

A-19

January 19, 2015

Chair Janet Wolf

Santa Barbara County Board of Supervisors
123 East Anapamu Street
Santa Barbara, CA 93101

2015 JAN 20 AM 8:27

COUNTY OF SANTA BARBARA
CLERK OF THE
COUNTY

Las Varas Ranch Development Project

Dear Chair Wolf and Board Members,

I am writing the Commission to request that the County Planning Commission pursue acquisition of a near shoreline easement for the California Coastal Trail (CCT) across Las Varas Ranch. I am a former recreation trails planner for the Los Padres National Forest with over 30 years of experience planning for, designing and building trails in rugged remote areas of the County. As the recreation trails planner for the Santa Barbara Ranger District, I oversaw management of a trails system well in excess of 100 miles in length on this District's several hundred thousand acres. In this capacity I managed the majority of the front country trail system in the foothills along the South Coast of Santa Barbara County.

In addition to managing the heavily used front country trail system, I oversaw trail projects throughout the District's remote extensive back country areas. Trail projects in these rugged remote areas could be challenging. Such projects often involved supplying crews for 7-10 day shifts using mule teams. In addition, in more rugged terrain, our crews would on occasion resort to blasting to create new or repair existing trail corridors. Further, many of the trails in the Los Padres National Forest back country cross major rivers and streams such as the Santa Ynez River, Santa Cruz Creek or the Sisquoc River, drainages far larger and more challenging than those along the Gaviota Coast. . Where our trails intersect such major drainages, careful siting and design was required to ensure provision of safe crossing points.

As the Commission may be aware, the Los Padres National Forest also hosts tens of thousands of acres of cattle allotments with thousands of head of cattle where Forest Service land are leased to adjacent ranches or private cattle operators. Many of these grazing allotments were located in popular recreational areas. These include Santa Barbara, Montgomery and Salisbury Potrereros, lower Manzanita Creek, and Cachuma allotments. These cattle allotments were traversed by miles of unfenced recreational trails, sometimes popular routes. Hikers who often shared facilities with the grazing operations would be required to close gates and share routes with cattle. During my 30 years of service, I am unaware of any significant conflicts between these cattle grazing operations and trail users.

Finally, I have substantial experience with working with local agencies such as the City and County of Santa Barbara as many of these agencies' trails connect with those on US Forest Service lands. I am also familiar with many of the private non-profit trail organizations such as the Santa Barbara Trails Council, the Montecito Trails Foundation and the Santa Barbara Mountain Bike Trail Volunteers. During these lean budget times, local governments and even the US Forest Service have come to increasingly depend upon the expertise and abilities of these community organizations to plan, design and implement trail projects. These organizations have considerable expertise in all aspects of trail planning and construction.

I wished to give the Planning Commission input on this important trail based on my 30 years of professional governmental experience with recreation and trails planning as follows:

Lenzi, Chelsea

From: Mark Hawes <mark.hawes1@icloud.com>
Sent: Monday, January 26, 2015 11:56 AM
To: sbcob
Cc: Farr, Doreen
Subject: Las Varas Ranch Development, Coastal Trail and Open Space

Dear Chair Wolf and Board members,

I am concerned about the impacts of the Las Varas Ranch development on coastal trails and access. I respectfully request that the Board of Supervisors:

- Support your Planning Commission and ensure that the project Environmental Impact Report is revised to fully address project impacts.
- Protect historic informal public coastal access to Edwards Point.
- Require dedication of an easement for a nearshore California Coastal Trail.
- Support the County's Coastal Plan that identifies Edwards Point as a major Coastal Park.

Please do everything possible to acquire a nearshore California Coastal Trail and protect blufftop open space on Las Varas Ranch!

Sincerely,

Mark Hawes

Sent from my iPhone

January 27, 2015

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

Board of Supervisors
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Las Varas Ranch Project – for February 17, 2015 Hearing

Dear Chair Wolf and Honorable Supervisors:

Brownstein Hyatt Farber Schreck represents the owner of the Las Varas and Edwards Ranches (Ranch). On her behalf we submit this letter for your consideration in preparation for the February 17, 2015 hearing before your Board. In preparation for the hearing, you will receive a Planning Commission recommendation for additional environmental review for the Las Varas Ranch Project (Project) prior to making a final decision on the Project. This letter is to inform you that the Owner of the Ranches vehemently disagrees with this recommendation for the reasons set forth below.

Procedural History of Project

The Project application was deemed complete for processing by the County on April 9, 2008.

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

The Planning Commission conducted two (2) public hearings on the Project in January-February 2012, culminating on February 8, 2012 with no substantive vote on the Project

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

038566\0003\11831758.2

and a referral of the Project to your Board with the request that you respond to three requests:

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

The Board of Supervisors conducted a public hearing on the Project on April 17, 2012 and determined that it required further environmental information on a broad range of topics, including analysis of an alternative east west public trail route south of Highway 101.¹

Following that additional environmental analysis, the Project returned to the Planning Commission on July 30, 2014 and September 23, 2014 for additional review.

During each of these five (5) public hearings, the County provided ample public notice of the proceedings and received extensive public comment. Because the environmental review was conducted in-house and County staff wrote all draft and final EIRs, it is reasonable to conclude that the County Planning & Development staff considers the environmental review to be complete and legally adequate for the purposes of CEQA.

The February 17, 2015 Hearing Will Be the Last Stop

The first time around, the applicant accepted the Planning Commission's decision to ask your Board for direction regarding the trail issue and your Board's recommendation for additional environmental review, although the applicant was disappointed that the Board did not directly address the issue of exaction of a new trail, not approved by the applicant and not part of the three trails already on offer in the Project description. The applicant and her representatives worked with staff to provide accurate and updated studies, to

¹ The topics cited in the Board's motion included visual impacts and aesthetics, development footprints and building size; mapping of biological resources; hazardous materials/remediation issues; fire access; agricultural resources and viability of continued agricultural operations; historic and cultural resources; water systems, water availability and growth inducing impacts; and recreation (including trail alignments proposed by the public and applicant), costs and safety issues including siting adjacent to 101, connectivity, multi-use and Caltrans issues.

provide detailed project information, and to make adjustments to the Project to respond to staff concerns. The applicant even offered an enormous concession -- as a compromise only -- to accept an east west trail route that uses the existing ranch road and that will allow the public to share the Highway 101 underpass with the cattle operation. This was the trail route recommended by the Gaviota Plan Advisory Committee (GPAC) but is not the preferred route from the owner's perspective because it interferes with an existing productive agricultural operation.

With this major change to the trail, the applicant anticipated that her showing of good faith would be reciprocated with a final decision to approve the Project as now revised and based upon the extensive environmental review. Instead, the Planning Commission again punted the decision to your Board. For the applicant, this translates into yet another year wasted and over \$100,000 of additional funds spent. It definitely is not a path that she will pursue beyond the Board's February 17, 2015 hearing. If it is the Board's intent to deny approval of the Project, the applicant would like to see the findings to support such a denial. This is an exemplary project. It just doesn't satisfy the strident demands of a few members of the public for a trail right through the middle of productive agricultural land. If the Board chooses to placate these few people, it will deny the opportunity to all members of the public to enjoy the three trails now being offered by the applicant as part of Project approval.

The Planning Commission's Request for Further Environmental Review Is Misguided

The issues identified by the Planning Commission for further environmental review demonstrate a fundamental lack of understanding of the Project and of the role of environmental review. In its final action, approved on a 3-2 vote, the Commission requested additional environmental review of aesthetics/visual resources, agricultural resources, biological resources, cultural resources, land use, recreation, and growth inducement. All of these issues have been exhaustively studied in the EIR and the Recirculated EIR.

Aesthetics/Visual Resources

The Planning Commission asked for further analysis of the potential visual impacts of a small cabana site requested by the applicant on proposed Lot 2. The applicant hereby withdraws the request for a cabana site on this proposed parcel, so there is no need for further analysis. The Commission also asked for further environmental analysis to determine the potential visual impacts resulting from future construction of agricultural pole barns and other agricultural structures that are exempt from environmental review under existing County ordinances and wanted to add a requirement that any future agricultural structures on this land, unlike any other agricultural property in the County, would undergo design review. Finally, the Commission asked for environmental review

that presumes, for the visual analysis, that all existing natural landforms and vegetation ceased to exist.

Continuation and Viability of Agriculture

The Project was carefully designed to support continuation of viable agriculture on the property. The vast property is dedicated to orchard and open grazing lands and is a successful agricultural enterprise. The Project proposes to limit the ultimate development envelope for each parcel to the two acres allowed by the County's current Agricultural Preserve (Williamson Act) program. This will be the maximum area on each parcel that will be set aside for non-agricultural uses, other than the three proposed public trails. With the existing parcels that comprise the Property, there is NO such limitation on the area that could be used for non-agricultural uses because there is no Williamson Act contract, there are no CC&Rs, and there is no regulation that would treat this Property differently from any other privately-owned agricultural land.

With the Project approval, the grazing lands will be cooperatively managed and the entire property will be subject to binding conditions and CC&Rs that impose limitations crafted to prevent non-agricultural use of agricultural lands. The environmental review has concluded that Project impacts to agricultural are not potentially significant. Yet, project opponents demand that an agricultural conservation easement be required for Project approval. Agreeing to such a condition would completely deprive the applicant of any opportunity to enjoy tax benefits if she were to choose voluntarily to grant an agricultural conservation easement. That is an opportunity that she will not forfeit simply to satisfy the frivolous demands of a few opponents who can cite no rational basis for this exaction. The Project description includes binding CC&Rs. The staff-proposed conditions incorporate the substance of these CC&Rs into the Project approval. The conditions are fully enforceable by the County even if the CC&Rs were to terminate in the future. There is no basis for burdening this applicant with a condition that she dedicate an agricultural conservation easement involuntarily.

The Planning Commission questioned the adequacy of the conditions and the CC&Rs in providing for long-term agricultural viability, as well as being concerned that the agricultural enterprise would be fragmented by conversion of the productive agricultural land into non-commercial agriculture, or "hobby farm" operations. Because the proposed parcels (other than those south of the railroad right of way) are a minimum of 100 acres in size, they are not of the size ordinarily devoted to hobby farms. However, the CC&Rs will require the approval of the homeowners association or grazing cooperative before any land is removed from grazing and devoted to a more intensive agricultural enterprise. The gist of this discussion arose from a staff suggestion that existing grazing land not be allowed to convert to more intensive agriculture in the future – this kind of limitation is contrary to the County's Right to Farm Ordinance and a host of other County policies that encourage long-term viability and productivity of agricultural land. If grazing ceases to be

economic for the property, the landowners must have the option of intensifying cultivation to ensure that the agricultural operation remains viable.

Land Use & Recreation -- Exaction of Coastal Bluff Top Trail

The applicant already proposes an offer of dedication of a public parking lot site and three public trails that will provide public access from Highway 101 to a unique site on the Gaviota Coast without trespassing and without invitation. The offer also will provide an alternative route to reaching Edwards Point so people have no need to trespass on the railroad right of way, climb over ranch fences, or hike along private beachfront.

In order to exact a different trail from those voluntarily offered by the applicant, the County must address a threshold question – is there sufficient nexus and proportionality between Project impacts upon recreational resources and the exaction of any public trail through the property, let alone a trail that would go through the heart of the thriving agricultural operation? From the outset of this County process, the applicant's position, supported by a string of U.S. Supreme Court cases, has been that there are no legal grounds upon which such an exaction could be based. Although the Commission and your Board have discretion in approving, conditioning, or disapproving these three (3) projects, that discretion must be exercised reasonably based upon substantive evidence in the record – the decision cannot be arbitrary or capricious or lacking in an evidentiary basis. The County cannot, without complying with the Supreme Court test, either exact an unjustifiable offer or dedication or deny approval because the applicant refuses to agree to the exaction.

The Project comprises three (3) separate projects impacting completely different legal parcels – the proposed parcels that would be most impacted by the public trail that certain trail advocates demand is the subject of a simple lot merger and lotline adjustment on the parcels south of the railroad right of way. A lotline and parcel merger does not satisfy either the rational nexus or rough proportionality that the Supreme Court requires because neither action has any impact upon recreational resources. The only other project element proposed south of Highway 101 is a lot split that results in two existing legal parcels becoming three parcels. This lot split is the site of the public parking lot site and vertical trail offered by the applicant. There simply are no recreational impacts from the Project to justify exaction of a trail that the applicant does not agree to dedicate.

Although the Planning Commission relied on existing LCP policies that call for acquisition of Edwards Point and the Gato Creek corridor to allow for a bike trail and other intensive recreational use of Edwards Point, the Planning Commission failed to acknowledge that the LCP policies are visions for the long range future and may take generations to realize. If imposed now, they would directly conflict with County and Coastal Act policies that protect the integrity and viability of existing agricultural lands.

No Upland Extension of Sandy Beach Trail

The trail dedications offered by the applicant include a public trail along the sandy beach above mean high tide. The applicant absolutely will not accept an upland extension of this offered trail. Any such extension would allow the public to access the grazing lands and sensitive plant communities immediately upland from the beach in direct violation of County and Coastal Act policies protecting agriculture, native vegetation, and other sensitive coastal resources from damage wrought by public access. The applicant's offer of dedication is strictly limited to the sandy beach and is generous, particularly because it provides a connection to an offered vertical trail and public parking lot site. With the offered ranch trail, the three trails provide the potential for a future loop in the County's trail system.

Cultural Impacts

The Planning Commission questioned the adequacy of the environmental analysis of cultural resources based upon the existence of County ordinances that provide limited permit exemptions for certain agricultural structures that would be located primarily outside the proposed building envelopes. These impacts, of course, were analyzed as part of the environmental review for the ordinances. These ordinances are part of the baseline and would apply to this property whether or not the Project is approved. They are not part of the Project description, nor are they unique to this property.

Biological Impacts

The Planning Commission called for additional environmental review of possible future activities, particularly agricultural activities, that could impact biological resources such as birds of prey and species of concern. These impacts have been adequately analyzed in the EIR. The Commission also called for further environmental review of the potential biological impacts of the proposed cabana, which proposal the applicant withdraws.

Growth Inducement

Despite the applicant's and EIR's detailed explanation of the shared water system that will serve the new residences, both owner-occupied and agricultural employee occupied, that will be constructed on the proposed parcels, the Planning Commission expressed concern that the 14 potential new connections reviewed in the EIR were not an adequate projection of the growth that could be tied to the proposed water system, primarily because Lot 6 *might* be further divided in the future.

The applicant has no plans to further divide Lot 6 and has not factored into the water system sizing any potential for such a land division. Any such future land division would be entirely discretionary and would occur only after County environmental review and approval. It also is speculative and not appropriate for environmental review. This

argument is based on pure speculation. The Commission also speculated that Goleta Water District water might be used for future residences, although the existing water supply in the West Conduit, the sole source of Goleta Water District water for this property, is non-potable and for irrigation purposes only. Goleta Water District has a policy against providing its water for any new residential development on land served by the West Conduit. Upgrading the West Conduit to make the water service potable would be costly and difficult to justify given the small human population on the West Conduit. Goleta Water District serves current residents bottled water for potable purposes. Many property owners in the area use private water wells to meet their drinking water needs.

Applicant's Compromise Proposal

Prior to the September 23, 2014 Planning Commission hearing, the applicant presented a Compromise Proposal. The Compromise Proposal includes the GavPAC-recommended east-west trail along the ranch road, connecting with the vertical trail and public parking lot site offered by the applicant, in lieu of the upland east-west trail demanded by certain trail advocates through pastureland and calving grounds. The Compromise Proposal incorporates all of the conditions proposed by staff at the September hearing with the following exceptions:

- The applicant's request for a cabana site on Lot 2 has been eliminated.
- Retain the 2-acre Residential Development Envelope (RDE) for Lot 2, sited as described in the Recirculated EIR Alternative 3A. This requires deleting Condition 25(a).**BIO12-1(a)**, as set forth in the Planning Commission's staff report.
- Relocate the Lot 4 Residential Development Envelope (RDE) as proposed in the Recirculated EIR Alternative 3C and limit its size to 2 acres. This location allows the natural topography to screen improvements within the RDE (which improvements will be subject to design review pursuant to the conditions of approval) from public view and will distance the RDE from the historical structures that are so highly prized in the EIR analysis.

The Compromise Proposal Specifically Excludes the Following (in Addition to Rejecting Any Trail Exaction or Easement Not Already Offered or Accepted by Applicant):

- Imposition of an agricultural conservation easement as a condition of approval
- Exaction of a coastal bluff top trail as a condition of approval
- Extension into the upland area of the proposed sandy beach trail as a condition of approval

- Any requirement for fencing design that is not approved by the landowner. Specifically, Condition 6. **AES 5** leaves the property owner at the mercy of staff to determine the final fence design between the public trails and the agricultural operations. This is unworkable and unacceptable because the applicant will not dedicate a trail if the long-term integrity of the agricultural operation is not adequately protected and preserved. Food safety, employee safety, public safety, and avoidance of theft and vandalism are essential to the continued growing of food on this property, while allowing public access. The applicant has proposed the following wording in lieu of the wording the staff report:

“To minimize the impacts of the trail fencing to the visual character of the site, while preventing trespassing, cattle and worker harassment, vandalism and theft within the adjacent agricultural areas, the fencing between any public trail and any orchard shall be chain link approximately six feet high plus 3 strands of barbed wire on top, and the fencing between any public trail and the grazing land shall be hog wire with 2 strands of barbed wire above for a total height of 48” or more, with the height and construction of fencing being subject to further fortification if trespassers, poachers, thieves, vandals or others gain entry through the fencing. Wildlife accessible passageways or culverts will be incorporated into the fence design to avoid impeding wildlife corridors. The trails through the property, and the parking lot at the trailhead, shall be closed from dusk to dawn to protect the existing agricultural operation and the security and privacy of existing and future residents.”

- Any requirement that the applicant pay for improvements to Highway 101 that are related entirely to the traffic that would be generated by public use of the proposed parking lot and trail system. The applicant has agreed to pay for left turn lanes that accommodate residential and agricultural traffic, but providing acceleration and deceleration lanes for the public's use of the parking lot and trails is one of the few responsibilities arising from the trail dedication that must remain with the County and not be imposed on the applicant.
- Any requirement that the applicant allow the parking lot to be developed and opened and the trails constructed before the first new residence is constructed south of Highway 101. It must be entirely clear in the conditions that the acceptance and development of the trails and public parking lot offer of dedication cannot occur unless and until approval of the first Coastal Development Permit is final with the building permit issued to allow the first proposed development in a Residential Development Envelope (RDE) south of Highway 101. Any condition that imposes an exaction or easement not already accepted by the applicant.

Conclusion

The applicant greatly appreciates the Board's attention to the concerns raised by the Planning Commission and the applicant's responses thereto, and asks that the Board acknowledge and appreciate the many compromises made by the applicant to date, as reflected in the Compromise Proposal. The Planning Commission conditions totaled 90. These conditions reflect the results of two rounds of environmental review and five (5) public hearings before the Planning Commission and Board of Supervisors. They also reflect the thorough and serious attention paid by County staff to legitimate concerns voiced by the public.

With this Compromise Proposal, the citizens of the County will be able to enjoy a new Gaviota Coast trail to the beach, a public parking lot site off Highway 101, and a lateral trail that connects two coastal trail segments. Without the Compromise Proposal, the citizens of the County will not receive any of these benefits.

The applicant will, at her discretion, continue to allow friends of her family to have access to the property, but reserves her legal right to implement heightened security measures to nip in the bud future trespassing. She will work with Union Pacific to curtail trespassing on the railroad right of way as well. Photographs submitted into the public record during the September 23, 2014 hearing by trail advocates display a shocking disregard for personal safety and for the safety of small children by some members of the public – the photos depict families with small children standing and walking on the railroad tracks. Perhaps these photographs were staged for effect, but what they showed was a group of very foolish people putting lives and safety at risk, supposedly to reach the beach. The photos also show young children climbing fences next to "No Trespassing" signs, yet the trail advocates argue that the public can be trusted to not interfere with adjacent agriculture as they use trails. The trails proposed by this applicant will provide a safe beach route with adequate and safe parking and will provide strong fences between the public and the agricultural operations.

The Project represents the only realistic opportunity for the public ever to enjoy the incredibly generous trail system proposed.

The applicant will not pay for additional environmental review. Such review is purely a stalling tactic and an attempt to squeeze the applicant economically to force her to accede to unreasonable public trail demands.

If the Board chooses to disapprove or further delay the Project, the opportunity for the public to enjoy the trail dedications will be lost. If lost, the applicant can still pursue residential development on each of the existing lots independently without any trail or parking lot site dedication.

Residential development will occur on this property either way because of the existing parcels. New residential construction either can occur subject to the conditions to which the applicant is willing to submit and proceed in the manner that the County staff envisions, subject to extensive conditions applicable to all of the parcels, or it can occur on an ad hoc basis, parcel by parcel with no global conditioning being available to the County. Because of the rough proportionality test imposed by the Supreme Court, the County can wave goodbye to any trails with ad hoc development. A single family home doesn't justify a trail exaction, as the Coastal Commission discovered in the Nolan case. The Project, as reflected in the Compromise Proposal, best serves the needs and objectives of the applicant, the County and the public.

What remains is for the Board to make a final decision because a non-decision will be a decision to proceed with ad hoc land development. The applicant is not willing to return to the Planning Commission for further processing. It is time for Board to make a final determination. The parcels exist and the applicant or her successors are entitled to develop them in conformity with the law.

Sincerely,

A handwritten signature in dark ink, appearing to read "Susan F. Petrovich". The signature is fluid and cursive, with the first name "Susan" and last name "Petrovich" clearly distinguishable.

Susan F. Petrovich