



1

3 West Carrillo Street, Suite 205
ph : 805.962.4611

Santa Barbara, CA 93101
fax: 805.962.4161



2016 MAY 13 PM 3: 57
COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS
P.14-004.01

May 12, 2016

Board of Supervisors
County of Santa Barbara
105 East Anapamu
Santa Barbara, CA 93101

Subject: **Pollyrich Farms Appeal of Sierra Grande Rural Recreation Project
Conditional Use Permit, Case No. 13CUP-00000-00012
Sierra Grande Response to Appellants Appeal Issues**

Dear Honorable Supervisors,

L & P Consultants represents Sierra Grande, the applicants for the approved Rural Recreational Project Conditional Use Permit (CUP) that is being appealed to your Board by Pollyrich Farms, the Appellant. We have reviewed the Board Letter prepared by P&D staff for your review and consideration, and support the staff recommendation that your Board deny the appeal and make the finding for approval of the project as included therein. We have also reviewed and support the P&D staff summary of the project, and staff's description and extensive response to the Appellant's issues. Furthermore, it is our intent to supplement the staff's summary and provide for your consideration additional and detailed information on the following issues so that you have sufficient information to make an informed decision in denying the appeal and approving the Rural Recreational Project CUP:

Access to the Project Site

The Appellant claims that there are insufficient recorded access rights to the Project Site, specifically that not all the parcels within the Sierra Grande ownership have recorded access rights through the Pollyrich Farms property. The Appellant concedes that record access rights do exist over the Pollyrich Farms property for the benefit of the Sierra Grande Parcel that recreational guests would travel to and park vehicles, and receive orientation for use of the recreational facilities, but that there are no record access rights for the benefit of the Sierra Grande Parcel that the recreational zip line and ropes course facilities are located upon. The following will demonstrate that all of the Sierra Grande Parcels have record access rights over the Pollyrich Farms property.

In order to properly determine what access rights exist, there are two basic facts that must be determined; First, which parcels have been granted access rights and therefore are dominant tenements and have the right to access Highway 246 across the Pollyrich Farms property, and second, what level or intensity of use is permitted in utilizing the right.

In order to determine these two facts and thereby develop a complete picture of the rights held by the various properties our office conducted a review of the subject properties. First, we reviewed the records maintained by a local title company to determine a chain of title for the subject properties. It is important to note that title companies index property or deed records by parcel reference for their use in issuing title insurance policies. However this indexing system is for their use and does not conform to the requirements of Constructive Notice under California Law as follows:

Civil Code §18 - Notice, actual and constructive. Notice is: 1. Actual--which consists in express information of a fact; or, 2. Constructive--which is imputed by law.

The Santa Barbara County Recorder's Office indexes documents based on the Grantee-Grantor system. Therefore, after determining an orderly chain of title for the subject properties, we conducted a second step and researched the Grantee-Grantor index maintained by the Santa Barbara County Recorder's Office. While normally any document found in the Grantee-Grantor index will appear in a Title Company's Index, it is not always the case that the document will be index by parcel, and therefore may be overlooked by researchers referencing by parcel only.

The subject property for this research included the following parcels, APN 137-250-074 (Pollyrich), APN 137-270-032 (Granite), APN 137-270-033 (Gildred-Hartman, ie, Sierra Grande), APN 137-270-034 (Novatt) and APN's 137-270-031 & 137-280-017 (Hartman, ie, Sierra Grande). We found that all of the above parcels were held in common ownership by the Gardner Ranch Co. in 1991. California Civil Code § 811 reads as follows, "*How extinguished. A servitude is extinguished: 1. By the vesting of the right to the servitude and the right to the servient tenement in the same person; ...*". Therefore, by the doctrine of merger, in accordance with California Law, no access easements existed across any of the subject properties in favor of the Hartman (Sierra Grande) parcel at that time due to the fact that all of the parcels were held in the same ownership.

While the appellant is correct that the Gildred-Hartman (Sierra Grande) parcel acquired an access easement across the Pollyrich Farms parcel by a reservation in the deed granted to E. Ruoslahti, et al. (Pollyrich's predecessor in title) by Jelmax, et al. (Gildred-Hartman's predecessor in title), this is not the only document in the chain of title of the Pollyrich parcel that grants access rights across the Pollyrich parcel. Therefore any conclusions of access rights across the Pollyrich parcel based solely on that document is incomplete.

In 1991 the Gardner Ranch Co. processed 91-LA-001 with the County of Santa Barbara. As part of the lot line adjustment the County of Santa Barbara required that the Gardner Ranch Co. record an agreement to provide access for Parcel 2 of 91-LA-001, the Hartman (Sierra Grande) Parcel, for access to both Highway 101 and Highway 246.

By two deeds recorded on July 23, 1991, as Instruments No. 91-047392 and 91-047393, Gardner Ranch Co., conveyed Parcel 1 of 91-LA-001 to Granite Construction Co. Parcel Three of these two deeds granted a 60' wide access easement across the Pollyrich parcel to Granite Construction Co. The southerly end of the 60' easement across Pollyrich begins at the northerly termination of the access easement reserved by Gardner for the benefit of Parcel 2 of 91-LA-001 (Hartman, ie, Sierra Grande) across Parcel 1 of 91-LA-001 (Granite).

In 2005 Jelmax, LP, successor in interest to Gardner Ranch Co. conveyed both the Pollyrich and the Hartman (Sierra Grande) parcels to E. Rouslathi, et al. by a deed recorded April 6, 2005 as Instrument No. 2005-0031251. This is the deed analyzed in Mr. Kirby's, esq. letter to the Board of Supervisor's dated April 29, 2016. However as a simultaneous recording Jelmax and E. Rouslathi recorded a "Declaration of Reciprocal Easement Rights and Covenants Running with the Land" (Declaration) as Instrument No. 2005-0031252. The effects of the Declaration are not discussed in Mr. Kirby's, esq. letter to the Board of Supervisors. Apparently Mr. Kirby's research did not recover this document.

While Exhibit's A and B of the Declaration were omitted in the recording, the Declaration is clearly in the chain of title for the subject properties and was properly recorded and indexed by the Santa Barbara County Recorder's Office. *Every conveyance of real property or an estate for years therein acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagees; ... Civil Code §1213.*

The Declaration contains the following;

1. *“Jelmax Property (now Gildred-Hartman, ie Sierra Grande) and the EREE Property (now the Pollyrich parcel and the Hartman, ie, Sierra Grande parcel) are hereinafter the ‘Collective Properties’ ...”*. This statement conclusively ties the Sierra Grande and Pollyrich parcels to a mutually beneficial Reciprocal Easement Agreement for easement rights and obligations across each of the parcels.
2. *“..for the use and benefit of the Collective Properties and of each and every person or entity who now or in the future owns any of the Collective Properties or any portion thereof.”* This statement conclusively extends the easement rights and obligations to future owners of the parcels.
3. *“The Declarants also agree that no gates will be installed on the access roads to Highway 101 and 246”*. This statement supports the conclusion that existing reciprocal access rights for all of the parcels to both Highways 101 and 246 was intended, with limitations on private gates.
4. *The Declaration specifically lists APN 137-250-074 (Pollyrich) and APN’s 137-270-031 and 137-280-017 (Hartman)*. This statement conclusively discloses that the Sierra Grande and Pollyrich Farms parcels are subject to all of the benefits and obligations of the Reciprocal Easement Rights agreement.
5. *“Declarants recognize and agree that access by easement is the most commonly used means of access to the parcels across the river”*. This statement also supports the conclusion that existing reciprocal access rights for all of the parcels to both Highways 101 (Pollyrich Farms) and 246 (Sierra Grande) was intended.
6. *“Declarants agree that it is desirable and practical to keep the road which is subject to the easement described on Exhibit “D” (Exhibit “D” is the description of the Highway 101 access road) attached hereto minimally maintained as an emergency or inclement weather entrance to the Collective Properties”*. This statement discloses that the primary access for all the parcels was intended to be by way of Highway 246, and that Highway 101 access was secondary.

Based on the above cited record documents found in the chain of title for the Pollyrich parcel, the Hartman (Sierra Grande) parcel clearly is entitled to access to Highway 246 across the Pollyrich parcel and such access is intended to be a primary access for the property except for emergency or inclement weather access. In turn, the Pollyrich Farms parcel has reciprocal access rights over the Sierra Grande parcels to access Highway 101, a fact that the Appellants may not realize.

In regards to intensity of use, the Appellant cited the court in (*Wall v Rudolph 1961*) 198 Cal. App. 2d 684, 686, that “A substantial change in the nature of the use of the dominant tenement outside the scope of normal development is prohibited and can be enjoined”. However, the court in (*Wall v Rudolph*) also stated “Whether the use just described is excessive, unduly burdensome, depends primarily upon the terms of each grant construed in the light of circumstances surrounding its execution ... “

The 60’ wide access road in question has been granted to or reserved by the following:

1. Granite Construction Company – Granite Construction Company is operating a commercial gravel/mining operation on the dominant tenement for this easement.
2. JelMax – At the time Jelmax reserved the 60’ wide easement over the Pollyrich parcel, Jelmax was processing a subdivision of the dominant tenement for this parcel.
3. Hartman – as successor in interest to E. Ruoslathi, et al. to the “Declaration of Reciprocal Easement Rights and Covenants Running with the Land”

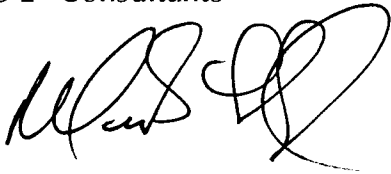
Clearly, the use of the access as proposed by the Sierra Grande Rural Recreation Project parcels does not rise to the level of use intended by the grant of the easement to the Sierra Grande predecessors or Granite Construction Company to support their commercial operations. The reservation by Jelmax to support the intended subdivision of the Gildred-Hartman parcel. Or the use by the Hartman parcels, contemplated in the "Declaration" by allowing the road on the Jelmax parcel (now Gildred-Hartman) to be widened to 40' should "APN's 137-270-031 and 137-280-017 of the EREE property become developable in the future..."

The Appellant also raises the issue as to whether there is adequate driveway access width to the Project Site, stating that the Highway 246 access driveway serves six (6) residences, and should be 24 feet in width for such service demands pursuant to Fire Dept. standards, rather than the Fire Dept. approved 20 foot width. The residence on Pollyrich Farms, which is immediately accessed from Highway 246, is one of the residences, and the other five (5) are on the south side of the Santa Ynez River on the Sierra Grande parcels and adjacent properties. Two (2) of those five (5) residences are farm employee residences. The Appellant neglects to recognize that the Fire Dept. Conditions of Approval conditioned "all weather" access for the five (5) residences is from Highway 101, not from Highway 246 which has an "at grade" crossing of the Santa Ynez River and therefore does not constitute "all weather" access. The fact of the matter is that the Highway 246 access driveway, beyond the Pollyrich Farms residence, provides no other "conditioned" residential access, and the Rural Recreational Project guest access requirements of the Fire Dept. can be accommodated within the 20 foot width requirement. This should not be construed to indicate that Sierra Grande parcel residences have no access approval over the Pollyrich driveway, only that "all weather" access for health and safety purposes is to be by means of Highway 101.

As noted in your staff letter, for purposes of the Project, the applicant had demonstrated record title rights over Pollyrich Farms that allowed recreational guests to drive and park vehicles on the Sierra Grande Project Site, and that the question of access between Sierra Grande parcels was not an issue that the County adjudicates. We hope that this analysis has adequately addressed the issue of record title access to the Sierra Grande Project Site, and that it is understood that all the Sierra Grande parcels have record title access over Pollyrich Farms through access agreements that resulted from requirements of County Conditions of Approval in other projects, and that the Appellants research efforts failed to uncover this situation. It would appear that the Appellants recourse lies with its title insurance carrier.

Very truly yours,

L&P Consultants

A handwritten signature in black ink, appearing to read 'Mark Lloyd', written in a cursive style.

Mark Lloyd, PLS 5470
Agent for Sierra Grande

Cc: Steven Rodriguez, P&D