

A coastal landscape featuring a wide sandy beach in the foreground, scattered with seaweed and rocks. The ocean is visible with gentle waves breaking near the shore. In the background, a steep, light-colored cliff rises from the beach, topped with a line of dark green trees. A long pier extends into the water on the right side of the frame. The sky is filled with large, white, fluffy clouds.

Appeal of the Paradiso del Mare Project

Appellants:

Gaviota Coast Conservancy

Santa Barbara Surfrider

Santa Barbara Audubon

Marine Mammal expert Peter Howorth



Site Constraints

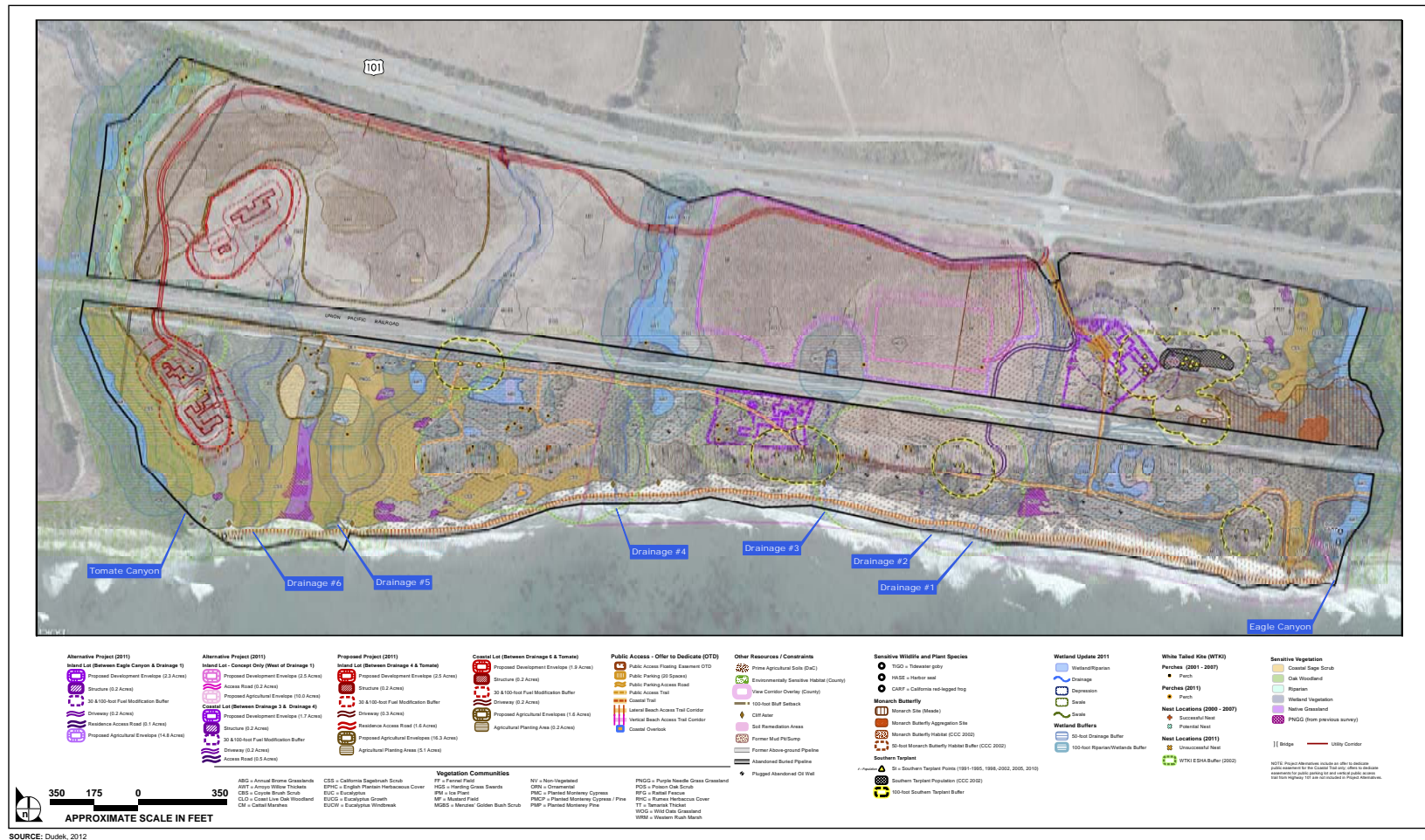


FIGURE 3.9-1

Site Constraints

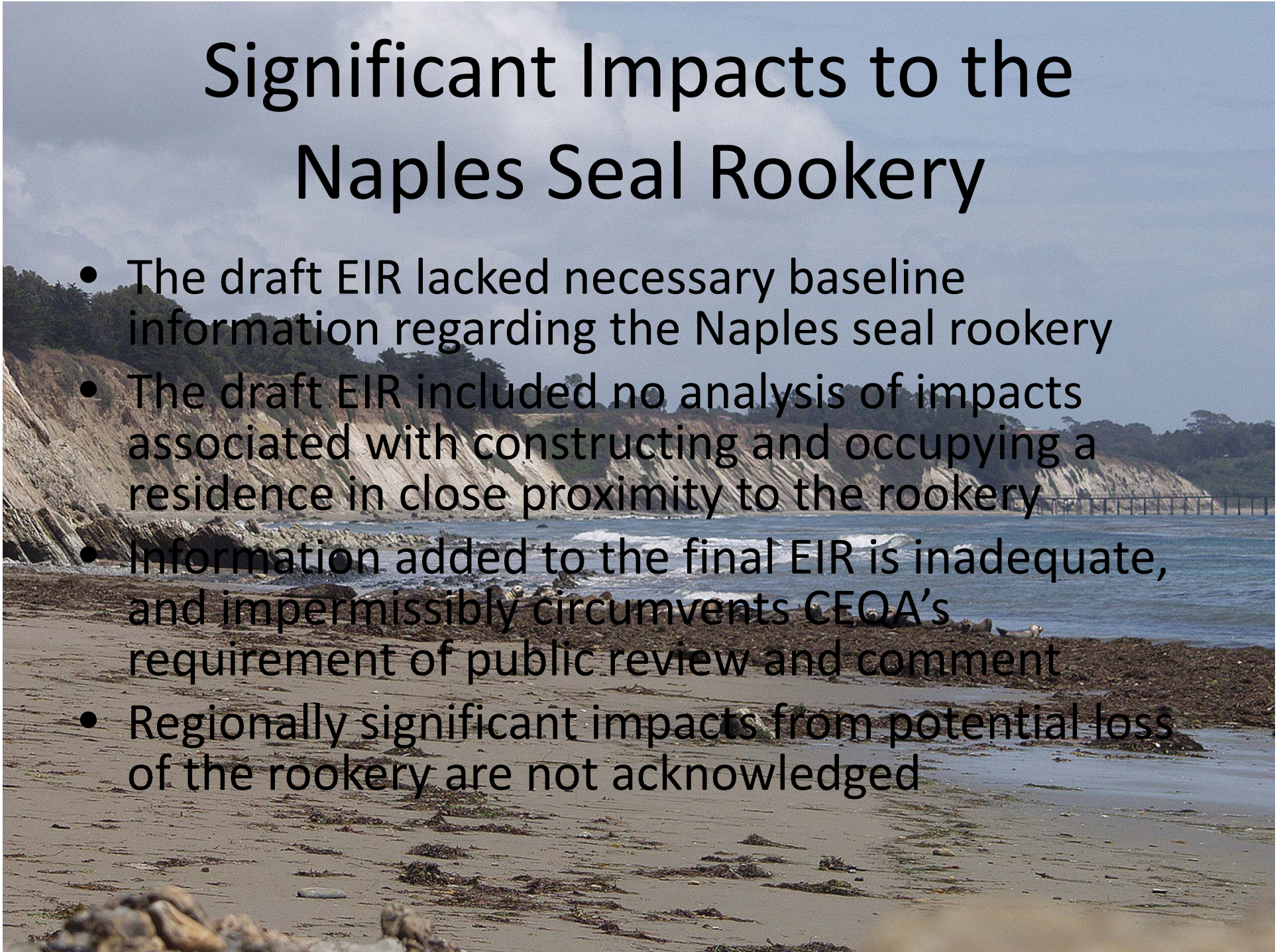
Issue Overview

- EIR's failure to recognize that the Project will cause three additional Class I significant impacts
 - Significant impacts to the Naples Seal Rookery
 - Significant impacts to White Tailed Kite
 - Significant impacts from the loss of public access
- EIR's failure to include a legally adequate alternatives analysis

9 12 2003

Significant Impacts to the Naples Seal Rookery

- The draft EIR lacked necessary baseline information regarding the Naples seal rookery
- The draft EIR included no analysis of impacts associated with constructing and occupying a residence in close proximity to the rookery
- Information added to the final EIR is inadequate, and impermissibly circumvents CEQA's requirement of public review and comment
- Regionally significant impacts from potential loss of the rookery are not acknowledged



Significant impacts to White Tailed Kites

Two White-tailed Kites are shown in flight against a clear blue sky. The kite in the foreground is lower and has its wings spread wide, showing dark feathers on the underside. The second kite is positioned higher and further back, also with wings spread, carrying a small, dark object (likely a fledgling) in its talons.

- Unprecedented 6-fledgling nest observed in Spring 2013 within Ocean Estate development envelope
- Rather than relocate the Ocean Estate, the EIR includes a 75-100 foot buffer around the nest tree
- This buffer does not protect the nest tree as required by County policy
- Availability of other nest trees does not support conclusion of no significant impact

Significant impacts to public access and recreation

- Ocean Estate would block the beach access route used by the public for generations
- Use by 100-200 people per day during surf season is acknowledged in the record
- 2009 DEIR found Class I impacts from the loss of this public access route
- Unauthorized status does not affect CEQA impact analysis
- Proposed vertical access points do not mitigate impacts; access at Tomate West is required



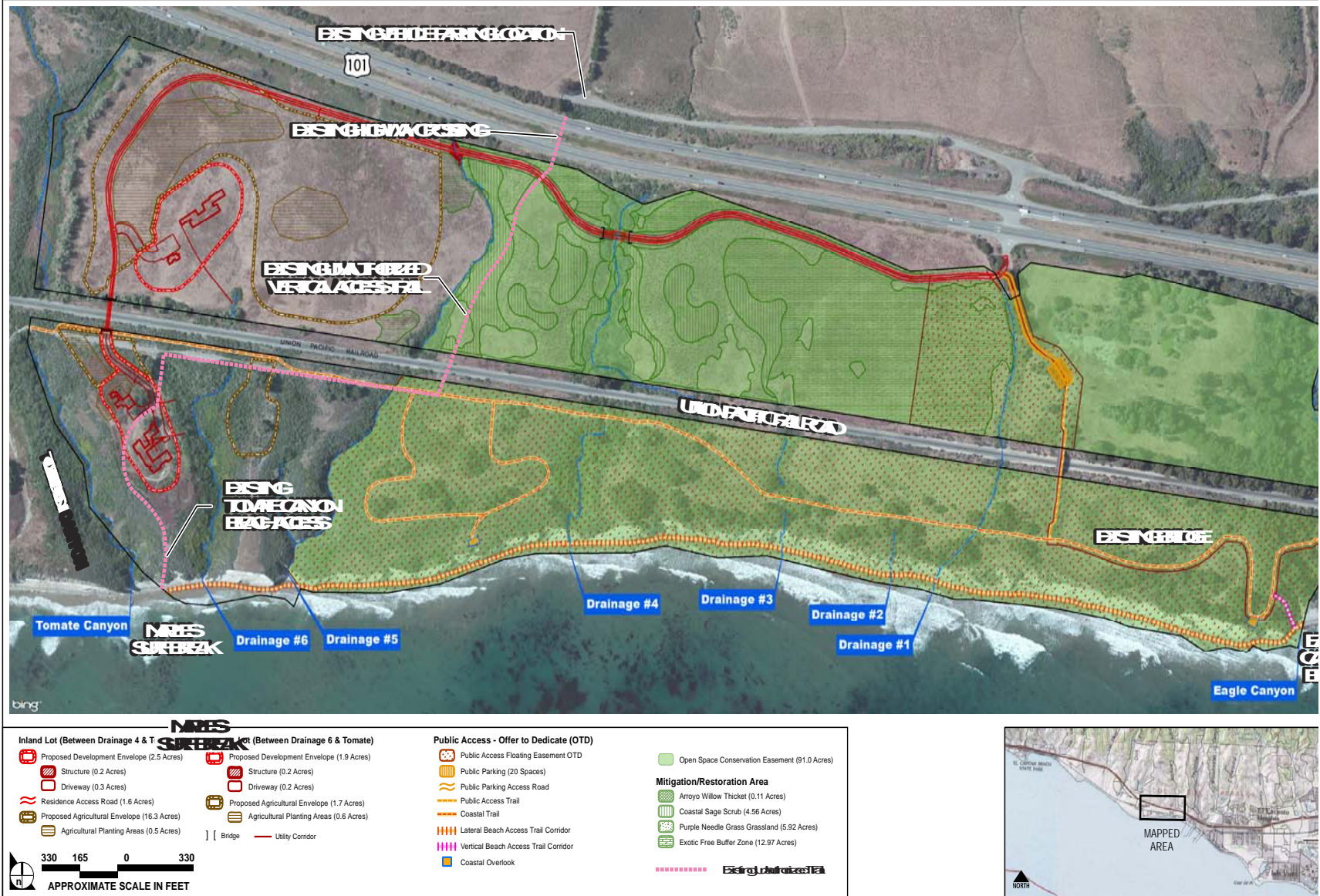


FIGURE 3



Alternatives

- Feasible alternatives are available to avoid significant impacts associated with the Ocean Estate
- East-end alternatives are environmentally superior to the proposed project
- An alternative incorporating the Applicant's Naples Lots could site two homes north of the railroad, avoiding numerous significant impacts
 - A covenant restricting development on the Applicant's entire holding to only two homes demonstrates that using the Applicant's Naples lots for a portion of the development and for vertical beach access at Tomate West is feasible

9 12 2003

Recording Requested by:

LAWYERS TITLE COMPANY

- Accommodation Only -

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Joseph L. Cole
P.O. Box 5476
Santa Barbara, California 93150



2009-0018110

Recorded
Official Records
County of
Santa Barbara
Joseph E. Holland

REC FEE 83.00

08:00AM 03-Apr-2009 | LC
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**GRANT OF EASEMENT
AND DECLARATION OF COVENANTS**

THIS GRANT OF EASEMENT AND DECLARATION OF COVENANTS
(this "Grant"), is made effective as of April 2, 2009 (the "Effective Date"), by and
between Gaviota Holdings, LLC ("Grantor") and CPH Dos Pueblos Associates, LLC
("Grantee").

RECITALS

A. Grantee is the owner of that certain real property located in the
unincorporated area of the County of Santa Barbara, California and more particularly
described at Exhibit A attached hereto and by this reference incorporated herein (the
"Dominant Property"), and Grantor is the owner of that certain real property also located
in the unincorporated area of the County of Santa Barbara, California and more
particularly described at Exhibit B attached hereto and by this reference incorporated
herein (the "Servient Property").

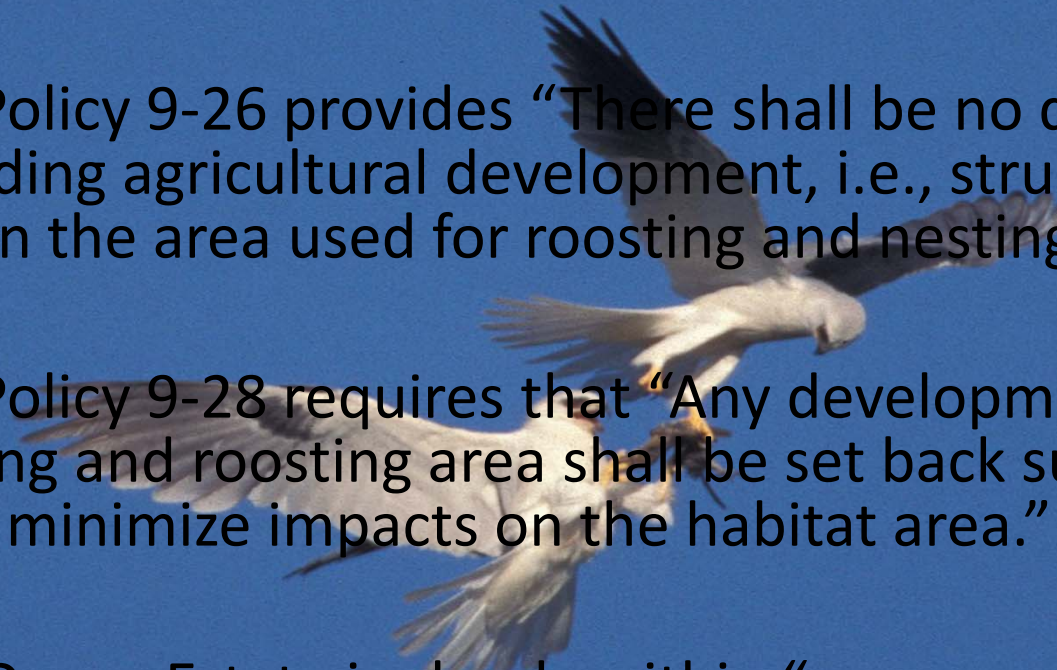
9. Covenant to Restrict Development. Grantee, for itself, and its successors and assigns, covenants and agrees for the benefit of Grantor and the Servient Property that Grantee shall not construct or install any improvements on the Dominant Property, except that Grantee may construct two homes that, together with related structures permitted to support each such home, shall not collectively exceed 20,000 square feet for each home. The site for each home shall be limited to the approximate locations on Grantee's property shown on Exhibit C-1 attached hereto, provided, however, that Grantee may change the location of either or both of such sites: (a) if such change is required for approval of a site by the governing regulatory authorities, and (b) if Grantee provides Grantor with reasonable advance notice of any public proceedings respecting the change of such locations.

White-Tailed Kite expert Mark Holmgren



Policy inconsistency: the Project will violate LCP policies protecting kites

- LCP Policy 9-26 provides “There shall be no development including agricultural development, i.e., structures, roads, within the area used for roosting and nesting.”
- LCP Policy 9-28 requires that “Any development around the nesting and roosting area shall be set back sufficiently far as to minimize impacts on the habitat area.”
- The Ocean Estate is clearly within “area used for nesting” and is not sufficiently set back to minimize impacts on the habitat area.



CEQA: evidence of a significant unmitigated impact

- The development will significantly impact the kites
- But for the development, kites are likely to reuse this nest tree
- The 75-100 foot buffer is inadequate to allow for future use of the nest tree, as acknowledged by the County's biological consultant
- Habitat restoration proposed will adversely affect the prey base in the short-term, and is not designed to increase the prey base successfully in the future



Conclusion

- The EIR must be revised to acknowledge significant unmitigated impacts to the 2013 nest tree
- The Board should direct consideration of an alternative that avoids developing within the Ocean Estate development envelope
- The EIR must be revised to acknowledge the inadequacy of the proposed restoration plan, and to strengthen the plan

Marine Mammal expert
Peter Howorth



Naples Harbor Seal Rookery

Regulatory Compliance

- California Environmental Quality Act (CEQA):
 - Environmental baseline in EIR must be adequate to assess impacts from the Project.
 - Impact analysis must adequately disclose, analyze, and mitigate all significant impacts.
- Local Coastal Plan:
 - Policy 2-11: “All development...shall avoid adverse impacts on habitat resources...”
- Naples State Marine Conservation Area:
 - Extends to high tide line; “takes” of harbor seals prohibited.
- Federal Marine Mammal Protection Act:
 - Prohibits “takes” of harbor seals.

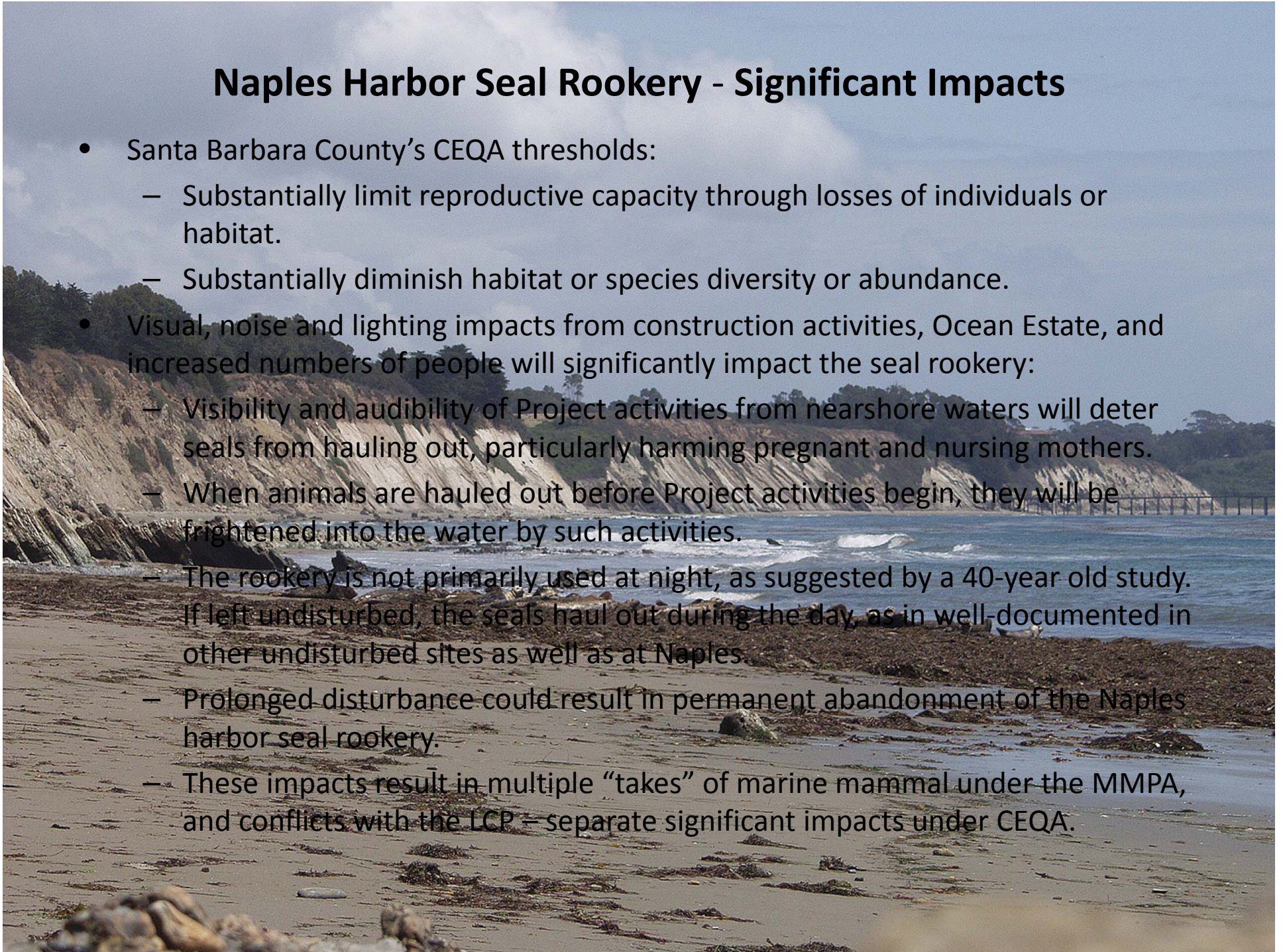


Naples State Marine Conservation Area



Naples Harbor Seal Rookery - Significant Impacts

- Santa Barbara County's CEQA thresholds:
 - Substantially limit reproductive capacity through losses of individuals or habitat.
 - Substantially diminish habitat or species diversity or abundance.
- Visual, noise and lighting impacts from construction activities, Ocean Estate, and increased numbers of people will significantly impact the seal rookery:
 - Visibility and audibility of Project activities from nearshore waters will deter seals from hauling out, particularly harming pregnant and nursing mothers.
 - When animals are hauled out before Project activities begin, they will be frightened into the water by such activities.
 - The rookery is not primarily used at night, as suggested by a 40-year old study. If left undisturbed, the seals haul out during the day, as in well-documented in other undisturbed sites as well as at Naples.
 - Prolonged disturbance could result in permanent abandonment of the Naples harbor seal rookery.
 - These impacts result in multiple “takes” of marine mammal under the MMPA, and conflicts with the LCP – separate significant impacts under CEQA.





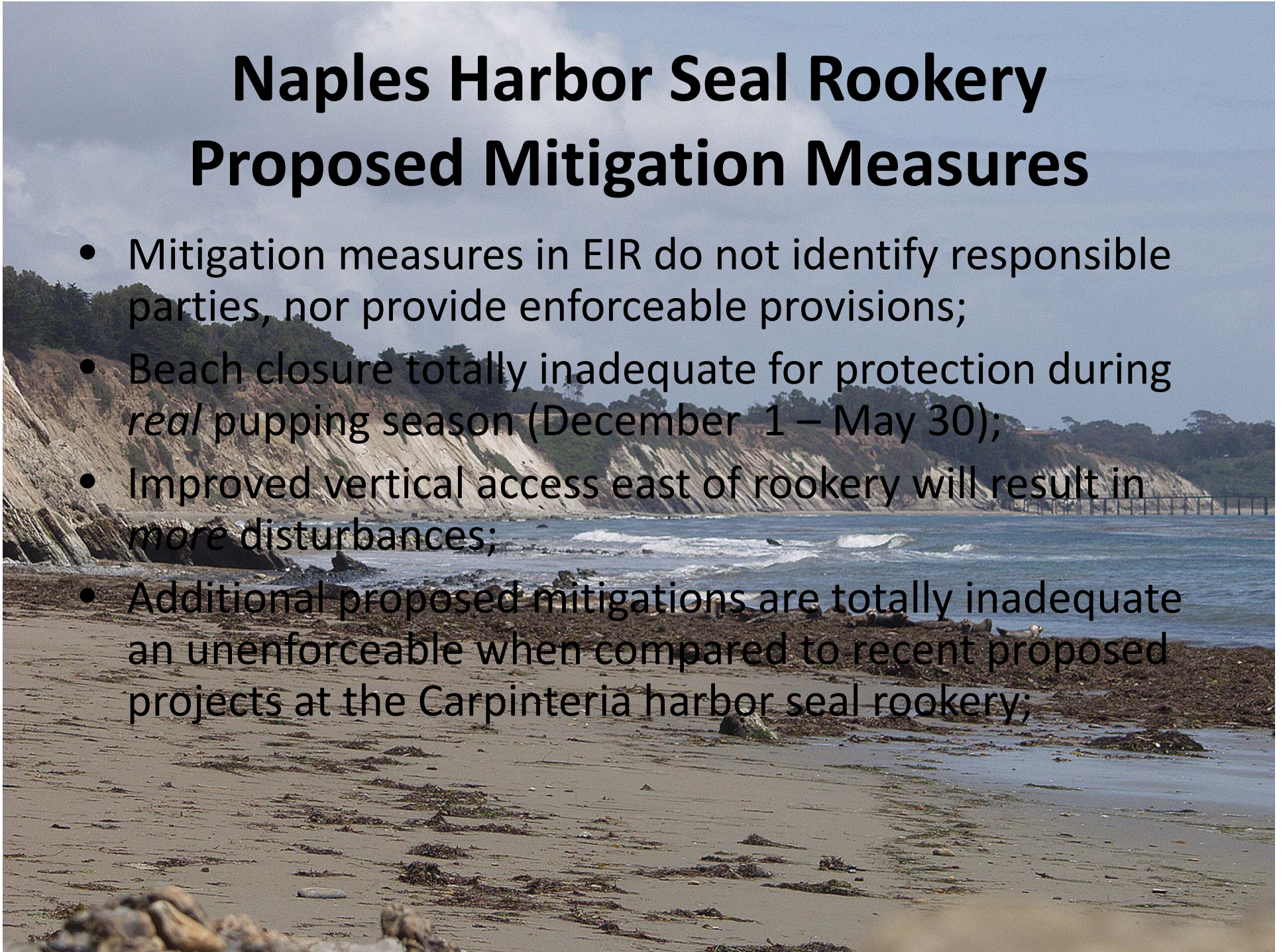




Naples Harbor Seal Rookery

Proposed Mitigation Measures

- Mitigation measures in EIR do not identify responsible parties, nor provide enforceable provisions;
- Beach closure totally inadequate for protection during *real* pupping season (December 1 – May 30);
- Improved vertical access east of rookery will result in *more* disturbances;
- Additional proposed mitigations are totally inadequate and unenforceable when compared to recent proposed projects at the Carpinteria harbor seal rookery;



A close-up photograph of a seal's head, showing its wet, dark fur and long, thin whiskers. The seal's eye is partially visible, and the background is a blurred blue, suggesting water.

Conclusion

- Loss of the Naples rookery is a regionally significant, major impact. Without the Naples rookery, only one other publically accessible rookery would remain in Santa Barbara County and only one other in all of Southern California.
- The EIR requires revision and recirculation to:
 - Allow the public and agencies to comment on adequate baseline information.
 - Acknowledge the significance of impacts to the seal rookery.
 - Include new enforceable mitigation measures to protect the rookery.

Appellants' Request

- Uphold the appeal
- Direct that the EIR be revised and recirculated to:
 - Acknowledge significant impacts to kites, seals, and public access and recreation
 - Revise the alternatives section to:
 - Accurately reflect relative impacts of east-end alternatives
 - Include detailed analysis of a partial off-site alternative utilizing the Applicant's Naples lots

