the California Attorney General through its Charitable Trusts Section. Failure of the Land Trust to competently manage its charitable assets could result in penalties or loss of its state status as a nonprofit charitable corporation.

3. The Proposed Path Encroaches Upon the Preserve and Its Construction and Use Likely Violates the Conservation Easement

Alignment B as described in the MND likely violates the Conservation Easement in several ways, discussed further below. The extent of those violations is unclear, however, because the MND lacks the necessary information to determine whether the construction, maintenance, and use of Alignment B complies with the Conservation Easement restrictions.

Initially, there is no question that Alignment B encroaches upon the Preserve. The MND states “Alignment B would displace about 0.65 acres of open space (within the Modoc Preserve)”¹¹ Thus, the Conservation Easement controls how (or if) Alignment B can be built and used.

⁷ Civil Code § 815.1.

⁸ Civil Code § 815.3.

⁹ Exh. A, ¶¶ 2(c), 3.

¹⁰ Exh. A, ¶ 4. The Conservation Easement also contains multiple other obligations and restrictions, and the summary here is illustrative and not comprehensive.

¹¹ MND at 64; *see id.* at 2 (Alignment B lies “partially within the Modoc Preserve”); *id.* Appendix C.

Because of that, the MND needs to analyze project compliance with the Conservation Easement in the MND. For example, Section 4.10 of the MND inquires whether the project would result in “land use incompatible with existing land use.”¹² The Conservation Easement dictates existing land use for the Preserve, and so the MND must analyze whether Alignment B is compatible with the Conservation Easement. The MND, however, fails to provide sufficient analysis to that point, and its description of the MND instead suggests Alignment B would violate the Conservation Easement.

For example, the MND states that “[t]wo retaining walls ... would be required along the multi-use path to provide a level surface and limit earthwork,” which the MND concedes would be a change in topography.¹³ Other construction work would involve modification of drainage swales, further grading, and earthwork of “14 to 24 feet wide along the multi-use path alignment.”¹⁴ Construction would involve “traditional methods including ... tree removal, rough grading, retaining wall construction, finish grading and paving.”¹⁵

The Conservation Easement restricts the construction of roads, structures or “[a]ny alteration of the general topography ... including ... the excavation or removal of soil, sand, gravel or rock” in the Preserve unless such work is consistent with the Conservation Values of the Easement.¹⁶ But the MND contains no information or analysis how Alignment B—involving tree removal, grading, earthwork, construction, and resulting in a paved path with retaining walls—is consistent with those Conservation Values.

The MND also contemplates that construction of the path will result in increased use of the Preserve. “The proposed [Path] may result in an increase in trail use as compared to existing conditions by pedestrians, bicyclists and equestrians.”¹⁷ The Conservation Easement, however, prohibits “[a]ny use of the [Preserve] which may generate significant noise, traffic, ... crowds; or which may significantly impair or interfere with the natural, open space, scenic, wetlands, ecological and wildlife habitat values of the [Preserve].”¹⁸ The MND concludes, without analysis, that “this increase in human activity and related disturbance would be minor and significant impacts on local wildlife populations are not anticipated.”¹⁹ But without supporting data or analysis for that conclusion, the Land Trust cannot evaluate whether an increase in use would be consistent with the Conservation Easement.

¹² MND at 62.

¹³ MND at 5, 60.

¹⁴ MND at 5.

¹⁵ *Id.*

¹⁶ Exh. A, ¶ 4.

¹⁷ MND at 42.

¹⁸ Exh. A, ¶ 4(i).

¹⁹ MND at 42.

Further, the MND suggests that construction and maintenance of Alignment B would affect several sensitive and protected species within the Preserve. The MND states that Southern Tarplant (*Centromadia parryi australis*)—a rare, threatened, or endangered California plant as recognized by the California Native Plant Society—was “[p]lanted at the Modoc Preserve from 2015-2017”²⁰ But according to land managers at the Land Trust, Southern Tarplant currently exists at the Preserve. It was planted as part of an earlier restoration and has since naturally been re-seeding and spreading through the Preserve. The MND identifies no mitigation measures to avoid disruption of that species.

The MND also lists the Monarch butterfly (*Danaus plexippus*) as a special-status wildlife species, notes that the Preserve is “[s]uitable roosting habitat,” but states the species was not observed at the Preserve and is “unlikely to occur” there.²¹ This statement is incorrect. Land managers for the Land Trust report they commonly observe Monarch butterflies and caterpillars on the Preserve. Again, the MND identifies no mitigation measures to avoid disruption of that species.

Finally, the MND suggests that construction of Alignment B would require removal of trees within the Preserve, possibly including coast live oaks, another sensitive or protected species.²² The removal of such trees would conflict with the Conservation Easement, which prohibits significant interference with natural, ecological, and wildlife habitat values in the Preserve.

Rather than providing information as to how the above construction and use of Alignment B would comply with the Conservation Easement, the MND suggests without support that Alignment B “has been designed to minimize encroachment into the Modoc Preserve and to be consistent with the provisions of the conservation easement held by The Land Trust for Santa Barbara County....”²³ As shown above, however, that statement is either inaccurate or it is unsupported by sufficient evidence to justify adoption of the MND.

4. The Land Trust Urges the County to Postpone Adoption of the MND to Consider Alternatives

The Land Trust is not opposed to the Path in principle, but its obligation to protect the Preserve and enforce the Conservation Easement is paramount. The Land Trust is eager and willing to discuss with the County how the Path can be built, even within the Preserve, but the Land Trust needs substantially more information than the County or the MND has provided. As set forth in an earlier letter sent to the County on August 17, 2022,²⁴ the Land Trust would need the following information to assess whether Alignment B is consistent with the Conservation Easement:

²⁰ MND at 33.

²¹ MND at 34, 36.

²² MND at 43.

²³ MND at 4.

²⁴ A copy of the letter is attached as Exhibit B and incorporated herein by reference.

- Trail design, construction, and management plans;
- Specific information on how, and by whom, the County will manage the kinds of bicycles allowed to use the path, speeds, traffic intensity, and lighting;
- Information to show that the construction of and use of Alignment B:
 - will not result in soil degradation or erosion;
 - will not result in pollution or degradation of surface waters that significantly impact the existing wetlands, uplands, or wildlife habitat in the Preserve;
 - will not result in the impairment of open space vistas;
 - Will be consistent with the purpose of the Conservation Easement to “assure that the Easement Area within the Property will be retained in perpetuity in its natural, open space, scenic, wetlands, ecological and wildlife habitat condition, use and utility, and to prevent any use of the Easement Area that would significantly impair or interfere with the Conservation Values”;
 - will prevent use of the path by motorized vehicles;
 - will prevent dumping and garbage;
 - will not cause significant degradation of topsoil quality, significant pollution, or a significant increase in the risk of erosion;
 - will not alter the general topography or natural drainage of the Preserve, including the excavation or removal of soil, sand, gravel, or rock;
 - will not result in the alteration or manipulation of watercourses located in the Preserve or the creation of new water impoundments or watercourses;
 - will not generate significant noise, traffic, dust, artificial lighting, or crowds which may impair the natural open space, scenic, wetlands, ecological, and wildlife habitat values.
- Information on how the County will manage public access to the affected area of the Preserve to protect public safety and the Conservation Values of the Easement.

We recognize the County may not have yet developed the information requested above. Nonetheless, because Alignment B encroaches upon the Preserve, the MND should have included such analysis in determining whether Alignment B is consistent with the Conservation Easement. Such analysis could suggest potential acceptable alternatives to Alignment B. For example, the Preserve currently has public access trails for pedestrian and equestrian use, as is allowed under the Conservation Easement.²⁵ Alternatives to Alignment B, such as unpaved paths without retaining walls, may be consistent with the Conservation Easement.

But unfortunately, the MND does not contain such analysis. Because of that, and because the current description of Alignment B in the MND appears to violate the Conservation Easement, the County should not approve the MND. Instead, the Land Trust requests the County postpone approval of the MND and first provide sufficient information to the Land Trust for it to determine if Alignment B or alternatives are

²⁵ Exh. A, ¶¶ 3(d), (h).

consistent with the Conservation Easement. Unless the County first provides that information, or in the absence of appropriate action by the County to take the area of the Preserve affected by Alignment B, the Land Trust cannot agree with Alignment B as described in the MND.

Very truly yours,



Robert B. Martin III

cc: Brian R. Pettit, Deputy County Counsel, County of Santa Barbara (by email to bpettit@co.santa-barbara.ca.us)

Mike Alvarado, La Cumbre Mutual Water Company (by email to MAlvarado@lacumbrewater.com)

Mark Manion (by email to MManion@ppplaw.com)

Meredith Hendricks, Executive Director, The Land Trust for Santa Barbara County (by email to mhendricks@sblandtrust.org)

Exhibit A



1999-0069145

Recorded		REC FEE	61.00
Official Records			
County Of			
SANTA BARBARA			
KENNETH A. PETTIT			
Recorder			
LARRY G. HERRERA			
Assistant		AES	
09:46AM 01-Sep-1999		Page 1 of 19	

Recording Requested by and When Recorded Mail To:

LAND TRUST FOR SANTA BARBARA COUNTY
P.O. Box 91830
Santa Barbara, California 93190
Telephone: (805) 966-4520

19

DEED OF CONSERVATION EASEMENT

This DEED OF CONSERVATION EASEMENT is made this 18th day of May 1999, by LA CUMBRE MUTUAL WATER COMPANY, a California nonprofit mutual water corporation ("LANDOWNER"), in favor of THE LAND TRUST FOR SANTA BARBARA COUNTY, a California nonprofit public benefit corporation ("LAND TRUST"), for the purpose of granting in perpetuity the Conservation Easement and associated rights described below.

WHEREAS, LANDOWNER is the owner in fee simple of certain real property located in the unincorporated portion of the County of Santa Barbara, State of California, identified as Assessor's Parcels No. 61-220-09, 61-220-10 and 61-261-01, and more particularly described in "Exhibit A" attached hereto and incorporated herein by this reference and delineated on the map attached as "Exhibit C" ("Property"); and

WHEREAS, a portion of the Property, identified as the "Easement Area" and described in "Exhibit B" and delineated on the map attached as "Exhibit C", remains in a substantially undisturbed natural condition and the Easement Area possesses unique and significant natural, open space, scenic, wetlands, ecological and wildlife habitat values (collectively "Conservation Values") of great importance to LANDOWNER, the people of Santa Barbara County and the people of the State of California; and

WHEREAS, the Easement Area possesses outstanding Conservation Values and consists in part of vernal marsh, southern willow scrub, annual grassland and oak woodland habitat with significant natural, open space, scenic, wetlands, ecological and wildlife habitat values, the preservation and management of which is consistent with the present and continued use of the Property for urban open space, injection and extraction water wells (including access roads, pipelines, utility lines and associated equipment), equestrian facilities and educational purposes; and

WHEREAS, LANDOWNER intends that the Conservation Values of the Easement Area be preserved and maintained by permitting only those land uses in the Easement Area that do not significantly impair or interfere with those Conservation Values; and

WHEREAS, the County of Santa Barbara has established an Open Space Element and other policies and zoning ordinances to help preserve Santa Barbara County's wetlands, wildlife habitat and open space lands; and

WHEREAS, LANDOWNER intends, as the owner of the Property, to convey to LAND TRUST the right to preserve and protect the Conservation Values of the Easement Area in perpetuity; and

WHEREAS, LAND TRUST is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code and Section 23701d of the California Revenue & Taxation Code, whose primary purpose is the preservation and protection of land in its natural, open space, scenic and wildlife habitat condition; and

WHEREAS, the LAND TRUST agrees, by acceptance of this Easement, to honor the intentions of LANDOWNER stated herein to preserve and protect in perpetuity the Conservation Values of the Easement Area for the benefit of this generation and future generations to come; and

WHEREAS, the specific Conservation Values of the Easement Area are further documented in an inventory of relevant features of the Property, dated SEPT 15, ___ 1999, on file in the office of LAND TRUST ("Baseline Inventory") and incorporated herein by reference, which consists of reports, maps, photographs and other documentation that the parties agree provides an accurate representation of the Easement Area as of the date of this Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California, including Sections 815-816 of the California Civil Code, LANDOWNER does hereby voluntarily grant to LAND TRUST a Conservation Easement ("Easement") in perpetuity over those portions of the Property described in "Exhibit B" attached hereto and incorporated herein by reference ("Easement Area") of the nature and character and to the extent hereinafter set forth, and LAND TRUST hereby accepts said Easement.

1. **PURPOSE.** It is the purpose of this Easement to assure that the Easement Area within the Property will be retained in perpetuity in its natural, open space, scenic, wetlands, ecological and wildlife habitat condition, use and utility, and to prevent any use of the Easement Area that would significantly impair or interfere with the Conservation Values. LANDOWNER intends that this Easement, except as noted herein, will confine the use of the Easement Area to such activities, including, without limitation, those relating to ecological research, open space, wetlands and wildlife preservation which are consistent with the purpose of this Easement.

2. **AFFIRMATIVE RIGHTS CONVEYED TO LAND TRUST.** To accomplish the purpose of this Easement, the following rights and interests are conveyed to LAND TRUST by this Easement:

(a) **Identify Resources and Values.** To identify, preserve and protect in perpetuity the Conservation Values of the Easement Area.

(b) **Monitor Uses and Practices.** To enter upon, inspect, observe, and study the Easement Area for the purposes of identifying the current uses and practices thereon and the baseline condition thereof, to conduct research on and make scientific observations of the ecological systems, to manage, maintain and/or restore the Conservation Values, and to monitor the uses and practices regarding the Easement Area to determine whether they are consistent with this Easement. Such entry shall be permitted upon prior notice to LANDOWNER, and shall be made in a manner that will not unreasonably interfere with LANDOWNER's use and quiet enjoyment of the Property.

(c) **Prevent Inconsistent Uses.** To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use.

(d) **Provide Signage.** To erect and maintain a sign or signs or other appropriate markers in prominent locations on the Basement Area, visible from a public road, bearing information indicating that the Easement Area is protected by LANDOWNER and LAND TRUST. The wording of the information shall be determined by LANDOWNER and LAND TRUST, but shall clearly indicate that the Property is privately owned and open to the public only along designated trails. LAND TRUST shall be responsible for the costs of erecting and maintaining such signs or markers.

3. **PERMITTED USES AND PRACTICES.** LANDOWNER and LAND TRUST intend that this Easement shall confine the uses of the Easement Area to open space, equestrian, pedestrian, educational and water company uses, and such other related uses as are described herein. Such uses shall not result in soil degradation or erosion, or pollution or degradation of any surface waters which significantly impact the existing wetlands, uplands or wildlife habitat, or result in impairment of open space vistas, and shall be consistent with the purpose of this Easement. The following uses and practices, if in accordance with federal, state and local laws and ordinances, and to the extent not inconsistent with the purpose of this Easement, are permitted:

(a) **Water Company Uses.** Except as specifically prohibited in Paragraph 4, to utilize the Easement Area for water recharge and extraction of underground water resources, with utility access including but not limited to water extraction and injection wells, access roads, pipelines and electric lines for operation and maintenance of water wells ("Water Company Uses").

(b) **Equestrian Use.** To allow LANDOWNER to utilize the Easement Area for equestrian purposes, including but not limited to trails.

(c) **Educational Uses.** To allow LANDOWNER to install and maintain facilities for educational purposes, including gardens and field study areas, and the public utilities necessary for their use. Such uses shall not include the construction of occupied buildings, roads or parking areas, either temporary or permanent.

(d) **Natural Resources Management, Restoration and Enhancement.** To make improvements which are intended to manage, restore or enhance the natural resource values within the Easement Area, including but not limited to alterations of topography or water courses, removal of non-native plants including trees, planting of additional appropriate plants, construction of trails,

bridges, and installation of related improvements for resource management, educational or scientific purposes.

(e) **Construction, Maintenance and Repair.** To maintain, repair and replace existing structures, fences, roads, ditches, water wells, water lines and other improvements in the Easement Area; and to construct additional improvements accessory to the permitted uses of the Easement Area. The LANDOWNER shall obtain the prior written approval of LAND TRUST for the construction of any such additional improvements, which consent shall not be unreasonably withheld. Prior notice and approval of the LAND TRUST are not required to maintain, repair or replace existing improvements.

(f) **Control of Animals and Plants.** To control problem animals and plants by the use of selective control techniques.

(g) **Utility Easements.** To provide for easements to private, public and quasi-public utilities in furtherance of the purpose of this Easement.

(h) **Public Access.** To allow public access to the Easement Area via a system of designated trails. The LANDOWNER and LAND TRUST shall establish appropriate restrictions on, and measures to manage, public access to the Easement Area, including but not limited to fences, gates, vehicle barriers, signs and time-of-use rules to ensure public safety and protection of the Conservation Values of this Easement.

4. **PROHIBITED USES.** Any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are inconsistent with the Conservation Values of this Easement and are expressly prohibited:

(a) **Subdivision.** The division, subdivision, or de facto subdivision of the Easement Area.

(b) **Commercial or Industrial Uses.** The establishment of any commercial or industrial uses within the Easement Area, including the construction, placement or erection of any commercial signs or billboards; provided, however, that neither equestrian, water well nor educational uses as contemplated by the provisions of this Easement shall be considered commercial or industrial uses.

(c) **Roads or Structures.** The construction of any road or structure within the Easement Area, except as provided in this Easement.

(d) **Motorized Vehicles.** The use of motorized and/or off-road vehicles, except by LANDOWNER or others under LANDOWNER's control for equestrian, water well, utility, educational, maintenance, restoration or emergency uses of the Easement Area.

(e) **Dumping or Disposal.** The dumping or other disposal of wastes, refuse or debris on the Easement Area.

(f) **Erosion.** Any use or activity in the Easement Area which causes significant degradation of topsoil quality, significant pollution or a significant increase in the risk of erosion.

(g) **Alteration of Topography.** Any alteration of the general topography or natural drainage of the Easement Area, including, without limitation, the excavation or removal of soil, sand, gravel or rock, except as may be required for permitted uses within the Easement Area.

(h) **Watercourses.** The alteration or manipulation of watercourses located in the Easement Area or the creation of new water impoundments or watercourses for any purpose other than permitted uses of the Easement Area or enhancement of natural habitat or wetland values.

(i) **Other Incompatible Uses.** Any use of the Easement Area which may generate significant noise, traffic, dust, artificial lighting or crowds; or which may significantly impair or interfere with the natural, open space, scenic, wetlands, ecological and wildlife habitat values of the Easement Area.

5. **RESERVED RIGHTS.** LANDOWNER reserves to itself, and to its personal representatives, heirs, successors and assigns, all rights accruing from the ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) **Water Rights.** All right, title, and interest in and to all tributary and non-tributary water, water rights, and related interest in, on, under or appurtenant to the Property; provided, however, that such water rights are used in a manner consistent with the purpose of this Easement.

(b) **Mineral Rights.** All right, title, and interest in subsurface oil, gas, and minerals; provided, however, that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, shall not damage, impair or endanger the protected Conservation Values of the Easement Area, and shall be limited to such activities as are permitted under Internal Revenue Code Section 170(h)(5) and applicable Treasury Regulations.

(c) **Property Management.** LANDOWNER may elect to assign certain responsibilities for planning, oversight and management of activities within the Easement Area to a management committee or site manager of LANDOWNER'S choice. LANDOWNER agrees to inform LAND TRUST of the scope of responsibilities so assigned, and further agrees to ensure that all activities undertaken by any assigned management entity are fully consistent with the terms of this Easement. LAND TRUST agrees to work cooperatively with any assigned management entity to further the purposes of this Easement.

6. **NOTICE AND APPROVAL.** The purpose of requiring LANDOWNER to notify LAND TRUST prior to undertaking certain permitted activities is to afford LAND TRUST an adequate opportunity to monitor the activities in question to ensure that the permitted uses as defined in Paragraph 3 are designed and carried out in a manner that is consistent with the purpose of this Easement. Whenever notice is required, LANDOWNER shall notify LAND TRUST in writing not less than thirty (30) days prior to the date LANDOWNER intends to undertake the activity in

question. The notice shall describe the nature, scope, design, location and any other material aspect of the proposed activity in sufficient detail to permit LAND TRUST to make an informed judgment as to its consistency with the purpose of this Easement. LAND TRUST shall respond in writing within twenty (20) days of receipt of LANDOWNER's written request. LAND TRUST's approval may be withheld only upon a reasonable determination by LAND TRUST that the action as proposed would be inconsistent with the purpose of this Easement.

7. **ARBITRATION.** If a dispute arises between the parties concerning the consistency of any existing or proposed use or activity with the purpose of this Easement, either party is encouraged to refer the dispute to mediation first, or if that fails, to arbitration as an alternative to judicial proceedings, by request made in writing upon the other. If the other party agrees to such arbitration, any and all disputes, controversies and claims arising out of or relating to this Easement or concerning the respective rights or obligations hereunder of the parties hereto shall be settled and determined by arbitration in Santa Barbara, California, pursuant to the then existing provisions of the California Code of Civil Procedure relating to Arbitration (Code of Civil Procedure Section 1280 et. seq.) The arbitrators shall have the power to award specific performance or injunctive relief and reasonable attorney's fees and expenses to any party in any such arbitration. The parties shall have the right to obtain discovery relating to the subject matter of any arbitration as provided in Code of Civil Procedure section 1283.05, including the right to take depositions as provided therein. The arbitration award shall be final and binding upon the parties, and judgment thereon maybe entered in any court having jurisdiction thereof. The service of any notice, process, motion or other document in connection with an arbitration under this Easement, or for the enforcement of any arbitration award hereunder, may be effectuated either by personal service upon a party or by certified or registered mail to the party at its address herein provided.

8. **LAND TRUST'S REMEDIES.**

(a) **Notice of Violation.** If LAND TRUST determines that a violation of any of the terms, conditions, covenants or restrictions contained in this Easement by LANDOWNER has occurred or is threatened, LAND TRUST shall give written notice to LANDOWNER of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose of this Easement, to restore that portion of the Easement Area so injured.

(b) **Injunctive Relief.** If LANDOWNER fails to cure a violation which is the result of LANDOWNER's action within a thirty (30) day period after receipt of notice thereof from LAND TRUST, or fails to continue diligently to cure such violation until finally cured, LAND TRUST may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury.

(c) **Damages.** LAND TRUST shall be entitled to recover damages for violation of the terms of this Easement or injury to any of the Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting

LANDOWNER's liability therefor, LAND TRUST, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

(d) **Emergency Enforcement.** If LAND TRUST, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the protected values of the Easement Area, LAND TRUST may pursue its remedies under this Paragraph without waiting for the period provided for correction to expire. LAND TRUST shall notify LANDOWNER in a timely fashion of any action either proposed or taken pursuant to this Paragraph.

(e) **Scope of Relief.** LAND TRUST's rights under this Paragraph shall apply equally to threatened as well as actual violations of the terms of this Easement. LAND TRUST's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(f) **Costs of Enforcement.** Any reasonable costs incurred by LAND TRUST in enforcing the terms of this Easement against LANDOWNER, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by LANDOWNER's violation of the terms of this Easement shall be borne by LANDOWNER; provided however that LANDOWNER shall not be responsible for any such costs of restoration necessary to remedy damage to the Easement Area caused by the conduct of third parties acting without permission of LANDOWNER. The prevailing party in any action brought pursuant to the provisions of this Easement shall be entitled to recovery of its reasonable costs of suit, including, without limitation, attorneys' fees, from the other party.

(g) **Enforcement Discretion.** Enforcement of the terms of this Easement shall be at the discretion of LAND TRUST, and any forbearance by LAND TRUST to exercise its rights under this Easement shall not be deemed or construed to be a waiver by LAND TRUST of such rights or of any subsequent breach of the same or any other terms of this Easement, or of its rights under the Easement. No delay or omission by LAND TRUST in the exercise of any right or remedy upon any breach by LANDOWNER shall impair such right or remedy or be construed as a waiver, and LANDOWNER hereby waives any defense of laches, estoppel or prescription.

9. **LANDOWNER'S REMEDIES.** LANDOWNER may pursue all remedies available at law or in equity.

10. **ACTS BEYOND LANDOWNER'S CONTROL.** Nothing contained in this Easement shall be construed to entitle LAND TRUST to bring any action against LANDOWNER for any injury to or change in the Easement Area resulting from causes beyond LANDOWNER's control, including, without limitation, fire, flood, storm and earth movement, or actions by persons outside the control of LANDOWNER, or from any prudent action by LANDOWNER under emergency conditions, to prevent, abate or mitigate significant injury to the Property or lives or other property resulting from such causes. LANDOWNER shall cooperate with LAND TRUST to remedy any such injuries or damage to the Easement Area to the extent feasible.

11. **COSTS AND LIABILITIES.** LANDOWNER retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property for health and safety, including payment of property taxes and assessments of any kind, costs associated with fire management and zoning regulations, and maintenance of adequate comprehensive general liability insurance coverage. LANDOWNER remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state and local laws, regulations and requirements. LANDOWNER shall not be responsible for any costs associated with maintenance or repair of any additional improvements within the Easement area which may be made for open space, habitat restoration, educational, equestrian, pedestrian or public access purposes.

12. **INDEMNIFICATION.** LANDOWNER shall release and hold harmless, indemnify and defend LAND TRUST and its trustees, officers, members, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments or administrative actions ("Claims"), including, without limitation, reasonable attorneys' fees, arising from or in any way connected with (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties; (b) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, including, without limitation, environmental or hazardous waste provisions; and (c) the obligations and costs associated with the LANDOWNER responsibilities specified in Paragraph 11. LANDOWNER's indemnification obligation shall not apply to any Claims caused by or arising out of the active or passive negligence or willful misconduct of Indemnified Parties. Nothing herein shall impose any obligation on LANDOWNER to be responsible for or liable for consequential damages suffered by LAND TRUST.

13. **SUBSEQUENT TRANSFERS.** LANDOWNER agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, any leasehold interest. The failure of LANDOWNER to perform any act required by this Paragraph shall not affect the validity of such transfer nor shall it impair the validity of this Easement or limit its enforceability in any way.

14. **EXTINGUISHMENT.** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The proceeds, if any, from such extinguishment to which LAND TRUST shall be entitled, as determined by the court, shall be the stipulated fair market value of the Easement, or proportionate part thereof as determined by a qualified appraiser mutually agreed upon by LAND TRUST and LANDOWNER, or a court appointed appraiser if the parties cannot reach mutual agreement.

15. **CONDEMNATION.** If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, whether by public,

corporate or other authority, so as to terminate this Easement, in whole or in part, LANDOWNER and LAND TRUST shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by LANDOWNER and LAND TRUST in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The LAND TRUST share of the balance shall be determined by the pro rata percentage of the value of the Easement compared to the total value of the Property unencumbered by the Easement as determined by a qualified appraiser mutually agreed upon by LAND TRUST and LANDOWNER, or a court appointed appraiser if the parties cannot reach mutual agreement.

16. **SUBORDINATION**. If at the time of conveyance of this Easement, the Property is subject to any mortgage or deed or trust encumbering the Property, LANDOWNER shall obtain from the holder of any such mortgage or deed of trust an agreement to subordinate its rights in the Property to this Easement to the extent necessary for the LAND TRUST to enforce the purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgage or deed of trust holder.

17. **GENERAL PROVISIONS**.

(a) **Controlling Law**. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

(b) **Liberal Construction**. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement.

(c) **Severability**. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **Entire Agreement**. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) **No Forfeiture**. Nothing contained herein will result in a forfeiture or reversion of LANDOWNER's title in any respect.

(f) **Successors in Interest**. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective beneficiaries, personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(g) **Notices**. Any notice, demand, request, consent, approval, or other

communication that either party desires or is required to give to the other party shall be in writing and either delivered personally or sent by first class mail, postage prepaid, addressed to the appropriate party at the address provided in this Easement or at such address as either party or successor in interest shall from time to time designate by written notice to the other.

IN WITNESS WHEREOF, LANDOWNER has executed this Easement and LAND TRUST has accepted this Easement as of the date first written above. This Easement shall become effective as of the date of recordation.

LANDOWNER:

LA CUMBRE MUTUAL WATER COMPANY
695 Via Tranquila
Santa Barbara CA 93110
Telephone: 967-2376 Fax: 967-8102

By B. R. Bertrando
B. R. Bertrando, President

By George E. Goodall
George E. Goodall, Secretary

LAND TRUST:

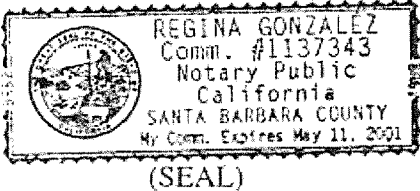
THE LAND TRUST FOR SANTA BARBARA COUNTY
Post Office Box 91830
Santa Barbara, California 93190
Telephone: 805/9664520 Fax: 805 963-5988

By: Robert Isaacson
Robert Isaacson, Vice President

By: Andrew Mills
Andrew Mills, Secretary

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.

On MAY 13, 1999 before me, Regina Gonzalez, a Notary Public in and for said State, personally appeared ROBERT ISAACSON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature Regina Gonzalez

STATE OF CALIFORNIA)
COUNTY OF Santa Barbara) ss.

On May 18, 1999 before me, Margaret L. Braniff, a Notary Public in and for said State, personally appeared BR. Bertrando, George E. Goddall & Andrew Mills, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Margaret L. Braniff

(SEAL)



"Exhibit A"
Legal Description of Propert

Exhibit A

PARCEL ONE: AP# 61-220-09

Lot No. 62 as shown-and designated on Sheet No. 7 of "Map of Tract No. 1 of La Cumbre Estates, being a Subdivision of a Portion of Hope Ranch" as surveyed by George A. Miller, licensed surveyor, which map was recorded on August 10, 1926 in Map Book 15, at Pages 117 to 126 inclusive, in the Office of the County Recorder of Santa Barbara County.

Together with a strip of land of a uniform width of 30 feet lying Southerly of and adjacent to said Lot 62, lying between the most Easterly line and the most Southwesterly line thereof produced to the centerline of Vieja Drive.

EXCEPTING therefrom:

That portion of Lot 62 of La Cumbre Estates, Tract No. 1, a Subdivision of a portion of Hope Ranch, in the County of Santa Barbara, State of California, according to the map thereof recorded in Map Book 15, Pages 117 to 126 inclusive, in the Office of the County Recorder of said County, described as follows:

Beginning at the most Easterly corner of Lot 54B of La Cumbre Estates, Tract No. 1, on the center line of Vieja Drive, as shown on said map; thence 1st, leaving the center line of Vieja Drive, North 43° 54' West, along the Northeasterly line of said Lot 54B, a distance of 364.72 feet to the most Northeasterly corner of said Lot 54B; thence 2nd along the Easterly prolongation of the Northerly line of said Lot 54B, North 77° 32' East, a distance of 36.00 feet; thence 3rd, South 43° 54' East, a distance of 146.00 feet; thence 4th, South 67° 08' East, a distance of 225.71 feet to a point on the center line of said Vieja Drive on the arc of a curve to the left having a tangent at said point which bears South 51° 51' 57" West, said Vieja Drive having a right of way sixty feet in width, being, thirty feet along each side of the following described center line; thence 5th, Southwesterly along said center line and along the arc of said curve, the radius of which is 1562.88 feet and through a central angle of 4° 23' 57", a distance of 120.00 feet to the point of beginning.

PARCEL TWO: AP# 61-220-10

Commencing at Stake No. 20 at angle point in the South line of Modoc Road as called for in deed from Delia Hope (a widow) to the Pacific Improvement Company, dated April 4, 1887, and recorded in Book 13 of Deeds, Page 157, et seq., Santa Barbara County Records; thence South 82° 15' East on line with a 4" x 4" redwood stake no. 19 as per deed, 435.6 feet to a 4 x 4 inch redwood stake; thence at right angles South 7° 45' West 100 feet to a 4 x 4 inch redwood stake; thence North 82° 15' West, parallel with the first above mentioned course, 435.6 feet to a 4 x 4 inch redwood stake; thence North 7° 45' East 100 feet to place of beginning; containing one acre.

PARCEL THREE: AP# 61-261-01

Lots 64, 65, 66, 67 and 68 as shown on Sheets Nos. 7 and 8 of 10 sheets of that certain Map of Tract No. 1, La Cumbre Estates, being a subdivision of a portion of Hope Ranch, recorded with the County Recorder of Santa Barbara County, California, in Map Book 15 at Pages 117 to 126, inclusive.

"Exhibit B"
[Legal Description of Easement Area]

Exhibit B

DESCRIPTION: Conservation Easement (APN 61-220-09 & 10 and 61-261-01)

An Easement over those portions of Lots 62, 63, 64, 65, 66, 67 and 68 of La Cumbre Estates, Tract No. 1, a Subdivision of a portion of Hope Ranch, recorded in Book 15, Pages 117 to 126, inclusive, of Maps, in the Office of the County Recorder, County of Santa Barbara, State of California, being described as follows:

BEGINNING at a point at the northwesterly corner of said Lot 64, said point being at the northeasterly corner of said Lot 63, at the southerly line of Modoc Road as shown on said map;

Thence along said southerly line of Modoc Road the following courses:

South 81°32'30" East, 314.54 feet to a point;

South 79°27'30" East, 439.11 feet to a point;

South 83°29'30" East, 478.99 feet to a point;

South 88°12'30" East, 974.76 feet to a point of curvature of a tangent curve;

Along a curve to the right having a radius of 15.53 feet, a delta of 169°44'30", a radial line of which bears South 01°47'30" West, an arc length of 46.01 feet to a point in the northerly line of Vieja Drive as shown on said map;

Thence along said northerly line of Vieja Drive the following courses:

South 81°32'00" West, 426.81 feet to a point of curvature of a tangent curve;

Along a curve to the right having a radius of 925.37 feet, a delta of 11°38'00", a radial line of which bears North 08°28'00" West, an arc length of 187.89 feet to a point;

North 86°50'00" West, 227.60 feet to a point of curvature of a tangent curve;

Along a curve to the left having a radius of 551.67 feet, a delta of 32°04'00", a radial line of which bears South 03°10'00" West, an arc length of 308.75 feet to a point;

South 61°06'00" West, 229.74 feet to a point of curvature of a tangent curve;

Along a curve to the right having a radius of 418.56 feet, a delta of 19°36'00", a radial line of which bears North 28°54'00" West, an arc length of 143.18 feet to a point;

South 80°42'00" West, 55.44 feet to a point of curvature of a tangent curve;

Along a curve to the right having a radius of 257.94 feet, a delta of 21°21'00", a radial line of which bears North 09°18'00" West, an arc length of 96.12 feet to a point;

North 77°57'00" West, 133.64 feet to a point of curvature of a tangent curve;

Along a curve to the right having a radius of 2425.70 feet, a delta of 7°46'00", a radial line of which bears North 12°03'00" East, an arc length of 328.81 feet to a point;

North 70°11'00" West, 74.52 feet to a point of curvature of a tangent curve;

Along a curve to the left (at a delta of 5°50'00" and an arc length of 111.12 feet the southwesterly corner of said Lot 64) having a radius of 1091.43 feet, a delta of 7°04'00", a radial line of which bears South 19°49'00" West, an arc length of 134.61 feet to a point;

North 77°15'00" West, 208.55 feet to a point of curvature of a tangent curve;

Along a curve to the left having a radius of 1176.28 feet, a delta of 6°49'00", a radial line of which bears South 12°45'00" West, an arc length of 139.95 feet to a point;

North 84°04'00" West, 216.11 feet to a point of curvature of a tangent curve;

Along a curve to the left having a radius of 363.09 feet, a delta of 43°08'00", a radial line of which bears South 05°56'00" West, an arc length of 273.34 feet to a point;

South 52°48'00" West, 90.85 feet to a point of curvature of a tangent curve;

Along a curve to the left having a radius of 1592.88 feet, a delta of 1°32'23", a radial line of which bears South 37°12'00" East, an arc length of 42.81 feet to a point on the northeasterly line of that certain tract of land described in a deed from the La Cumbre Mutual Water District to the Hope School District of the County of Santa Barbara recorded in Book 1801, Page 365, of Official Records, records of said County;

Thence North 67°08'00" West, leaving said northerly line of Vieja Drive and along the northeasterly line of said Hope School District land, 191.20 feet to a point;

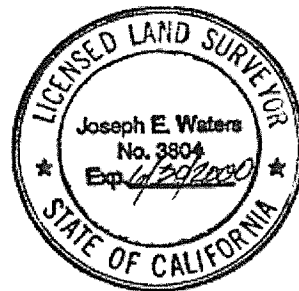
Thence North 43°54'00" West, continuing along said northeasterly line, 146.00 feet to a point;

Thence South 77°32'00" West, continuing along said northeasterly line, 36.00 feet to a point in the westerly line of said Lot 62;

Thence North 01°47'00" East, along said westerly line, 44.54 feet to a point;
Thence North 45°25'00" East, leaving said westerly line, 295.39 feet to a point;
Thence South 40°34'40" East, 65.86 feet to a point;
Thence South 42°18'13" West, 157.41 feet to a point;
Thence South 45°18'22" East, 100.03 feet to a point;
Thence North 68°35'33" East, 325.84 feet to a point;
Thence North 46°08'40" East, 182.90 feet to a point;
Thence North 26°40'21" East, 120.78 feet to a point in the southerly line of Modoc Road;
Thence South 69°38'30" East, along said southerly line (at 174.69 feet an angle point in the northerly line of said Lots 62, being the northwesterly corner of said Lot 63), 179.01 feet to a point;
Thence South 81°32'30" East, continuing along said southerly line of Modoc Road, 431.45 feet to the point of beginning.

Calculated area of easement: Approximately 20.4 acres

Prepared by: Joseph E. Waters, PL Date: May 10, 1999
Joseph E. Waters, PLS 3804



"Exhibit C"
Map of "Property" and "Easement Area"

EXHIBIT "C"
MAP OF EXHIBITS "A" & "B"

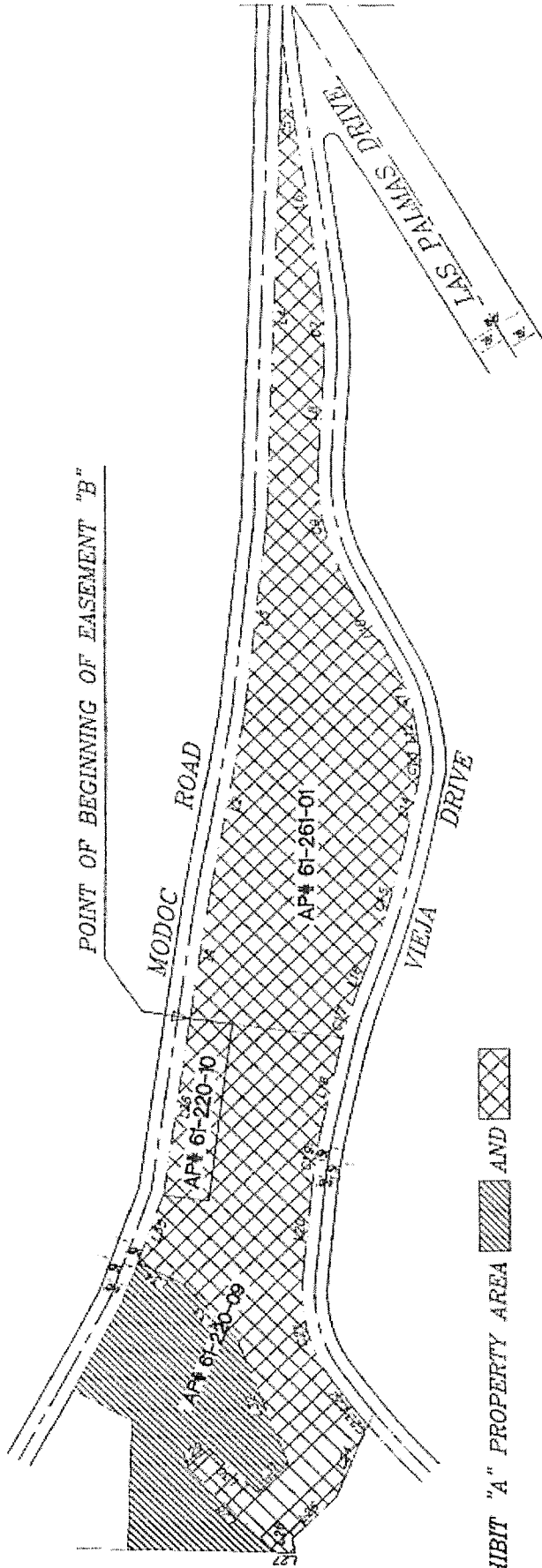


EXHIBIT "A" PROPERTY AREA AND

EXHIBIT "B" EASEMENT AREA

EXHIBIT "B" BOUNDARY

LINE	BEARING	DISTANCE
L1	S81°32'30"E	314.54
L2	S79°27'30"E	439.11
L3	S63°29'30"E	478.98
L4	S88°12'30"E	374.76
L5	S81°32'00"W	428.81
L6	N86°50'00"W	227.60
L7	S61°06'00"W	239.74
L8	S80°42'00"W	55.44
L9	N77°37'00"W	133.64
L10	N00°17'00"W	74.22
L11	N77°15'00"W	203.55
L12	N84°04'00"W	216.11
L13	S62°48'00"W	93.65
L14	N67°08'00"W	197.20
L15	N43°54'00"W	146.00
L16	S77°32'00"W	36.00
L17	N01°42'00"E	44.34
L18	N45°25'00"E	295.39
L19	S46°34'40"E	65.66
L20	S47°18'15"W	157.41
L21	S45°16'22"E	100.00
L22	N68°35'33"E	325.84
L23	N46°09'40"E	182.89
L24	N26°40'21"E	120.78
L25	S68°38'30"E	178.01
L26	S81°32'30"E	431.45

CURVE	DELTA	RADIUS	LENGTH
C5	169°44'30"	15.53	46.01
C7	113°58'00"	925.37	187.89
C9	32°04'30"	51.67	101.76
C11	192°36'00"	418.56	143.16
C13	212°12'00"	257.54	96.12
C15	7°46'00"	2423.70	328.81
C17	270°42'00"	1031.43	134.61
C18	6°49'00"	1176.28	138.85
C21	43°08'30"	361.09	271.34
C23	158°43'	1592.83	42.81

GRAPHIC SCALE



(IN FEET)

EXHIBIT "C"
CONSERVATION EASEMENT
LA CUMBRE MUTUAL WATER COMPANY.
MAY 19, 1989

Exhibit B



The Land Trust

For Santa Barbara County

August 17, 2022

VIA Certified US Mail, Return Receipt Requested, and
email to malvarado@lacumbrewater.com

La Cumbre Mutual Water Company
Mike Alvarado, General Manager
695 Via Tranquila
Santa Barbara, CA 93110

Santa Barbara County Public Works Transportation Division
Chris Sneddon, Deputy Director for Transportation
123 E. Anapamu St.
Santa Barbara, CA 93101

Re: Proposed Class I Bike Path at Modoc Preserve (Project); Deed of Conservation Easement dated May 18, 1999 from La Cumbre Mutual Water Company (“**Landowner**”) to The Land Trust for Santa Barbara County (the “**Land Trust**”), recorded on September 1, 1999 as Document No 1999-0069145 (the “**Conservation Easement**”) over a portion of Assessor’s Parcel Numbers 61-220-09, 61-220-10, and 61-261-01 (the “**Property**”)

Dear Mr. Alvarado and Mr. Sneddon:

I am reaching out to you regarding the County of Santa Barbara’s proposal to build a Class I Bike Path through the Modoc Preserve (the “**Project**”). As you know, the Modoc Preserve, which is a portion of the above-referenced Property, is subject to the terms, conditions, and restrictions of the Conservation Easement, which is held by the Land Trust.

La Cumbre Mutual Water Company as Landowner under the Conservation has the duty to comply with its terms and it may not allow others, including the County, to engage in any use or activity that violates the terms, restrictions, or conditions of the Conservation Easement. We are specifically including the County as an addressee of this letter to ensure the County is apprised of the Landowner’s obligation to comply with the Conservation Easement and the Land Trust’s legal obligation to enforce the Conservation Easement.

Plans and other documents related to this Project appear to have been developed without due consideration for the provisions of the Conservation Easement or the terms in it that empower and obligate the Land Trust to ensure perpetual conservation. To date, the Land Trust has not been provided with notice or information adequate to determine whether the Project is consistent with the terms of the Conservation Easement. Only if the Land Trust determines that the Project is designed, constructed, and managed in a way that complies with the Conservation Easement can the Land Trust provide approval and support for the Project. The Land Trust, therefore, requests information sufficient to determine if this Project can be constructed in compliance with the Conservation Easement. Please provide the information requested below at your earliest

opportunity. Requests for project approval should come from La Cumbre Mutual Water Company, as the landowner. However, as this is a County project, please work with the County to procure this information.

The Land Trust desires to work with the Landowner and the County to see if the Project can be accommodated under the Conservation Easement, and what it will take for the Project be successful. Although the Land Trust must and will enforce the Conservation Easement, in court if necessary, we believe a collaborative solution would be in the best interest of the Landowner, the Land Trust, and the community.

The Land Trust Is Required to Enforce the Conservation Easement in Accordance with its Terms

As the grantee of this Conservation Easement, the Land Trust is charged with enforcing its terms, conditions, and restrictions. This enforcement obligation is codified at Civil Code sections 815–816, which created conservation easements. In addition, the Corporations Code applicable to California nonprofit public benefit corporations requires the Land Trust to prevent loss of or injury to its charitable assets. The Land Trust’s interests in real property, including conservation easements, are assets of the Land Trust. The Land Trust’s obligation to appropriately steward its charitable assets is enforced by the California Attorney General through its Charitable Trusts Section. Failure of the Land Trust to competently manage its charitable assets could result in penalties or even loss of its state status as a nonprofit charitable corporation. This obligation is also a requirement of being a land trust accredited by the Land Trust Accreditation Commission, and the Land Trust is required to enforce each of its conservation easements in accordance with each of their terms. The Land Trust has adopted a written policy and developed written procedures for documenting and responding to potential conservation easement violations, is obligated to investigate potential violations in a timely manner and promptly document all actions taken, and must involve legal counsel as appropriate to the severity of the violation and the nature of the proposed resolution (Land Trust Alliance Standards and Practices, Standard 11.C)

Section 8 of the Conservation Easement states that if there is a threatened violation, the Land Trust may resort to a lawsuit, including an injunction to stop the violation. The Land Trust will be entitled to damages and recovery of its attorneys’ fees and costs both under the Conservation Easement Section 8 and under California Civil Code section 815.7. Section 815.7 also permits the Land Trust to not only recover the costs to restore any harm to the Easement Area and other damages, but also the loss of scenic, aesthetic, and environmental values.

Overview of Conservation Easement Provisions

The Recitals section of the Conservation Easement states that the Easement Area shall be preserved and maintained by permitting only those land uses in the Easement Area that do not significantly impair or interfere with identified Conservation Values. Conservation Values are defined as the natural, open space, scenic, wetlands, ecological and wildlife habitat values, which include, but are not limited to, “vernal marsh, southern willow scrub, annual grassland and oak woodland habitat” (“**Conservation Values**”).

Section 1 of the Conservation Easement states that its Purpose is to “assure that the Easement Area within the Property will be retained in perpetuity in its natural, open space, scenic, wetlands, ecological and wildlife habitat condition, use and utility, and to prevent any use of the Easement Area that would significantly impair or interfere with the Conservation Values” (“**Conservation Purpose**”).

Section 2 of the Conservation Easement affirmatively conveys to the Land Trust the right to determine if uses and practices in the Easement Area are consistent with the Conservation Easement, and to prevent any activity on or use of the Easement Area that is inconsistent with the Conservation Purpose.

Section 3 of the Conservation Easement sets out the permitted uses of the Easement Area with the stated intent “that this Easement shall confine the uses of the Easement Area to open space, equestrian, pedestrian, educational, and water company uses and other related uses.” Section 3(e) requires the Landowner to obtain Land Trust’s prior written approval, which “the Land Trust will not unreasonably withhold.”

Section 4 of the Conservation Easement prohibits activities and uses of the Easement Area that are inconsistent with the purpose of the Easement and also lists specific prohibited activities and uses. In particular Section 4(i) states “Any use of the Easement Area which may generate significant noise, traffic, dust, artificial lighting, or crowds or which may impair the natural open space, scenic, wetlands, ecological and wildlife habitat values [is prohibited].”

The Conservation Easement contemplates public access to the Easement Area via a system of designated trails, with restrictions to ensure that public safety and the protection of the Conservation Values. Paved trails are not categorically prohibited so long as the paved trail is compatible with the Conservation Easement, its Conservation Purposes, and Conservation Values. The Conservation Easement is silent on whether bicycles are permitted or prohibited within the Easement Area, but any such use would need to be implemented in ways (including trail design) that ensure the Conservation Purpose to preserve the Conservation Values.

Land Trust Requests the Following Design, Construction, and Management Plan Information

Please provide trail design, construction, and management plans of adequate detail to allow the Land Trust to evaluate consistency with the relevant terms of the Conservation Easement. Please also include specific information on how, and by whom, the Project will manage the kinds of bicycles allowed to use the path, speeds, traffic intensity, and lighting, all of which may be incompatible with the protection of the Conservation Values.

In addition, please provide information to show that the construction of and use of the bike path:

- Will not result in soil degradation or erosion (Section 3, preamble);
- Will not result in pollution or degradation of surface waters that significantly impact the existing wetlands, uplands, or wildlife habitat in the Easement Area (Section 3, preamble);
- Will not result in the impairment of open space vistas (Section 3, preamble);
- Will be consistent with the purpose of the Conservation Easement to “assure that the Easement Area within the Property will be retained in perpetuity in its natural, open space, scenic, wetlands,

ecological and wildlife habitat condition, use and utility, and to prevent any use of the Easement Area that would significantly impair or interfere with the Conservation Values” (Section 3, preamble; Section 1);

- Will prevent use of the path by motorized vehicles, such as electric bikes, which are a concern of the Land Trust (Section 4(d));
- Will prevent dumping and garbage (Section 4(e));
- Does not cause significant degradation of topsoil quality, significant pollution, or a significant increase in the risk of erosion (Section 4(f));
- Will not alter the general topography or natural drainage of the Easement Area, including the excavation or removal of soil, sand, gravel, or rock (Section 4(g));
- Will not result in the alteration or manipulation of watercourses located in the Easement Area or the creation of new water impoundments or watercourses (Section 4(h));
- Does not generate significant noise, traffic, dust, artificial lighting, or crowds or which may impair the natural open space, scenic, wetlands, ecological, and wildlife habitat values (Section 4(i)); and
- How public access to the Easement Area will be managed and restricted to protect public safety and the Conservation Values (Section 3(h)).

We look forward to hearing from you soon so that all parties can determine if there is a path forward for this project.

Sincerely Yours,



Meredith Hendricks,
Executive Director
Land Trust for Santa Barbara County

cc: Doug Campbell, Chair, Modoc Preserve Committee (via email)
Alison Petro, Land Trust for Santa Barbara County (via email)
Chris Sneddon, Santa Barbara County Public Works (via email and certified mail)
Rachel Van Mullem, County Counsel (via email and certified mail)
Eileen Chauvet, Conservation Partners LLP (via email)