

LAS VARAS RANCH FEBRUARY 17, 2015 BOARD OF SUPERVISORS

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WELCOME TO LAS VARAS AND EDWARDS RANCHES



PROJECT DETAILS

- Project deemed complete April 2008
- Project has undergone 4 Planning Commission hearings and now 2 Board hearings with no substantive decision
- Project reduces the number of buildable lots from 8 to 7
- Project results in future residential development being confined to designated building envelopes

A BRIEF REMINDER OF APPLICABLE STATUTES

California Coastal Trail Act – a trail to be constructed along California's coastline from Oregon to Mexico.

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

APPLICABLE STATUTES – COASTAL ACT

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

COASTAL ACT POLICIES

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

COASTAL ACT POLICIES

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

CALIF. RECREATIONAL TRAILS ACT (PRC §5070-5077.8)

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

(d) Trails should be located so as to avoid severance of private property and to minimize impact on adjacent landowners and operations . . .

(i) The department shall erect fences along any trail when requested to do so . . .

APPLICABLE CASE LAW

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

DOLAN v. TIGARD (1994)

- It must be decided whether the **degree** of the exactions demanded by the permit conditions bears the required relationship to the projected impact of the proposed development.
- The necessary connection required by the Fifth Amendment is "rough proportionality" -- some sort of individualized determination that the **required dedication is related both in nature and extent** to the proposed project's impact.

KOONTZ v. ST. JOHN'S RIVER WMD (2013)

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

APPLYING THE LAW TO THE PROPOSED CONDITIONS

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

APPLYING THE LAW TO THE PROPOSED CONDITIONS

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

APPLYING THE LAW TO THE PROPOSED CONDITIONS

- PAYMENT FOR ACCEL/DECEL LANES (COND. 53, 54 & 90)– no nexus between project build-out and condition because increased residential traffic is not significant. Sole significant traffic results from parking lot for public access.
- PARCEL 4 RDE LOCATION (COND. 85) – no nexus to visual impacts. Option 3C is the least visually intrusive, from 101 & RR.

APPLYING THE LAW TO THE PROPOSED CONDITIONS

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

APPLICANT'S PROPOSED FENCING

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

COMPROMISE PROPOSAL

- No trail other than the ones offered by applicant
- Beach trail to have no “upland extension”
- Locate Lot 4 building envelope as proposed in Alternative 3C of Recirculated EIR – 2 acres behind knoll
- No agricultural conservation easement
- No restriction on additional cultivation of agricultural land

COMPROMISE PROPOSAL

- County has full responsibility for studying need for acceleration/deceleration lanes on 101 and for paying for them if it concludes they are warranted – these are required only when public parking area opens. Not required by Caltrans.
- County shall not be entitled to accept offer of dedication of trails or parking lot area until final approval of first new residence in a development envelope south of 101 – no pending appeals, litigation, etc. – quid pro quo

CONCLUSION

This is the final compromise proposal the applicant will make. She has given all of the ground that she can.

There are 8 developable lots now

Construction of new primary residences on the existing lots will result in no new public trails

The only way there will be public trails on this land is by condemnation

Denial or delay deprives the public of a recreational opportunity

Delay is denial

LAST REQUEST

Schedule a Board hearing to determine the merits of the project and grant final approval; or,

Direct Planning Commission to render a swift decision after a single hearing.