CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA 89 SOUTH CALIFORNIA ST., SUITE 200 VENTURA, CA 93001 (805) 585-1800



Th19a

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ADDENDUM

DATE: April 8, 2014

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item Th19a, Santa Barbara County Appeal No. A-4-STB-14-0010 (Brooks

Street), Thursday, April 10, 2014

The purpose of this addendum is to (1) correct a minor error in the March 27, 2014 staff report and (2) attach correspondence from the applicants, appellants, and interested parties and attach documentation of ex-parte communication disclosure forms received to date.

Staff Report Correction: Substitute the following Coastal Act language in Section E.1.e, Page 45.

Note: Underline indicates text to be substituted in the March 27, 2014 staff report.

Coastal Act Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Attachments:

- 1. Letter from the Law Office of Marc Chytilo to Commissioners, dated April 4, 2014
- 2. Letter from Dudek to Commissioners, dated April 8, 2014
- 3. Letter from Santa Barbara County Trails Council to Commission Staff, dated March 27, 2014
- 4. Letter from The Land Trust for Santa Barbara County to Commission Staff, dated March 21, 2014
- 5. Letter from Karen Christensen, Jim Sloan, Elda Rudd, Ida Kane to Commissioners, dated April 7, 2014
- 6. Letter from Chris Crabtree to Commissioners, dated April 7, 2014
- 7. Email from Karim Kaderali to Commission staff, dated April 7, 2014
- 8. Email from Dawn Thatcher to Commission staff, dated April 7, 2014
- 9. Ex-Parte Communication Forms received from Commissioner Zimmer, dated March 31, 2014, April 4, 2014, and April 7, 2014 (2 separate forms)

Environmental Law

April 4, 2014

California Coastal Commission South Central Coast District Office 89 South California Street, Suite 200 Ventura, CA 93001 By email to all Commissioners and to amber.geraghty@coastal.ca.gov

RE: Paradiso del Mare Ocean and Inland Estates Project; Appellants' Response to Staff Report Th19a

Dear Chair Kinsey and Honorable Members of the Commission,

This letter is submitted on behalf of Appellants Gaviota Coast Conservancy (GCC), the Santa Barbara Chapter of the Surfrider Foundation (SB Surfrider), Santa Barbara Audubon Society (SB Audubon), and marine mammal expert Peter Howorth. We have reviewed the Staff Report recommending that the Commission determine that no substantial issue exists with respect to the grounds raised in the appeal, and find it to be inadequate and incorrect in a number of regards.

Appellants identified numerous flaws and omissions in the County's analysis through the testimony of marine mammal expert Mr. Howorth, White-tailed kite expert Mark Holmgren, County biologist John Storrer, and the 2009 draft EIR prepared for a very similar residential project on the same property. The Staff's Report and Recommendation however accepts the County's analysis as if it were unchallenged.

Not only does the Staff Report wholly accept the County's analysis with respect to the first factor for finding substantial issue – the degree of support for the local government's decision – it then proceeds to rely exclusively on the County's analysis as a basis for its findings with respect to the remaining factors. The overall result is a Staff Report and Recommendation that fails to exercise any independent judgment on the part of the Commission staff.

Discussed below, the Project indeed raises a substantial issue with respect to its conformity with the County's certified Local Coastal Plan (LCP) and the public access policies of the Coastal Act. The County has remarkably weak factual and legal support for its conclusions, the Project affects very significant coastal resources, and the County's interpretation of its LCP for this Project will set an adverse precedent for future interpretations of its LCP, particularly if endorsed by your Commission.

Although this Project is proposed as settlement of litigation, under the agreement between the Commission and the property owner, the Commission retained its full discretion to consider the totality of the site. Therefore, the Commission has the ability and authority to require a consideration of the Naples lots in its alternatives analysis, and may site the coastal access trail at Tomate West and relocate the Ocean Estate to avoid sacrificing ESHA in the form of the white-tailed kite nesting tree and seal rookery. We urge the Commission to recognize the Project's conflicts with several important

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LCP and Coastal Act policies to allow a more rigorous alternatives analysis and more appropriate protection of sensitive coastal resources through revisions to the approved Project.

1. Permit History and Background

The Staff Report describes the Standstill and Settlement Agreement between the applicant and the Coastal Commission in some detail, including that "the agreement reaffirms the Commission's discretion to ensure that the totality of development on the properties (i.e., the Naples and non-Naples lots considered cumulatively) is sited and designed in compliance with the LCP and Coastal Act." (Staff Report, p. 15.)

Specifically, the Settlement Agreement provides that the Commission:

may consider the totality of the Dos Pueblos property, including the number, configuration, and anticipated future development of the Naples lots, in determining the conformity of the residential development with the policies of the County's certified LCP and public access and recreation policies of the Coastal Act.

Staff Report, Exh. 11 at p. 1-2.

This provision gives the Commission broad discretion to consider the impacts of the current residential project together with the cumulative impacts of development of the Naples lots as they relate to LCP and Coastal Act consistency, and further to consider configurations for the residential project that extend beyond the two lots considered by the County. However, both the County and Commission staff failed to consider the totality of the applicant's property when addressing impacts from the Project on coastal resources and public access to the coast, and the Project's conformity with the LCP and Coastal Act.

The Staff Report concludes from this provision of the Settlement Agreement that "[t]hus, the County's approval of development on the non-Naples lots does not prejudice the ability of the County or the Commission to assure that development of the Naples lots, if and when proposed, complies with the LCP and the Coastal Act." (*Id.*) This statement demonstrates that the Commission staff's approach is to treat the Naples and non-Naples lots separately, rather than comprehensively.

This segmented approach undermined the adequacy of the County and Commission staff's analysis of the environmental issues associated with this Project, and importantly skews the analysis of alternatives. For example, the Staff Report recites "Commission staff is confident that the proposed development locations are the least environmentally damaging locations for the development envelopes". (Staff Report p. 15.) However, neither the County nor Commission Staff considered an alternative identified by Appellants, which would move the coastal estate to an inland location that includes at least one Naples lot. Specifically, a lot line adjustment could be accomplished with the easternmost Naples lot between the railroad and the highway, and the inland estate parcel, to create

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two development envelopes north of the railroad. Moreover, with respect to public access, the segmented approach caused both the County and Commission Staff to disregard what is unquestionably the preferable vertical beach access location on the applicant's property – the Tomate West drainage.

A comprehensive approach to the property is authorized by the Settlement Agreement, and is the only way to ensure that the Project complies with the LCP and Coastal Act. Accepting jurisdiction over the Project would enable this comprehensive approach.

Further, with respect to the Settlement Agreement's provision encouraging acquisition, the Staff Report notes "despite repeated efforts on behalf of many of the appellants here, there have been no identifiable potential buyers in this regard." (Staff Report, p. 15.) It is worth noting that Appellants remain very interested in a complete or partial acquisition, but to date the applicant has flatly rejected all attempts to negotiate an offer or otherwise achieve acquisition of the Property. It is puzzling that Staff makes this claim that has no basis in fact, leading Appellants to question what sources of information Staff relied on in preparing its Report and Recommendation.

2. Analysis of Substantial Issue

Overall, the Staff Report exhibits an extraordinary amount of deference to the County's analysis, glossing over the very same substantial flaws and omissions that were identified by Appellants based on the qualified expert opinions of Mr. Howorth and Mr. Holmgren. The very weak factual support for the County's analysis is not recognized as such, and then is used to discount the resources *affected* by the Project because the County found no significant adverse affect.

a. Degree of Support for Local Approval

i. Naples Harbor Seal Rookery

LUP Policy 2-11 requires that all development . . . adjacent to [ESHA], shall be regulated to avoid adverse impacts on habitat resources." The Staff Report acknowledges that "the appellant is correct that the County's policy findings do not specifically include a written policy consistency analysis of Policy 2-11 as applied to the Naples seal haul out." (Staff Report, p. 23.) Staff reasons that this failure is not consequential because the County analyzed more specific LUP policies requiring marine mammal and Naples reef protection including Policy 9-25, 9-33, and 7-19. (*Id.*) The County's analysis of these policies, copied below, does not support Staff's proposed conclusion that the Project is regulated to <u>avoid adverse impacts</u> on the Seal Rookery, particularly as it relates to the Ocean Estate.

LUP Policy 9-25: Marine mammal rookeries shall not be altered or disturbed by recreation, industrial, or any other uses during the times of the year when such areas are in use for reproductive activities, i.e., mating, pupping, and pup care.

<u>County's Analysis (Board Letter, pp. 11-12)</u>: As discussed above, the proposed project, as mitigated, would improve existing conditions with regard to protection of the seal haul-out and would provide specific protections to the on-site haul-out during the pupping/breeding season (such as monitoring, partial beach closure and posting of educational signage).

LUP Policy 9-33: Naples reef shall be maintained primarily as a site for scientific research and education. Recreational and commercial uses shall be permitted as long as such uses do not result in depletion of marine resources.

County's Analysis (Board Letter, p. 12): The proposed project does not include alteration of Naples reef and would re-locate public access further from the reef itself.

LUP Policy 7-19: In order to protect the marine resources of Naples Reef and the adjacent beach as a hauling out area for harbor seals, intensive recreational use shall not be encouraged. Access to the site should continue to be by way of boats.

County's Analysis (Board Letter, p. 12): The proposed project does not include alteration of Naples reef and would re-locate public access further from the reef itself, thereby increasing the distance between recreationalists and Naples reef and decreasing the potential for disturbance from the public to marine resources.

Nothing in the County's analysis of the three other policies actually addresses the core requirement of LUP Policy 2-11 – avoiding adverse impacts to ESHA, in this case, the seal rookery and haulout. The asserted "improvement" of existing conditions with regard to protection of the haul-out refers solely to impacts related to public access, and not at all to development on the site. Converting a natural, undeveloped site to luxury residential development, with new construction noise, vibration, and visual disturbances from both construction and occupancy will degrade existing conditions with regard to protection of the haul-out by deterring seals from approaching the haul out from near-shore waters.

Specifically, with respect to construction noise and vibration, Mr. Howorth established that seals hear and respond to different frequencies than humans, and noise energy at these frequencies travels further than the noises audible to humans. (Appeal pp. 5-6; Howorth Letter to County, 11/15/13, p. 6.) Condition 68 is based on the dBA scale, which measures noise audible to humans, not marine mammals. The assertion that "construction noise would not be above ambient levels at the haul out site" (see Staff Report, p. 26) is doubly flawed because it is based on the dBA scale, and is based on average noise levels, which do not accurately reflect high-intensity but short duration noises. Our appeal identifies numerous flaws in the County's analysis in this regard (see Staff Report pp. 20-21), none of which are responded to in the Staff Report.

The only response from the County mustered by the Staff Report with respect to visibility/night

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lighting¹ is a single statement attributed to a personal communication with John Storrer that "harbor seals are not particularly averse to lighting or human activity while in the water." (Staff Report, p. 24.) This statement is directly contradicted by Mr. Howorth:

[t]he view from the ocean is also very important to harbor seals, which closely scrutinize the coast before venturing ashore" and "Harbor seals have good vision in air and frequently closely watch people on the beach from nearshore waters. Construction equipment, along with the dust it raises when in operation, will present visual impacts that could affect haul-out patterns.

(Appeal, p. 4; Howorth Letter to County, 10/15/13, pp. 6-7.)

Moreover, the assumption that by eliminating the existing public beach access trail, impacts to the seal haul-out will be reduced is factually flawed. The existing coastal access trail reaches the beach several hundred feet to the west of the seal rookery, and the vast majority of beach traffic turns right (west) out to the Naples reef and surfing area. The substitute coastal access points (assuming one is ever built) are located east of the rookery. Foot traffic reaching the beach from any of the offered access locations going to Naples reef will also turn right and proceed west, but must walk through the seal haul out area. The Project would have the effect of directing more people *through* the rookery, which would increase disturbance to the seals.

Moreover, the specific protections to the rookery/haul-out during pupping/breeding season such as monitoring, partial beach closure and posting of educational signage, do not take effect upon approval of the Project, rather are linked to the future CDP for vertical access (see Conditions 20 and 21). The Staff Report itself acknowledges "[t]he conditions approved by the County restricting or regulating access cannot be implemented without a CDP for the access improvements, which is subject to review and/or appeal by the Coastal Commission." (Staff Report, p. 28.)

Accordingly, if the County's approval of the Project becomes final, construction of the Ocean Estate and other development on the site would commence with ineffective controls to protect the rookery from noise, vibration and visual impacts, and the public could only access Naples beach and surfbreaks by walking west from Haskell's beach directly *through* the rookery.

The degree of support for the County's determination that the Project "avoids adverse impacts" to ESHA and that the rookery "will not be altered or disturbed by recreation" to comply with LUP Policies 2-11 and 9-25 is weak and speculative, and is directly contradicted by the testimony of a highly reputable marine mammal expert. This weighs heavily in favor, not against, a finding of Substantial Issue.

¹ With respect to visual impacts to the Seal Rookery, the Staff Report artificially limits the grounds raised in the appeal to "night lighting" when in fact the appeal raised the visibility issue both during the day and at night.

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ii. White-tailed Kite

LUP Policy 2-26 prohibits development "within the area used for roosting and nesting" by White-tailed kites. The County's analysis of the Project's consistency with LUP Policy 9-26 relies on the absurd assumption that "the area used for roosting and nesting" does *not* include a documented nest tree. (See Staff Report, pp. 31-32; 2/4/14 Board Letter, p. 8.) As explained in our appeal, the County opted to approve development within the area used for nesting with full knowledge that doing so would sacrifice the most productive White-tailed kite nest tree ever documented.

Specifically, the County's own biologist Mr. Storrer admitted that "[i]t's unlikely that kites would return to the "new" (2013) nest tree given the current development proposal . . . Considering the combined effects of lighting, dogs, vehicles and general human activity between all those features I don't see why kites would choose to nest there." (Appeal, p. 9, Storrer Letter Report, p. 4.). Mr. Storrer went on to state that "[s]ince it appears that a number of environmental, engineering, and economic considerations point to the current location of the Ocean Estate development envelope, I suggest "sacrificing" that area as a resource for kites and looking to another part of the property that meets kite habitat requirements for preservation and improvement (i.e. management). I don't think that the proposed development envelope can be adjusted (reduced, reconfigured) to ensure compatible use by kites and people." (Appeal, p. 9, Storrer Letter Report, p. 5.) His testimony establishes that the foundation for his and the County's refusal to avoid impacts to the White-tailed kite nest tree was not that impacts were in fact avoided or minimized, but rather that other "considerations" ruled the process - i.e., the applicant's demands for this particular project configuration and refusal to consider the rest of their lands as offering alternatives that could avoid and minimize these impacts.

LUP Policy 9-28 requires that "any development around the nesting and roosting area shall be setback sufficiently far as to minimize impacts on the habitat area" (emphasis added). Again, the County's analysis relies on the absurd assumption that the "habitat area" does not include a documented nest tree. (See Staff Report, p. 31-32; 2/4/14 Board Letter, p. 8.) The 75-100 foot buffer approved by the County, in the words of Mr. Storrer "in any serious discussion would be indefensible". (Appeal, p. 9, Storrer Letter Report, p. 7.) Discussed above, Mr. Storrer expressed the opinion that even with the buffer, kites are unlikely to return to the tree following the development.

The Staff Report attempts to justify the County's flawed approach by noting that "area used for roosting and nesting", "nesting and roosting area" and "habitat area" are not defined in the LCP. (Staff Report, p. 31.) However, the definitions from the EIR and County's staff analysis that the Commission's Staff Report refers to all encompass at least the nest tree and surrounding area. Discussed above, the County's biologist admitted that this Project would sacrifice use of the nest tree. There is no available definition of these terms that renders the Project compliant with Policies 9-26 and 9-28. The County's approach that considered "the site context and the project as a whole" is merely an attempt to justify the policy non-compliance, and does not support a finding that the Project complies with the policies themselves.

iii. Public Access

LUP Policy 7-2 requires granting of an easement to allow vertical access to the mean tide line, and provides that "[i]n no case, however, shall development interfere with the public's right of access to the sea where acquired through use unless an equivalent access to the same beach area is guaranteed." The Staff Report reasons that "the County found that the floating vertical access easements would be consistent with the above cited policies because the proposed access would eventually open access to the same beach area in perpetuity for a greater variety of recreational users" and that "the County did not require an analysis of providing access at the Tomate West location because it found that the floating vertical easement locations comply with the policies requiring public access". (Staff Report, p. 41.)

The Appeal however articulates precisely why the floating vertical access easements would not constitute equivalent access to the same beach area: they do not permit access to Naples beach and surfbreaks at medium to high tides, and they require passage *through* the environmentally sensitive Naples Seal Rookery and accordingly would be closed from February through May as a condition of approval for the vertical accessway. Additionally, until the CDP for one of the seven improbable vertical accessways is approved, there would be no vertical access to the Naples beach and surfbreaks west of Haskell's beach in Goleta. During this interim period, there will be no protection for the Naples Seal Rookery, discussed above.

The County has not responded to any of these issues, and there simply is no factual or legal support for the conclusion that the OTDs render the Project consistent with the public access and recreation policies of the LCP and Coastal Act. The Ocean Estate interferes with a heretofore existing beach access by physically blocking the long-used beach access path, and the offer to dedicate any of the infeasible accessways down the coastal bluff at some future time is NOT equivalent access.

Discussed above, the Settlement Agreement gives the Commission the discretion to consider the applicant's entire property when determining the Project's consistency with the LCP and Coastal Act. The only equivalent access to the existing trail that the Ocean Estate would destroy is Tomate West. The County failed to consider this accessway as an alternative providing equivalent access, and instead approved a Project that conflicts with the LCP and Coastal Act, but if the Commission assumes jurisdiction over the Project this inconsistency could be easily rectified.

² Note, as explained in the Staff Report, the applicant has recently fenced and gated the property, but without the benefit of the required CDP for such development. (Staff Report, p. 38.) Prior to that time, the County acknowledged that this trail experienced use by up to 200 persons per day. (FEIR, p. 3.13-9; 2009 DEIR p. 3-13.9.) Appellants and the Coastal Commission have gathered hundreds of surveys and declarations of public recreational use in this area that were not submitted as part of the appeal since the County expressly recognized the existence of this ongoing public use.

b. The Extent and Scope of the Approved Project Was Understated by Staff

The Staff Report omits a critical aspect of the Project that bears on its extent and scope. Specifically, the Project includes construction of an oversized 10" potable waterline (in addition to a reclaimed water pipeline for agriculture and landscaping purposes) that would be sufficient to provide additional water for future development of the applicant's 25 Naples lots, which the County acknowledged would be growth-inducing for that reason. The Staff Report's discussion of the extent and scope of the approved project does not mention the waterline at all (*see* Staff Report p. 53.) When the waterline is taken into consideration, the Project's scope becomes considerably larger.

c. <u>Staff Understated the Significance of Gaviota's Coastal Resources Affected by the Approval</u>

In considering the significance of coastal resources affected by the approval, the Staff report merely rehashes the County's flawed reasoning that the Project would not significantly affect biological resources and public access. In fact, the coastal resources present on the Project site and affected by the Project are nothing less than extraordinary. These resources include the highly significant archaeological site and regionally significant visual resources to which the County found the Project would cause Class I significant and unavoidable impacts. These resources also include the most successful White-tailed kite nest tree ever documented, which the Project would unnecessarily "sacrifice". These resources further include the most heavily used public beach access point between Haskell's beach in Goleta and El Capitan State Beach, that the Ocean Estate would be constructed on top of. Staff's reasoning with respect to the 'significance' factor is circular, avoids recognizing the site's context as a gateway to the Gaviota Coast and its role as accessway to one of the most popular Gaviota Coast beaches and surf breaks, and thus is wholly flawed.

d. Precedential Value of the Local Government's Decision

The Staff Report focuses exclusively on whether the Project would conform to the draft Gaviota Coast Plan in considering the precedential value of the County's decision. As described on page 17 of the Staff Report however, this factor concerns "[t]he precedential value of the local government's decision for future interpretations of its LCP". The County's interpretation of its LCP for this Project allowed the construction of a large residential estate within 75 feet of the most productive documented White-tailed kite nest in ornithological history, allowed for ad-hoc and shoddy analysis of impacts to marine mammals (relying largely on a single field study of the site conducted over 40 years ago and ignoring the sustained objections from the undisputed leading local marine mammal expert that regularly observes the site and performs seal rescue on the Gaviota Coast), and allowed for the elimination of a well-established public beach access trail with no reasonable substitute access. In short, the County interpreted its LCP to include an extraordinary amount of flexibility that amounts to an admitted sacrifice of ESHA and coastal access. The County's approach is very likely to be applied to future Gaviota Coast Projects (of which several are currently pending), which would result in very significant cumulative losses to the coastal resources in this exceptionally important area.

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3. Conclusion

Staff's recommendation of no substantial issue defies logic in this case. The Gaviota Coast is a national treasure, worthy of designation as a National Seashore. Eighteen square miles of intertidal wetlands lie immediately below this Project, with the Gaviota Coast's only Pacific Harbor seal haulout and rookery scarcely 100 yards away. The Coastal Estate is proposed to be built **on top of** the most popular coastal access trail along a 4 miles stretch of otherwise inaccessible and remote coastline, and will knowingly and needlessly sacrifice the most successful white-tailed kite nest tree ever observed. While the County may have felt constrained from expanding the alternatives analysis to include the applicant's Naples lots, the Commission explicitly retained this discretion under the Standstill Agreement. If there were ever a case where the Commission needed to accept jurisdiction to cure lapses in a local government's approval, this is the case. The Gaviota Coast Conservancy, Surfrider Foundation and Santa Barbara Audubon Society implore your Commission to recognize the substantial issues posed by this Project.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO

Ana Citrin

Marc Chytilo

For the Gaviota Coast Conservancy

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Ellison Folk

For Santa Barbara Surfrider

576142.1



April 8, 2014 Via Email

California Coastal Commission

Via email 45 Fremont Street-Suite 2000 San Francisco, CA 94105

A copy of this letter has been provided to California Coastal Commission Staff in accordance with the requirements of Public Resources Code, Sections 30319-30324

Regarding: Item Th19a, Appeal No. A-4-STB-14-0010

Paradiso del Mare Residential Project

Hearing Date: April 10, 2014

Dear Chair Kinsey and Members of the California Coastal Commission,

On behalf of CPH Dos Pueblos Associates (CPH), I would like to thank you for your time and consideration of the below analysis provided in response to the appeals filed on the Paradiso del Mare Residential Project ("Project"). Over the last eight years we have worked closely with County of Santa Barbara (County) Planning and Development and Coastal Commission (Commission) Staff, and members of the community, to address the matters raised in the subject appeals and to reach agreement on the project description and design, as well as Conditions of Approval for the Project, which ensure the Project's consistency with applicable coastal resources protection policies. With the continued assistance of the County and Commission Staff, and continued coordination with representatives of local trail and conservation entities, we are proud of the Project plan unanimously approved by the County Board of Supervisors, which provides for 96% (137 acres) of the 143 acre lots to be preserved as permanent visual open space, 117 acres of which would be enhanced, maintained and preserved in perpetuity as a contiguous environmentally sensitive habitat area, and which includes substantial public access and recreation easements on the property representing the first phase for implementation of the California Coastal Trail along the 20-mile Gaviota Coast. Two residences on areas totaling 6 acres were included in the approval.

We very much appreciate the time Commission Staff have taken to conduct a comprehensive evaluation of the County's actions and findings that document the Project's consistency with all applicable County LCP policies and the public access and recreation policies of the California Coastal Act. Along with a thorough environmental review of the Project as disclosed in the Final Environmental Impact Report (FEIR), associated EIR Revision Letters, and substantial expert testimony provided throughout the course of the Planning Commission and Board of Supervisors hearing procedures (Planning Commission Hearings conducted on March 3, 2013, November 20, 2013 and December 4, 2013; Board of Supervisors appeal hearing conducted in February 2014), the County's record and decision to approve the Project is also supplemented by the substantial record generated throughout the County and Commission's review of the Dos Pueblos Golf Links project that began in the early 1990s.

We believe the County and Commission Staff's careful analysis and consideration of the Project appropriately addresses the issues raised by the appellants, and we wholly support the Staff Recommendation for No Substantial Issue on the Project appeals. Along those lines, we'd like to offer the following comments on select issues further supporting the Staff Recommendation, and responding to additional issues raised by the appellants following production of the Staff Report.

1. Introductory Comments - Environmental Review and Alternatives Analysis

The appellants have, in numerous statements, cited from an uncertified 2009 Draft EIR prepared for a prior Project proposal as evidence that the Project is inconsistent with the County's LCP and Coastal Act. The appellants contend that there were minimal changes to the Project warranting the conclusions and findings of the County's certified 2013 Final EIR identifying the proposed Project as the Environmentally Preferred Alternative and concluding the Project is consistent with all applicable coastal resource protection policies. These appeal contentions ignore the substantial coordination efforts that occurred for more than a year between the applicant team, County and Commission Staff, and members of the community, to identify appropriate Project description revisions and alternatives, and to prepare new and updated studies to address the various impacts disclosed in the 2009 Draft EIR, and to identify the best options for conducting additional environmental review to reflect the project revisions and alternatives analysis that resulted from that coordination process.

At the direction of County Planning and Development, the applicant proceeded with revising the entire EIR to accurately and comprehensively reflect the proposed project revisions that included substantially reduced residential and agricultural development in conjunction with proposals for a comprehensive habitat restoration plan, open space/conservation easement, and significant public access and recreation easement dedications, all intended to address the impacts identified in the 2009 Draft EIR related to biological resources, visual resources, archaeological resources (associated with the waterline extension), public access and recreation, as well as the needs and desires of the community. The project description revisions made subsequent to publication of the 2009 DEIR and fully analyzed in the certified 2013 Final EIR included the following:

- Relocation of the development envelope of the Ocean lot approximately 1,200 feet to the west of
 the originally proposed location to eliminate encroachment into 100-foot buffers for wetlands
 identified in the 2009 DEIR, and to avoid site areas historically documented as white-tailed kite
 nesting habitat and documented tarplant occurrences;
- Relocation of the development envelope of the Inland lot approximately 150 south/southeast of the
 originally proposed location to provide additional setback of the home site from Highway 101 and to
 better cluster and visually align the residential development on both lots;
- Construction of a bridge for residential access over the Union Pacific Rail Road (UPRR) corridor in place of the previously proposed undercrossing, thereby eliminating construction within Drainage 4;



- Realignment and consolidation of residential access roads/utility corridors into a single, shared
 access driveway/utility corridor located within the Inland lot and aligned as close to the Highway
 101 right-of-way as possible.
- Reduction in the proposed Ocean and Inland lot development envelopes from 2.8 and 6.10 acres
 to 1.9 and 4.1 acres, respectively (acreages include all structures, grading, access road, driveways
 and utility corridors);
- Reduction in the proposed Ocean and Inland lot residences from 8,042 and 12,413 sq. ft to 7,227 and 9,163 to sq. ft., respectively (square footages are gross calculations as presented in the 2009 and 2012 EIR and include all proposed structures including garages, basements, wall and mechanical spaces, etc., and therefore far exceed proposed habitable square footages for the homes);
- Designation of specific agricultural planting areas and tree limitations (dwarf and semi-dwarf species) within the proposed agricultural envelope to maintain natural open space along the Highway 101 corridor, to provide landscape screening of the residences as viewed from Highway 101, and to ensure such plantings are consistent with agricultural practices along the Gaviota Coast and will not block bluewater views from Highway 101 upon reaching maturity;
- Inclusion of a number of offers to dedicate (OTDs) easements for both vertical and lateral public access and recreation facilities, contingent on approval of the proposed Project, including:
 - Public vehicular access from Highway 101 via the existing site entrance and driveway to an area on the Inland lot dedicated for a public parking lot (20 spaces).
 - Trail access from the parking lot, over the UPRR property via the existing wooden bridge or new pedestrian bridge, to the California Coastal Trail easement, including preliminary coordination efforts with the County, UPRR and property owner to confirm a public easement across the UPRR property will be secured in exchange for the property owner extinguishing a number of existing, historic at-grade easement rights.
 - Beach access via a "floating" easement that extends along the bluff of the Ocean lot from Drainage 5 to Eagle Canyon, which provides flexibility for siting and design options for a beach access trail/stairway.
 - Approximately 35 acres included in a floating easement for the development of over 7,500 linear feet of the proposed California Coastal Trail extending the entire length of the Ocean lot and including a bluff top loop trail.
 - Two coastal overlooks on the Ocean lot.
 - Lateral access along the beach for the entire length of the site measured from the base of the bluff to the mean high tide line.



3

- Construction of a 1600 foot portion of the proposed California Coastal Trail easement, in conjunction with the proposed project utility corridor that extends from the existing wooden bridge connecting the Ocean and Inland lots over the UPRR to a proposed overlook area on the Ocean Estate:
- Overall site plan reconfiguration on both lots, as described above, intended to concentrate
 residential and agricultural land uses in areas of the property adjacent to anticipated and existing
 development and uses (Naples Townsite/Santa Barbara Ranch and Highway 101) and provide for
 contiguous open space over 96% of the property (when considering the proposed open space
 agricultural and conservation easement areas together);
- Inclusion of a 91 acre Open Space Conservation Easement, later expanded to 117 acres during
 the environmental review process, encompassing all on-site drainages and streams (including
 Eagle Canyon), and all areas know to contain sensitive cultural resources, wetlands, special-status
 plants (native grasslands, southern tarplant, and cliff aster), monarch butterfly aggregation site
 habitat, primary white-tailed kite nest habitat, California red-legged frog and tidewater goby habitat;
 and
- Inclusion of a Conceptual Upland and Riparian Mitigation and Monitoring Plan for 23.5 acres of onsite mitigation/revegetation on the Inland lot designed to establish a mosaic of new riparian, California sagebush scrub uplands, native grasslands, and enhanced exotics-free buffer zone areas intended to increase and enhance hunting, nesting and perching habitat for the white-tailed kite and their primary prey, the California vole.

In addition, a significant effort was undertaken by the Project team to prepare preliminary engineering studies, concept plans, and cost analyses for planning, design, permitting and construction of the public access improvements, based on design guidelines provided by the trails community and/or plans previously approved by the County and Commission for the site as part of the golf course project (i.e. the vertical access way at Eagle Canyon) to address concerns raised during the 2009 DEIR public review process regarding feasibility of the proposed OTDS (see Attachment 1, Paradiso del Mare Vertical Beach Access Alternatives and Public Access Cost Analysis, prepared by Penfield & Smith).

Finally, in response to the analysis and conclusions included in the Recreation Section of the 2009 DEIR, the Project team provided a comment letter detailing the site history and, relying on prior Coastal Commission findings and Court ruling on the matter, accurately identified the unauthorized status of public use of the site and the appropriate regulatory setting required for the DEIR analysis as it relates to public access and recreation. Additional discussion and response to the appellants contentions related to public access and protection of sensitive resources are discussed further below and, when considered together with the numerous project revisions, additional data and updated studies that were completed to address the issues raised in the 2009 DEIR, it is clear that the County conducted a comprehensive analysis of the Project's potential environmental impacts and required appropriate conditions to ensure compliance of the Project with all applicable policies of the LCP and Coastal Act.



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Alternatives Analysis

With respect to identifying and analyzing additional Project alternatives, both the County and Commission Staff have considered the totality of the applicant's property included in the subject coastal development permit applications, as well as planning and siting options to cluster the proposed Project with future development, in light of the potential for development to occur on the adjacent Naples properties and consistent with the terms of the Settlement Agreement. In particular, the County's environmental analysis considered three alternative development locations on both the Inland and Ocean Lots for purposes of avoiding and minimizing impacts to coastal resources and concluded in each case that the alternatives would not significantly reduce impacts to the coastal resources, but would in turn adversely impact other significant resources occurring on the site (cultural and visual resources, wetlands, monarch butterfly habitat, native plant communities and special status plants, etc.) and preclude the ability to implement the comprehensive Project plans proposed to maximize preservation of contiguous open space and habitat and public access opportunities across the site.

The appellants have argued that the County should have considered an "off-site alternative that "merges" the Inland and Ocean Lots and relocates the Ocean Lot development on the Inland lot. The Inland and Ocean lots are zoned AG-II-100, which allows one single family dwelling unit per legal lot (Section 35-69.3.5 of the Coastal Zoning Ordinance). Because the UPRR owns in fee the parcel separating the Inland and Ocean lots, the Inland and Ocean lots are not physically contiguous and the County therefore appropriately determined that a lot line adjustment, resubdivision or lot merger to permit a second home site on the Inland Lot as suggested by the appellants is not legally possible.

In addition, the appellants assert that the County, and now the Commission, should consider an alternative that would locate the proposed Ocean Lot residence to the inland side (north of the UPRR property) on one or more of the applicant-owned Naples lots. However, the Settlement Agreement provides that "The Commission recognizes that one single-family dwelling unit is a permitted use on each of the non-Naples lots", and specifically allows the property owner to pursue development of the two Ranch lots separate from the Naples lots, subject to conditions that ensure the Ranch lot development is sited and designed consistent with applicable policies of the Coastal Act and LCP, which the County has done. Contrary to the explicit terms of the Settlement Agreement, the appellants suggested alternative would essentially preclude the ability of the property owner to pursue the development potential clearly identified in the Settlement Agreement as two homes on the Ranch lots and, separately, up to ten homes on the Naples lots, in part by eliminating all development potential on the Ocean Lot and some unknown development potential on the Naples lots, and by implicating policies and procedures unique to development of the Naples lots that would not otherwise apply to the proposed Project (Policy 2-13 transfer of development rights and local coastal program amendment requirements), and all for no demonstrable benefit to sensitive coastal resources or coastal access. As discussed in the County's findings and Commission Staff Report, these suggested alternatives would not avoid or lessen impacts to sensitive coastal resources given the type and location of resources that occur on the totality of the property, as documented during the prior golf course project review and the current applications. The ultimate result of the appellant-suggested alternatives would be to simply deny the property owner any and all use the Paradiso del Mare project site and adjacent Naples lots located south of the of the UPRR property while achieving no real benefit for the long-term protection and preservation of sensitive coastal resources or public access opportunities.



The result of the extensive environmental review process and policy analysis conducted for the Project has resulted in a Project that carefully balances limited development, resource protection, and public recreational amenities, resolving decades of debate over the appropriate balance of land uses for the property. In addition to the sensitively planned residential, habitat conservation, agricultural and public access project elements, the applicant's proposed contributions to establish endowments for a Gaviota Seals Watch (\$20,000) and Public Access Implementation plan (\$500,000) will ensure longterm protection of significant coastal resources, while providing maximum public access and recreational opportunities of local, regional and state-wide significance.

2. Substantial Issue Analysis

A. Environmentally Sensitive Habitat Area

Naples Harbor Seal Rookery

Although the Staff Report describes in detail the substantial amount of professional technical analysis, expert testimony, and thorough conditions of approval applied to the Project to ensure Project impacts to the harbor seal rookery are avoided, and that current impacts to the resource resulting from the existing unauthorized and unmanaged access across the site are appropriately addressed such that the resource will be protected into the future, the appellants continue to assert the Project is inconsistent with the resource protection policies of the County's LCP, particularly in regard to analysis of project noise impacts upon the Naples Harbor Seal Rookery. Accordingly, we offer the following point-by-point supplemental comments in support of the Staff Recommendation and in response to appellant comments submitted subsequent to production of the Staff Report.

The Appeal makes the following assertions:

1. Similarly, the County entirely failed to evaluate the audibility of construction noise from any points other than the haul out itself, and undertook no analysis of whether construction would cause adverse impacts to the seals. Approximations of noise levels at the haulout itself are only that - approximations - and moreover use the dBA scale, which reflects the range of human hearing, not that of seals. As Mr. Howorth explained, "[t]he use of A-weighting in assessing potential impacts to marine mammals is highly questionable, however, because A-weighting does not take into account the hearing frequency range and sensitivities of marine mammals, which are quite different from those of humans." (Howorth Letter, 10/15/13, p. 6.) The County made no assessment of the potential impact of ground-borne vibrations on seals hauled out at the rookery, despite the fact that "pinnipeds are known to be sensitive to ground-borne vibrations". (Id.)

First, the haul out has been the focus of the appellants comments regarding impacts upon seals, and whether various effects of the project could cause the seals to abandon the haul-out. Therefore, quantification of construction noise levels at the haul out is appropriate and sufficient. Second, the quantification of future project construction noise levels, and existing train noise levels, at the haul-out are not approximations; the identified noise levels were quantified using environmental (outdoor) noise attenuation rates widely accepted both by academics and



practitioners in the field of acoustics. The methodology was explained in written responses and in testimony before the Planning Commission. Third, commercial and industrial noise sources are studied and documented on the basis of the A-weighted sound scale, as analysis is most commonly geared toward effects upon human population. Data is not readily available in other weighted scales for common sources such as construction equipment, trains, traffic, etc. While seals have a different hearing mechanism than humans, the comparison of noise levels with a similar frequency composition under the A-weighting system allows a determination of relative sound intensity. On this intensity comparison, train operations produce a calculated noise level of 18 dBA CNEL at the rookery, whereas construction is calculated to result in a noise level of 8 dBA CNEL at the seal rookery. The most substantial vibration from construction activities is associated with pile driving and blasting; neither of these activities would occur with project construction. Small bulldozers, backhoes, or trucks would not produce vibrations capable of propagating 325 or more to the seal haul out.

2. In addition, statements made in the Response to Comment on the recirculated biological resources section of the EIR disclose that the impact analysis relies primarily on the difference in elevation between the Ocean Estate development envelope and the haulout itself for its conclusion that noise and vibration "are not expected to affect harbor seal behavior." (See Responses D2-15 and 17). Both in the responses to comment and at the Planning Commission, County Staff and the applicant explained that construction noise is similar to train noise, and accordingly that it is unlikely to affect the seals. According to numerous observations by the Carpinteria Seal Watch and Howorth, seals at the Carpinteria rookery, which also lies under a coastal bluff, are still frightened by train sounds. Also, as at Carpinteria, at Naples the seals have been exposed to train noise for decades, whereas construction noise at that location would be a change from the existing conditions. Considering the long duration of the construction activities, Project noise would represent a cumulative impact when combined with train noise. It would also represent a significant Project impact by itself. Moreover, train noise is transient whereas construction noise is constant in nature.

As explained in written comments and in testimony before the Planning Commission, attenuation of construction noise between the development envelop and the seal haul out area would be dependent upon both the distance of separation and the barrier effect of the top edge of the seacliff which would interrupt the direct travel path for sound waves. Testimony presented before the Planning Commission described the high degree of similarity between train noise (diesel locomotive engine and steel wheels against steel track) and construction equipment noise (diesel engine and rotating steel propulsion tracks), whereby the frequency pattern would be very similar.

With regard to the statement "construction noise at that location would be a change from existing conditions," the history of the project site must be considered. Neither the appellants in their complaint, nor the marine mammal experts engaged to oppose the project, acknowledge the period of history with much greater intensity of activity on the project site associated with oil extraction and production activities. As detailed in the oil production history of the subject property (Final EIR pp. 3.9-2 to 3.9-5), oil production on the site began in 1929 and was sustained until abandonment of



the facilities in 1998 (a period of 70 years). During this period activity on the site included the drilling of wells, operation of well pumps, regular trips by heavy tanker trucks, construction of collection lines and storage tanks, etc. The noise levels and use of night-time lighting during this period was of far greater intensity than that which would be associated with construction or occupation of two single family residences on the property. No documentation presented by the appellants suggests the Naples Harbor Seal Rookery had a declined level of use across the 70 year period of oil activities on the site; from a noise perspective, this suggests that the harbor seal population using the rookery has some tolerance for anthropocentric noise generation.

3. The dominant construction noise is low frequency (under 1000 hertz [Hz]). Low frequency noise does not attenuate rapidly with distance, yet the EIR. states that construction noise levels of 95 dB will somehow attenuate to 65 dB at Bacara Resort, 1440 feet away from the closest construction activity. The EIR. states alternatively that noise diminishes by 3 dB or 6 dB with every doubling of distance, but provides no indication of what this distance is (EIR 3.11-15, 17, and 22; also 3.11-10), rendering such statements completely meaningless. Howorth pointed out in his response comments that even sounds of 1000 Hz (higher than the construction sounds) will attenuate only 4 dB at 1000 meters (3281 feet) (see Richardson et al., 1995 Academic Press division of Harcourt Brace, San Diego, p. 77 ("At 1 kHz [1000 Hz; a higher frequency than construction equipment sounds] ... a typical value for in-air attenuation is ~4 dB/km [4 dB attenuation at 1000 meters or 3281 feet]"), thus the EIR statement that lower frequency construction noise will attenuate from 95 to 65 dB in only 1440 feet is literally and completely impossible. Moreover, the Ocean Estate site is only 326 feet from the Naples seal rookery. Howorth pointed out that harbor seals' lowfrequency hearing threshold is about 70 dB seal rookery. Howorth pointed out that harbor seals' low-frequency hearing threshold is about 70 dB. in air and that their hearing frequency range is from 100 Hz to 180, 000 kHz, indicating that they certainly could hear the construction noises.

First, the comment demonstrates considerable confusion on the part of the commenter regarding principals of acoustics. Numerous investigators have addressed the behavior of sound waves in the outdoor environment, to the point where universal adoption of a standard rate of attenuation has occurred internationally. The primary mechanism for the lessening of sound with distance from the source is called "geometric spreading". The sound source emits a certain energy which is exerted upon the volume of air surrounding the source; this finite energy is distributed over an increasing volume of air as the sound wave moves from the source (the surface of the dissipation pattern is hemi-spherical). As the energy is spread over a larger volume of air, the sound intensity (sound level) decreases. For a point source (like construction) geometric spreading results in a decrease of 6 dB each time you double the distance from the sound source to the receiver. A sound level of 95 dB measured at 50 feet from construction activity would be reduced by 6 dB to 89 dB at 100 feet (double the distance). Hence, the EIR statement that construction noise of 95 dB at 50 feet would be attenuated to 65 dB is correct (89 dB at 100 feet; 83 dB at 200 feet; 76 dB at 400 feet; 70 dB at 800 feet; 64 dB at 1600 feet). Agencies including Caltrans, Federal Highway Administration, County of Santa Barbara, to name a few, each use this attenuation formula for outdoor point noise sources such as construction.



With respect to the reference provided by Howarth: "even sounds of 1000 Hz (higher than the construction sounds) will attenuate only 4 dB at 1000 meters (3281 feet) (see Richardson et al., 1995 Academic Press division of Harcourt Brace, San Diego, p. 77 ("At 1 kHz [1000 Hz; a higher frequency than construction equipment sounds] ... a typical value for in-air attenuation is ~4 dB/km [4 dB attenuation at 1000 meters or 3281 feet]"). This attenuation value is for atmospheric absorption of sound waves, which is applicable for examining sound travel over longer ranges. Atmospheric absorption is influenced by pressure gradients and moisture content in the air, which further reduce the sound energy in addition to geometric spreading effects. Thus, at a distance of 3,281 feet from the construction site we would expect the sound level to be reduced approximately 4 dB more than the universal attenuation rate described above (at 3200 feet geometric spreading would attenuate the noise level to 56 dB using the equation above, atmospheric absorption would further reduce this to 52 dB).

Finally, the comment assumes that geometric spreading is the dominant effect for construction noise attenuation at the seal rookery, when in fact the barrier behavior of the ocean bluff is the primary effect upon residual noise levels at the rookery (see previous comment and response). Neither the EIR nor consultants for the applicant assert seals would not hear construction noise at the haul out (as claimed by the commenter in the closing sentence), rather the conclusion has been stated that such noise levels should not impact the seals, compared to historic and current noise levels occurring in association with the project site.

4. At the same hearing, one of the Applicant's consultants mentioned that sound levels at the Ocean Estate would be 45 dB and only 35 dB at the rookery, leading County commissioners to believe that the 45 dB level was somehow tied to construction noise. No effort was ever made by the Applicant to measure natural ambient noise at the beach under various conditions, which could easily exceed 45 dB, as proven by noise studies at the nearby Carpinteria seal rookery. In the BIR (Page 3.11-13), the 45 dB level is tied to ambient noise inside the estate and has nothing whatever to do with construction noise. The BIR does mention that ambient levels outside the dwelling ranged from 53 .1 to 68 dB just from traffic on Highway 101 (Page 3 .11-11).

The testimony presented to the Planning Commission characterized typical ambient noise levels in rural areas and low density residential areas as approximately 45 dB CNEL, which is generally considered to be very acceptable for the average resident. This is also the maximum allowable interior noise level enforced by the State of California for multiple family residential buildings. The noise levels in completely natural settings with little or no urban influence can be as low as 35 dB CNEL, as documented by the National Park Service and US Forest Service. Thus, 35 dB CNEL was referenced as the probable minimum ambient noise level at the beach area, including seal rookery. The 53.1 and 68 dB CNEL noise levels referenced by the commenter were calculated at the building envelopes from freeway and train sources, for comparison with the County 65 dB CNEL allowable maximum noise exposure in exterior living areas. Again, the bluff top barrier effect would reduce these noise levels in the seal rookery.



5. According to the EIR, construction noise ranges from 75 to 95 dBA for each piece of construction equipment (Pages 3.11-15, 17, and 22). The EIR claims that the total noise level of construction activities will be 95 dBA, yet fails to analyze sound levels generated by multiple types of equipment operation at once. Also, back-up alarms, required on heavy equipment, generate very loud, penetrating sound that can be heard at great distances, yet no mention is made of noise from back-up alarms.

The Federal Transit Authority (Transit Noise and Vibration Impact Assessment, 2006), Caltrans (Technical Noise Supplement, November 2009), and County of Santa Barbara (Environmental Thresholds and Guidelines Manual, October 2008) each reference average construction noise of 95 dB(A) at a 50' distance from the source. This average is composed of multiple pieces of equipment operating simultaneously, with varying individual sound contribution and intensity of use. Given this value is incorporated in the County adopted thresholds, it is deemed appropriate for the analysis.

6. Seals are known to be very sensitive to vibrations, yet no analysis was made on the impacts of vibrations from heavy equipment coupling to the substrate and hence to the nearby seal rookery, much of which lies over or on the same rock formation. Vibration analyses have been made for past projects at Carpinteria; there is no reason why such analyses should not be made for this Project.

The most substantial vibration from construction activities is associated with pile driving and blasting; neither of these activities would occur with project construction. Small bulldozers, backhoes, or trucks would not produce vibrations capable of propagating 325 or more to the seal haul out. The industrial period of the site also cannot be overlooked or discounted. Figure 3.9-1 (see FEIR p. 3.9-3) indicates the location of three former oil wells within the development envelop. The construction of each of these wells alone would have involved a substantial vibration source from the grinding of the drill head through the same bedrock strata underlying the seal rookery. Train passage multiple times per day also creates more vibration than would construction activity on the site. No evidence has been presented by the mammal experts that use of the Naples Seal Rookery declined during the former on-site oil operations, including those located as close the seal rookery as the Ocean Estates. To the contrary, evidence from the appellant mammal expert and biologists involved in the preparation of the EIR indicate continuing successful use of the rookery site, and not abandonment of the site caused from industrial vibration levels.

7. Overall, the County entirely failed to consider the audibility of construction noise and vibration from locations other than at the haulout itself, failed to consider the frequencies detected by harbor seals, and undertook no actual analysis of whether introducing construction noise and vibration at this location would cause adverse impacts to the seals. Mitigation Measure/Condition Noise 0-2 and Noise 0-4 are standard construction noise mitigation measures to reduce impacts to humans, and the Project includes no mitigation measures at all that address vibration.



The claim is false as it relates to noise effects of the project. The responses to comments on the EIR, and to Mr. Howorth's comment letter of 10/15/13 provide quantification of sound levels produced during construction and the attenuated sound levels that would exist at the seal rookery area. The analysis demonstrated the noise from construction would produce a lower average noise level (community noise equivalent level or CNEL) at the seal rookery than the existing CNEL generated from train operations on the UPRR tracks. The frequencies of sound produced from the rail activity were discussed in testimony to the Planning Commission, and were described as being similar to the frequencies of construction activity. This was used to conclude the construction effects upon the seals were not likely to lead to abandonment of the seal rookery. In addition, the much greater intensity of oil activity on the property (which lasted 70 years) was referenced as not evidently negatively affecting the use of the seal rookery by resident seals, drawing further support for the conclusion that temporary construction impacts are unlikely to cause significant impacts on the rookery or seal population. Finally, while mitigation measures Noise 0-2 and Noise 0-4 may be applied as a standard to control construction noise, it does not mean they would be ineffective for minimizing construction noise effects of the project, or that they can be ignored by the construction crews.

As it relates to potential impacts to the rookery from members of the public and future residents, the County's analysis appropriately identified the extent of existing impacts occurring at the site due to the unauthorized access, and the long term benefits to the resource that will occur with implementation of a comprehensive public access plan for the property.

Although the appellants attempt to make the case that the existing unauthorized access has no impact to the seal haul-out currently because "the trail reaches the beach several hundred feet to the west of the seal rookery, and the vast majority of beach traffic turns right (west) out to the Naples Reef and surfing area", impacts to the seal haul-out from the existing, unauthorized access are well recognized and documented by expert and public testimony provided during the County's hearing process on the subject applications, as well as by the Commission and County during the review of the golf course project. The appellants' contentions that the unauthorized access has no impacts to the seal haul-out currently, but that the proposed Project and implementation of the public access OTDs would significantly impact the haul-out inconsistent with LCP policies, are significantly flawed for the following reasons:

- 1. The appellants assume that the seal haul-out is some fixed point on the beach located "several hundred feet" east of Tomate Canyon, as opposed to a beach area that has been observed to encompasses the beach generally from the mouth of Tomate Canyon Creek to Drainages 4 and 5, an area upon which existing unauthorized access directly outlets.
- 2. The appellants ignore the fact that, as indicated through public testimony, many surfers legally access Naples Reef by passing through the haul-out area from public access facilities available at Haskell's Beach to the east (Bacara), and from an additional unauthorized access point located to the east at Eagle Canyon. It is also a well-known fact that surfers access Naples Reef from Tomate West and Santa Barbara Ranch located to the west.



- 3. The appellants assume that their preferred, alternative beach accessway located offsite on the adjacent applicant-owned Naples lots, referred to as Tomate West, would provide unfettered public access to Naples Reef, thus resolving any and all ESHA protection issues associated with existing and proposed public access on the actual Project site. However, it should be noted that both the County and Commission included the Tomate West beach access location in the public access management plan required for the golf course project to protect the seal haul-out, and it is therefore speculative to assume the County and/or Commission would not be concerned about beach access impacts to the seal haul-out (or other sensitive resources) at the offsite, Tomate West location. This renders the proposed onsite beach access OTD included in the Project a valuable option for comprehensively addressing public access opportunities and constraints for all user groups along this portion of Gaviota.
- 4. The appellants assume that "Foot traffic reaching the beach from any of the offered access locations going to Naples reef will also turn right and proceed west, but must walk through the seal haul out area." Here, as noted above, the appellants ignore the fact that surfers are already impacting the seal haul-out while gaining access to Naples Reef from scurrying down the onsite bluff at Tomate Canyon, as well as from walking up the beach from Haskell's Beach and Eagle Canyon, and although the appellants claim to support maximum public access opportunities, they continue to focus their arguments and recommendations to facilitate access for a single user group surfers who want to access Naples Reef. The appellants' analysis of the issue does not consider, in any context, the benefits of the proposed onsite beach access to other user groups who may simply want to access and enjoy the pocket beach at Eagle Canyon and/or walk east of the site to enjoy the public amenities available at Haskell's Beach, which would have no impact to the seal haul-out.

The proposed public access easements and future management plan would improve and enhance public beach access for all user groups, while redirecting public access away from the immediate vicinity of the rookery and informing and managing beach access to protect the seal haul-out, as approved pursuant to a separate coastal development permit, during the most critical times of the year. The applicant's proposed public access plan and County's approval with conditions to implement a public access management plan are consistent with the Commission's prior approval of these project elements analyzed and approved for the subject properties as part of the Dos Pueblos Golf Links project.

In addition, pursuant to the Project Description, which is implemented through Condition 1 of the County's permit, future residents will not be permitted to access the beach from the Ocean Lot via the existing unauthorized trail at Tomate Canyon (or any other beach access location not specifically implemented via the public access plan), will be required to comply with all provisions of the seal protection/restricted access plan required pursuant to MM BIO-12, and will additionally be required to accept a "Notice to Property Owner" as presented below and required per the County's conditions:

Prior to issuance of any Coastal Development Permit, the Applicant shall record a "Notice to Property Owner" (NTPO) to ensure residents are advised of the responsibilities associated with



living near the sensitive habitats and special-status species documented on the project site. The NTPO shall include specific information related to the seal haul-out, white-tailed kite, and other sensitive species occurring on the property as identified in the FEIR for the project. The NTPO shall be reviewed and approved by the Planning and Development Department and County Counsel.

In summary, the approved project provides an ample setback from the seal rookery to ensure the Project is not visible from the rookery or near shore waters, and the area surrounding the Ocean Lot residence will be occupied by an extensive buffer area permanently preserved with native vegetation. The grading plan includes required erosion control, best management practices for storm-water pollution prevention, and permanent storm-water system components to direct storm-water run-off away from the bluff edge and seal rookery. Noise restrictions have been imposed during the construction of the project and substantial lighting restrictions have been required to ensure the proposed residence will not impact seal use of the beach. Finally, the Project, in conjunction with future implementation of the proposed public access OTDs and public access management plan will, for the first time, provide for maximum public access that is located, designed and managed to ensure long term protection of the seal rookery on the site. Thus the project as approved by the County, is consistent with all applicable resource protection policies of the County's certified LCP relative to protecting the Naples seal rookery.

White-Tailed Kite

The County's LCP has specific policies that incorporate protections for the white-tailed kite, which state that development including agricultural development, structures, and roads, shall be located away from an area used for roosting and nesting, and that any development around a roosting and nesting area shall be set back a sufficient distance to minimize impacts to white-tailed kite nesting areas. As noted in the Staff Report, these policies, however, contain no determination of what distance should be applied between development, including agricultural development, structures and roads nor is there a definition of "sufficient distance" in relation to development around roosting and nesting areas in order to minimize impacts. Accordingly, to carry out an analysis of Project consistency the County and the Commission have appropriately considered the Project and site on a case-specific basis, which takes into account the following in order to determine policy consistency:

- The extensive and exhaustive white-tailed kite surveys that have been undertaken on the Project Site from 1998 to 2013;
- The abundance of suitable nesting habitat on-site (> 300 potential nest trees);
- The overwhelming scientific information on white-tailed kite nesting behavior, and in particular white-tailed kite nesting behavior in Santa Barbara County and at the Project Site, which clearly indicates that kites do not typically nest in the same tree twice. This is evidenced by the fact the March 13, 2013 nest observation in Tree 184 was the first time a nest was observed in



this particular tree and on this portion of the site since 1998, and that all prior potential and confirmed nest sites have been observed in different trees on the site:

- Expansive foraging habitat that will be restored and preserved on the balance of the site in perpetuity; and,
- The low intensity use of the proposed development.

As noted in the appellant comments submitted subsequent to production of the Staff Report, previous Coastal Commission actions addressing development on the site in proximity to kite nesting habitat have addressed the issue of ESHA determination and buffers from known nest sites, citing specifically the buffers recommended for the prior Dos Pueblos Golf Links project. However, the appellants contentions fail to consider any of the site-specific analysis conducted for the current, proposed residential project, and the substantial amount of data and information that has been gathered to document historic and current conditions of the site since the Commission last consider the golf course project in 2002.

As described in the white tailed kite technical studies included in the County's record (Exhibit 15). in the case of the Dos Pueblos Golf Links project, the Commission designated observed nest sites and "important use trees" as ESHA, and required buffers of 200 feet from observed nest trees and immediately adjacent trees (resulting in ESHA buffers around nest trees identified that year of 256 and 322 feet), and 100 foot buffers from "important use" trees (Dixon 2002) in the context of that project, which anticipated high intensity use of the site for 50,000 to 60,000 rounds of golf 360 days a year for an 18 hole course, and 20,000 rounds of golf a year for a 9 hole course. Of important note is the fact that the Commission acknowledged the difficulty of determining the ESHA footprint during its review of the golf course project for the following reasons: 1) trees potentially suitable for nesting and perching are scattered over much of the site and do not form discrete clumps or groves distant from other suitable tree habitat, 2) kites often, perhaps typically, do not return to the same tree to nest each year (although Dr. Dixon noted observations of kites using the same tree in three successive years at the U. C. Santa Barbara campus, and that kite use of the same or different trees may be a function of the relative availability of suitable nesting trees at a given site), and 3) at the time, there was no knowledge of which trees or groups of trees had been most used historically. In addition, the Commission noted that there was no analysis available at that time relative to the proportion of remaining trees that would be in suitable for nesting. Many of these factors influencing the white-tailed kite ESHA and buffer determination on the site in 2002 are no longer applicable.

As described in the Staff Report, extensive site-specific survey results covering a significant time period (1998-2013) are now available which thoroughly document the location, extent and abundance of suitable nesting and foraging habitat on site, in conjunction with white-tailed kite use of the site for both foraging and nesting and the habitat conditions that are the limiting factor to sustaining kite use of the site into the future (i.e. degrading foraging habitat).

These surveys demonstrate:



- 1. There is an abundance of suitable nest habitat on-site (> 300 potential nest trees), the vast majority of which is located on the Ocean Lot, east of the proposed residential development between Drainage 1 and Drainage 5. The site area located between Drainage 1 and Drainage 5 contains the densest clusters of suitable nest trees, has been documented as the most intensely used portion of the site for kite nesting and perching and, until 2013, has supported all prior nest sites. This entire area is proposed to be preserved in perpetuity within an Open Space/Conservation Easement.
- 2. Consistent with most observations of the propensity for kites to use different trees for nesting year-to-year, there have been no observations of kites returning to or re-using any of the previously documented nest trees on the site for nesting. As such, the limited residential development proposed on the far west end of the Ocean Lot, which is located a significant distance (approximately 800 feet) from the majority of suitable nest habitat located between Drainage 1 and Drainage 5, would have no significant impact on kite use of the site for nesting, irrespective of the observed 2013 nest site in Tree 184.
- 3. Regardless of the insignificant project impacts to nest habitat on the site and the ensured availability of abundant suitable nest trees in perpetuity, the long term viability of the site to support kite use and reproduction is compromised by the observed trend of degrading foraging habitat. The proposed project will maintain a 117-acre conservation easement of the balance of the property in which there are in excess of 300 suitable nest and perch trees that provide significant and sufficient habitat for the white-tailed kite. However, nesting success is largely dependent on the availability of suitable foraging habitat located in proximity to suitable nest habitat. Accordingly, to enhance the on-site habitat for the white-tailed kite, while mitigating project-related impacts, the project includes an Upland and Riparian Mitigation and Monitoring Plan that is designed to increase the hunting habitat value for the white-tailed kite and their primary prey, the California vole. This would be accomplished by creating a mosaic of natural vegetation communities, including native grasslands, in the central portion of the site near suitable nest and perch trees. The plan also includes planting of coast live oak trees within Drainage 4 and/or 5 to provide additional tree habitat of suitable height and structure for kite nesting/perching. The proposed tree plantings just north of the Union Pacific Railroad right-of-way, would further expand the primary nesting/perching habitat on the site from the Ocean Lot northerly to the Inland Lot, in an area physically buffered by both distance and the railroad corridor from the public access easement dedications proposed within the Ocean Lot. thereby providing new perching/nesting opportunities that would be insulated from potential impacts associated with recreational use of the site. To further facilitate the recovery of the site to an ecologically balanced condition, habitat restoration will be implemented concurrent with the removal and maintenance of adjacent mustard fields.

The documented site-specific conditions of the site existing at this time, along with the extensive body of available information relative to kite use of the site and of other coastal resource constraints, and the limited residential development proposed warrant an independent determination of adequate buffers to address white tailed kite. The proposed residential project was identified by the Commission to be the preferred development alternative for the site given the adverse impacts to white-tailed kites anticipated with the golf course project, and in comparison to



the Dos Pueblos Golf Links project, the proposed residential development is dramatically less intense than the previously reviewed golf course project, will utilize a much smaller portion of the site for the residential development, will result in minimal impacts to nesting habitat, and most importantly, will result in enhancement of on-site foraging habitat that would otherwise continue a trend of degradation in the foreseeable future. In addition to identifying a development location that protects the densest clusters of suitable white-tailed kite nest trees, the Ocean Lot contains several other environmental constraints protected by the proposed development location, including a number of deeply incised drainages that contain large stands of coastal sage scrub, coastal bluffs with associated sensitive bluff habitat including cliff aster, wetlands, documented cultural resource sites, and areas supporting Southern tarplant and purple needlegrass grasslands. The proposed Ocean Lot development envelope has therefore been located in the westernmost portion of the property where a feasible building site has been identified that avoids all these sensitive resources and provides ample setbacks from the coastal bluff, wetland habitat, and coastal drainages.

When considering the totality of sensitive coastal resources on the site that will be avoided by the proposed project, the abundant amount of suitable nesting habitat available on the site that will be preserved and expanded in conjunction with the foraging habitat enhancement opportunities, and the opportunity to preserve a contiguous 117-acre area of integrated kite perching, nesting and foraging habitat associated with the proposed Open Space/Conservation Easement, the proposed placement of the Ocean Lot residential development envelope will not significantly impact kite perching/nesting habitat. The County-identified mitigation measure to establish a 75-100 foot buffer from the 2013 nest tree has considered current habitat conditions and the white-tailed kite's ecological requirements, nest selection tendencies, level of proposed disturbance, and other sensitive site constraints, in their entirety. The identified buffer is warranted in the specific case of the Paradiso residential development given that the development would be located a substantial distance (approximately 800 feet) from the site area containing the densest clusters of suitable nest trees and documented as the most intensely used portion of the site for kite nesting and perching, and is therefore consistent with applicable LCP policies protecting white-tailed kites.

B. Public Access

The appellants assert that there is no factual or legal support for the conclusion that the proposed OTDs render the Project consistent with the public access and recreation policies of the LCP and Coastal Act, and that the County and Commission must consider an offsite Project alternative, essentially exacting public access easements on the applicant's adjacent Naples lots in addition to that being offered as part of the Paradiso Project, to find the Project consistent with the public access and recreation policies of the LCP and the Coastal Act.

The proposed Project includes development of a single-family residence and agriculture use area on the westerly (or upcoast) portion of both the Inland Lot and the Ocean Lot. The developments have been carefully sited in this location so that, consistent with the Settlement Agreement, they are clustered nearest the Naples lots immediately to the west, placed furthest from the identified sensitive habitat areas and proposed public access areas, to provide for reasonable separation between the



residential, agricultural and public uses to ensure land use compatibility, and to accommodate a 117-acre Open Space Conservation Easement.

As clearly identified in the project description, all public access easement dedications are contingent on approval of a residential development site that is located a sufficient distance from the public easement dedications and in the westerly portion of the lot to ensure residential, agricultural, and recreational land use compatibility of the site.

While the Project proposes only two homes and limited agricultural use on each of two lots, the offers to dedicate public access and recreation easements are substantial. They include lateral and vertical trails on the property, lateral access on the beach, a scenic overlook at the bluff edge, and an area for a 20-car public parking lot on the easterly (or downcoast) portion of the inland lot. As noted, the offers to dedicate are contingent in nature. It bears emphasis that if the applicant did not volunteer to offer these easements, the easements could not be required in connection with this two-house development because of constitutional and other constraints.

First, requiring the access easements would not be legally permissible because the two-house project itself will not create any significant adverse environmental impact on public access. Contrary to the appellants contention that "the applicant has recently fenced and gated the property, but without the benefit of the required CDP for such development", the site is and for decades has been fenced, posted with "No Trespassing" signs, and patrolled by security guards, as the Court of Appeal expressly recognized in *Surfrider Foundation v. California Coastal Commission (1997) 2d Civil B101510* (Attachment 2), upholding the 1994 golf course approval (see below).

The County's FEIR and analysis underscores throughout that there is currently "unauthorized" public access across the property. The Project Overview explains:

"The project site is private property that is currently fenced, gated and patrolled by a security guard. However, some level of unauthorized ongoing public access is evident. A moderately sized unauthorized trail crosses the site from U.S. Highway 101 east of Tomate Canyon and an additional unauthorized trail cross the UPRR in the vicinity of Eagle Canyon. In addition, an unauthorized east-west trail appears to exist along the UPRR corridor and a steep, but useable pathway exists from the bluff top east of Tomate Canyon to the beach below."

We understand that, as in the past, there are those who assert that through trespass, surfers have somehow acquired a prescriptive right to continued use of the trail. While the County's FEIR and policy analysis does explain that there is one trail across the site and that its use has been "unauthorized," it must be noted that there is substantial evidence and site history which confirm that the uninvited access over this property has indeed been unauthorized and that no prescriptive right to use any portion of the property exists.

Specifically, in connection with the original golf course proposal, the property owner's predecessor, ARCO, provided the County and Coastal Commission with sworn affidavits from oil company personnel for the period from the mid-1940's to the present which indicated that a continuous and effective effort has been made over the years to exclude trespassers from the site. This evidence was provided to



County Staff and considered by the Planning Commission and Board of Supervisors during the Project review process. Moreover, based upon that evidence, the Court of Appeal in *Surfrider Foundation v. California Coastal Commission*, explained, in reviewing the Commission's original decision to approve the Golf Links Project:

"In an effort to prevent surfers from crossing the site, ARCO has installed fences, posted signs against trespass, and employed security guards to remove surfers from the beach. The site has no legal beach parking. Thus, to reach the beach, surfers and beachgoers must park along the far side of Highway 101, cross the highway, scale at least one barbed wire fence, cross a railroad track, and climb down a steep, and at time unstable, bluff.

Referring to the access program on the property which ARCO proposed in connection with the Golf Links Project, the Court of Appeal continued:

"... For the first time, beachgoers will enjoy access without parking illegally, dashing across an interstate highway, climbing over barbed wire fences and a railroad track, shimmying down a steep bluff, or being escorted off the property by security guards."

The Court of Appeal also went further in noting that the Commission cannot decide whether public prescriptive rights exist: "Nor will the project destroy any access rights that may have been acquired through public use. The Commission did not decide whether such rights existed, nor could it." In short, while there has been acknowledged unauthorized use of one trail across the site, there is ample substantial evidence that no prescriptive right of access exists.

Moreover, to impose mitigation measures on a project, a public agency may exercise only those powers provided to it by legal authority independent of CEQA. (Pub. Res. Code § 21004; *Sierra Club v. California Coastal Commission* (2005) 35 Cal.4th 839, 859.) There is no authority in the Coastal Act or the County LCP (which implements the Coastal Act) which authorizes either the Commission or the County to somehow adjudicate or "decree" public prescriptive rights across private property. In *LT-WR v. California Coastal Commission* (2007) 152 Cal.App.4th 770, for example, the Coastal Commission denied a CDP for security gates and "no trespassing" signs under Coastal Act Sections 30210 and 30211 based on the existence of *potential* prescriptive rights in favor of the public. The Court held the denial of a permit on such grounds to be speculative and beyond the authority of the Commission:

"... [W]e conclude the trial court properly overturned the Commission's denial of a permit for the gates and no trespassing signs. Inherent in one's ownership of real property is the right to exclude uninvited visitors. In prohibiting LT-WR from excluding the public from its property on the theory that "potential exists to establish prescriptive rights for public use," the Commission in effect decreed the existence of such rights. We find the Commission's denial of a permit for the gates and signs, premised on the existence of 'potential' prescriptive rights, was speculative and properly was overturned by the trial court.

* * *



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"[T]he Commission is not vested with the authority to adjudicate the existence of prescriptive rights for public use of privately owned property. In denying LT-WR a permit for the gates and no trespassing signs due to the possibility of prescriptive rights, the Commission gave credence to the claimed prescriptive rights. The Commission's denial of a permit for the gates and signs, premised on the existence of 'potential' prescriptive right, was speculative and properly as overturned by the trial court." (152 Cal.App.4th at 775, 806.)

Thus, "unauthorized access" cannot be converted into lawful access and mitigated or otherwise modified to require public access. If the applicant did not offer the access easements noted above, a mitigation measure requiring some form of public access could not be lawfully imposed. (CEQA Guidelines § 15126.4(5).)

Second, as with any government exaction or condition of approval, a mitigation measure cannot violate state or federal constitutional standards. The CEQA Guidelines explain:

"A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid all significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (Nollan v. California Coastal Commission, (1987) 483 U.S. 825, Dolan v. City of Tigard, (1996) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal.4th 854." (CEQA Guidelines § 15041(a)

CEQA Guidelines Section 15126.4(a)(4) further explains, in relevant part:

"Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

- (A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. (Nollan v. California Coastal Commission, (483 U.S 825 (1987); and
- (B) The mitigation measure must be 'roughly proportional' to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994) " (Emphasis added.)

The two U.S. Supreme Court cases cited in the CEQA Guidelines frame the constitutional limitations on public access easements. *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, holds that there must be an "essential nexus" between the burden created by a project and the exaction or mitigation measure imposed to address it. In other words, there must be a precise match between the condition imposed and the specific type of burden on access created by the project. *Dolan v. City of Tigard* (1994) 512 U.S. 374, holds that in addition to satisfying the *Nollan* "nexus" requirement, there must be "rough proportionality" between a condition and extent of the impact it is supposed to mitigate. The Court explained: "No precise mathematical calculation is required, but the city must make some sort of *individualized determination* that the required dedication is related *both in nature and extent* to the impact of the proposed development."



In the absence of the applicant's decision here to volunteer the access easements noted, neither requirement could be satisfied here. There may be illegal parking offsite on the inland side of Highway 101 and an unauthorized trail across the property. Neither situation, however, was created by the property owner or its predecessors, and it should suffice to state that extraordinary mitigation measures or conditions requiring dedication of an 20-car parking lot and an extensive access network on the property in connection with a two-house development would lack the "essential nexus" and "rough proportionality" required, even if the sentiment is that such access would provide a significant community benefit.

In any event, the legal constraints on the imposition of access requirements should not present an issue with the instant application as the property owner has proactively offered to dedicate the public access and recreation easements, subject to the contingency noted above. As noted in the Staff Report, a number of coordination efforts are already underway to ensure the offers to dedicate can be accepted by the County and implemented shortly after project approval. Issues associated with the purported infeasibility of the proposed OTDs due to cost constraints and potential resource impacts were fully vetted by the County and addressed by conditions of approval, as explained in the Staff Report and discussed above. In summary, the Project carefully balances residential and high priority coastal land uses, including safe public access and resource protection, in a manner that proactively implements the coastal access and recreation policies of the County's LCP and Coastal Act

C. Significant Coastal Resources Affected by the Project

The appellant's claim that the Staff Report understates the significance of coastal resources affected by the Project approval relative to biological resources and public access, as well as archaeological and visual resources. However, the Staff Report fully acknowledges the significance of the biological, visual and public access resources potentially affected by the Project, and analyzes these issues in detail throughout the report, including applicable excerpts from the County's analysis and detailing the numerous conditions imposed by the County to ensure the Project's consistency with applicable policies. With respect to archaeological resources, while the subject appeal failed to identify any grounds for appeal related to this resource, its worth noting that the County's analysis and conditions of approval for the Project were informed by extensive study and coordination that occurred between the affected property owners, County and Commission Staff, and a number of representatives of the Native American community, resulting in a Project design that preserves all onsite archaeological resources within the proposed open space conservation easements, and a mitigation program supported by those Native American representatives who participated throughout the process.

D. Precedential Value of the Local Government's Decision access.

The appellant's contend that the County's interpretation of the LCP for the project "is very likely to be applied to future Gaviota Coast Projects (of which several are currently pending), which would result in very significant cumulative losses to the coastal resources in this exceptionally important area." While the appellants focus solely on their perceived deficiencies of the County's application of the LCP relative to protection of white-tailed kites, harbor seals and public access, their assessment lacks any



acknowledgement of the positive precedent the Paradiso del Mare Project sets for evaluating other potential residential development proposals on Gaviota.

In response to concerns regarding protection of sensitive biological, visual, agricultural and cultural resources, the Project clusters development on the least constrained portion of the site, limits the site's total residential development potential to two homes located on only 4% of the 143 acre site, preserves panoramic bluewater and open space views across the site, and includes a comprehensive habitat restoration and management plan within a 117 acre open space conservation easement. The Project is voluntarily offering extensive public access easements, located and designed in close coordination with the community and Staff, and for which significant endowment funds have been provided to ensure the OTDs can be implemented in a timely manner upon Project approval and in manner that is the most protective of sensitive coastal resources. The public access OTDs, including the first section to be constructed by the Project, represent the first step for completing the California Coastal Trail along the Gaviota Coast in a way that is consistent with the vision for the California Coastal Trail as identified by the Draft Gaviota Coast plan and the Coastal Conservancy. Taken together, the proposed Project and associated environmental review, conditions of approval, and policy analyses provide an example of how private property owners, regulatory agencies and the community can collaborate to design a project that allows for limited land development while prioritizing resource protection and establishment of significant public benefits.

Conclusion

The issues raised in the appeals have been thoroughly vetted during the many years of development review for the subject properties, including the County's and Commission's review of the previous Dos Pueblos Golf Links Project, and the eight-year County review process culminating in the two-home residential proposal now being presented for your consideration. As a result of a diligent environmental review process, close coordination with County and Commission Staff, and input provided by numerous stakeholders, the proposed Project carefully balances limited residential development and agricultural uses with protection of significant coastal resources, while providing maximum public access and recreational opportunities of both regional and state-wide significance.

We thank the Commission and Staff again for your time and consideration and, based on substantial evidence in the record, we wholly support the Staff Recommendation to find that the appeals raise No Substantial Issue with respect to the Project's conformity with applicable County LCP and Coastal Act policies.

Sincerely,

April Winecki

Senior Project Manager/Coastal Planner

Dudek



Sjiller

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CC Via Email

Amber Geraghty, Coastal Commission
Jack Ainsworth, Coastal Commission
Jamee Patterson, Attorney General
David Alderson, Attorney General
Anne Almy, County Planning and Development
Chris Yelich, Brooks Street
Howard Zelefsky, Brooks Street
Steven H. Kaufmann, Esq., Richards, Watson & Gershon





Penfield & Smith

Engineering • Surveying • Planning • Construction Management

111 East Victoria Street • Santa Barbara, CA 93101 tel 805-963-9532 • fax 805-966-9801

MEMORANDUM

TO: Howard Zelefsky

FROM: Michael Osborn, P.E.

SUBJECT: Paradiso del Mare Vertical Beach Access Alternatives

WORK ORDER: 12825.15

DATE: June 25, 2012

It is our understanding that the County has expressed reservations about the potential of constructing a vertical beach access in the previously studied location near the mouth of Eagle Canyon. The property owner has offered the County a floating easement for vertical beach access along the bluff from Eagle Canyon to Drainage #5. The County has requested that the owner provide possible alternative locations along the bluff where a vertical access structure could be constructed.

On Friday, June 22, 2012, Bret Foster, P.E. and I visited the project site during the early morning low tide (approximately -0.5ft.) to walk to beach and determine alternative locations for a future vertical beach access. The following summarizes our observations:

- The bluff from Eagle Canyon to Drainage #4 is approximately 70-ft. tall. The rock
 material of the bluff face varies from more solid to very weathered in appearance
 and often has a thick layer of soil at the top. Vertical access along this stretch of
 beach and between the three locations described below would be difficult. See
 Photo A, below.
- Drainage #4 is a deep, narrow, incised channel with little horizontal protection at the bluff face along the beach. The vertical difference is much less than the adjacent bluffs; however, it will be difficult to locate a structure outside of the drainage flow path. See Photo B.
- There is an unnumbered local drainage between #4 and #5 that has greater potential than drainage #4 since it is not a major drainage course; the face material seems solid; and there is bedrock at the beach that may provide some protection to the structure's foundation. However, this face is still rather tall (over 30-ft.) and would require at least three flights of stairs to reach the beach. See Photo C.
- Drainage #5 presents the best alternative out of the three alternatives identified herein for a vertical beach access as the mouth of the drainage is very near beach level and in a natural cove that provides horizontal protection of a structure's

foundation. With some grading, access could come down the eastern side of the drainage and land on the east side of the drainage flow path. See Photo D.

The last three locations above are the apparent viable alternatives for a future vertical access. All three are within close proximity to old roads on the property along which public trail access to the top of the bluffs could be provided. Based upon visual observations, vertical access at Drainage #5 would be the first choice as an alternative to vertical access at Eagle Canyon. The un-named drainage between Drainage #4 and #5 would be the second choice and Drainage #4 would be the third choice. Although not apparently ideal, a fourth choice, any other location along the bluff between Eagle Canyon and Drainage #5 could be considered, if so desired.

At present, we are unable to clearly determine if access at Drainage #5 would be equal or superior to access at Eagle Canyon for several reasons. Access at Eagle Canyon has received more analysis and consideration than any other location along the beach frontage. It is expected that there would be some challenges at Drainage #5 that are yet unknown. Further geotechnical and geological analysis and engineering design would be needed make any further determinations of the viability for access at Drainage #5, or for that matter any alternative.

c. Hady Izadpanah, Penfield & Smith Bret Foster, Penfield & Smith April Winecki, Dudek and Associates

Photographs:



Photo A: Typical Bluff Face Eagle Canyon to Drainage #4



Photo B: Drainage #4



Photo C: Unnumbered Local Drainage between #4 and #5



Photo D: Drainage #5

Cost Analysis - Eagle Canyon Beach Access Stairs

Project: Paradiso del Mare Estates Location: APN 079-200-004; 079-200-008

Client: Makar Properties

W.O. No.: 12825.07 Calc'd By:

Path Name: W:\work\12000-12999\12825\Project Estimates\



am Name.	W.\Work\12000-12999\12625\P10ject Estimates\			(000)000-0002	
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2	Engineering Services	LS	1	\$50,000	\$50,000
3	Geotechnical & Geological Service:	LS	1	\$30,000	\$30,000
4	Biological Survey	LS	1	\$22,970	\$22,970
5	Permitting	LS	1	\$20,000	\$20,000
	Sub-Total				\$137,97
	Construction Costs				
1	Mobilization	LS	1	\$30,000	\$30,000
2	Construction Survey	LS	1	\$8,000	\$8,000
3	Biological Monitoring	Day	60	\$250	\$15,000
4	Clearing & Grubbing	LS	1	\$5,000	\$5,000
5	Grading	LS	1	\$20,000	\$20,000
6	Erosion & Sediment Control BMPs	LS	1	\$20,000	\$20,000
7	Crane Rental	Day	30	\$1,650	\$49,500
8	Timber Stairs	LS	1	\$50,000	\$50,000
9	Steel Railing	LS	1	\$52,000	\$52,000
10	Protection of Piles from Sea Water	LS	1	\$5,000	\$5,000
11	Piles	EA	12	\$5,000	\$60,000
12	Treatment of Water from Pile Holes	LS	1	\$5,000	\$5,000
13	Concrete Landing & Stairs	CY	60	\$2,000	\$120,000
14	Re-vegetation	LS	1	\$5,000	\$5,000
	Sub-Total				\$444,50
	Contigency	-	20%	\$582,470	\$116,49
	Inflation	-	10%	\$698,964	\$69,89
	Total				\$768,860

Cost Analysis - Alternative Vertical Beach Access

Project: Paradiso del Mare Estates

Location: APN 079-200-004; 079-200-008

Client: CPH Dos Pueblos Associates, LLC

W.O. No.: 12825.15 Calc'd By: mlo

Path Name: W:\work\12000-12999\12825\Project Estimates\



Drainage

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File Name:					8/20/2012	
				UNIT	TOTAL	
ITEM	DESCRIPTION	UNIT	QUANTITY	COST	COST	
	Soft Costs					
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2	Engineering Services	LS	1	\$50,000	\$50,000	
3	Geotechnical & Geological Services	LS	1	\$30,000	\$30,000	
4	Biological Survey	LS	1	\$22,970	\$22,970	
5	Permitting	LS	1	\$20,000	\$20,000	
	Sub-Total				\$137,970	
	Construction Costs					
1	Mobilization	LS	1	\$30,000	\$30,000	
2	Construction Survey	LS	1	\$8,000	\$8,000	
3	Biological Monitoring	Day	60	\$250	\$15,000	
4	Clearing & Grubbing	LS	1	\$10,000	\$10,000	
5	Grading	LS	1	\$40,000	\$40,000	
6	Erosion & Sediment Control BMPs	LS	1	\$20,000	\$20,000	
7	Crane Rental	Day	30	\$1,650	\$49,500	
8	Timber Stairs	LS	1	\$100,000	\$100,000	
9	Steel Railing	LS	1	\$104,000	\$104,000	
10	Protection of Piles from Sea Water	LS	1	\$5,000	\$5,000	
11	Piles	EA	12	\$5,000	\$60,000	
12	Treatment of Water from Pile Holes	LS	1	\$5,000	\$5,000	
13	Concrete Landing & Stairs	CY	60	\$2,000	\$120,000	
14	Re-vegetation	LS	1	\$10,000	\$10,000	
	Sub-Total				\$576,500	
	Contigency	-	20%	\$714,470	\$142,894	
	Inflation	-	10%	\$857,364	\$85,736	
Total					\$943,100	

Cost Analysis - Alternative Vertical Beach Access

Project: Paradiso del Mare Estates

W.O. No.:

Location: APN 079-200-004; 079-200-008 Client: CPH Dos Pueblos Associates, LLC Drainage #4.5



Calc'd By:

111 East Victoria St. Santa Barbara, CA 93101

(805)963-9532

Path Name: W:\work\12000-12999\12825\Project Estimates\

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3	Geotechnical & Geological Services	LS	1	\$30,000	\$30,000
4	Biological Survey	LS	1	\$22,970	\$22,970
5	Permitting	LS	1	\$20,000	\$20,000
	Sub-Total				\$137,970
	Construction Costs				
1	Mobilization	LS	1	\$30,000	\$30,000
2	Construction Survey	LS	1	\$8,000	\$8,000
3	Biological Monitoring	Day	60	\$250	\$15,000
4	Clearing & Grubbing	LS	1	\$7,692	\$7,692
5	Grading	LS	1	\$30,769	\$30,769
6	Erosion & Sediment Control BMPs	LS	1	\$20,000	\$20,000
7	Crane Rental	Day	30	\$1,650	\$49,500
8	Timber Stairs	LS	1	\$76,923	\$76,923
9	Steel Railing	LS	1	\$80,000	\$80,000
10	Protection of Piles from Sea Water	LS	1	\$5,000	\$5,000
11	Piles	EA	12	\$5,000	\$60,000
12	Treatment of Water from Pile Holes	LS	1	\$5,000	\$5,000
13	Concrete Landing & Stairs	CY	60	\$2,000	\$120,000
14	Re-vegetation	LS	1	\$7,692	\$7,692
	Sub-Total				\$515,577
	Contigency	-	20%	\$653,547	\$130,709
	Inflation	-	10%	\$784,256	\$78,426
	Total				\$862,682

Cost Analysis - Alternative Vertical Beach Access

Project: Paradiso del Mare Estates

Location: APN 079-200-004; 079-200-008

Client: CPH Dos Pueblos Associates, LLC

W.O. No.: Calc'd By:

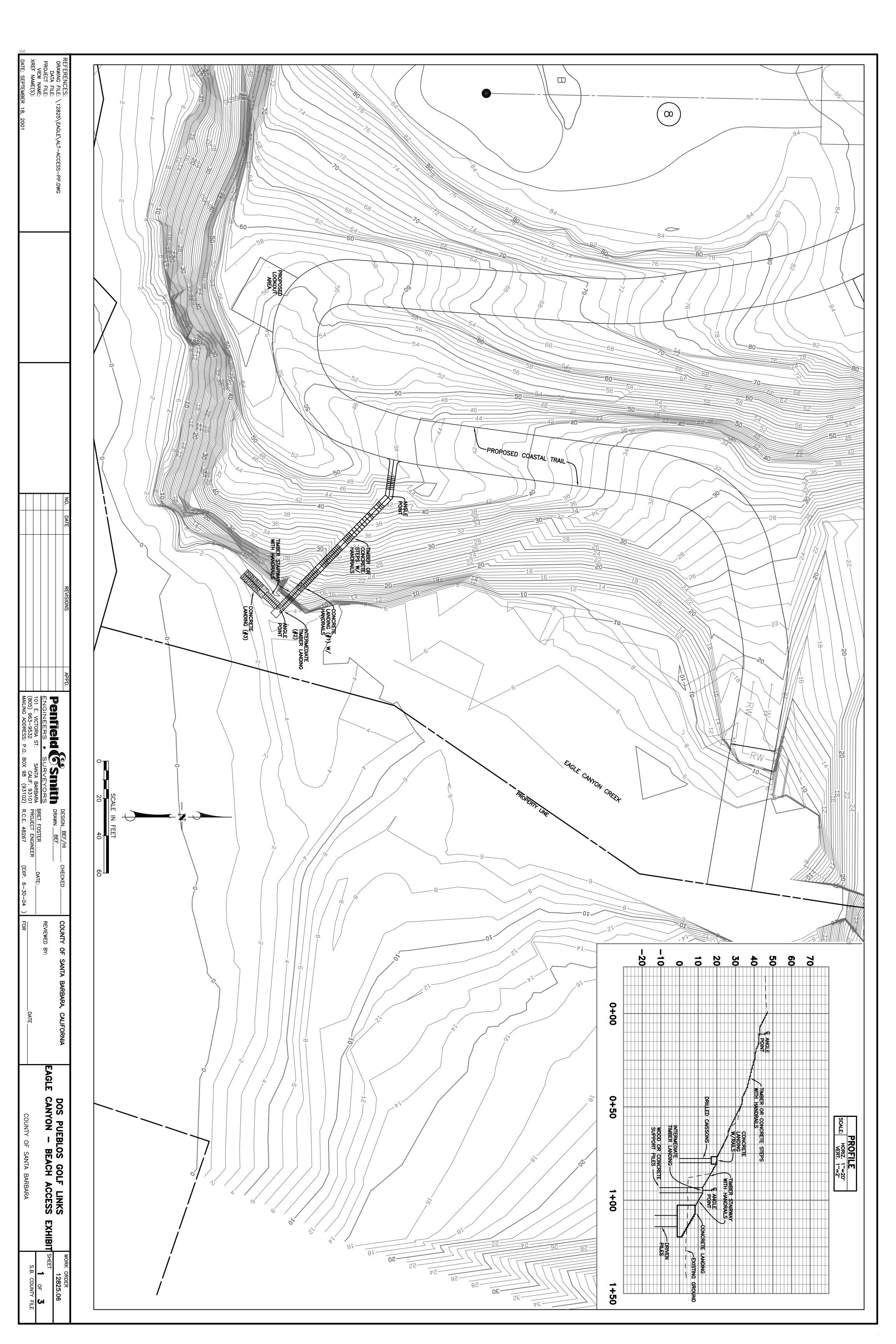
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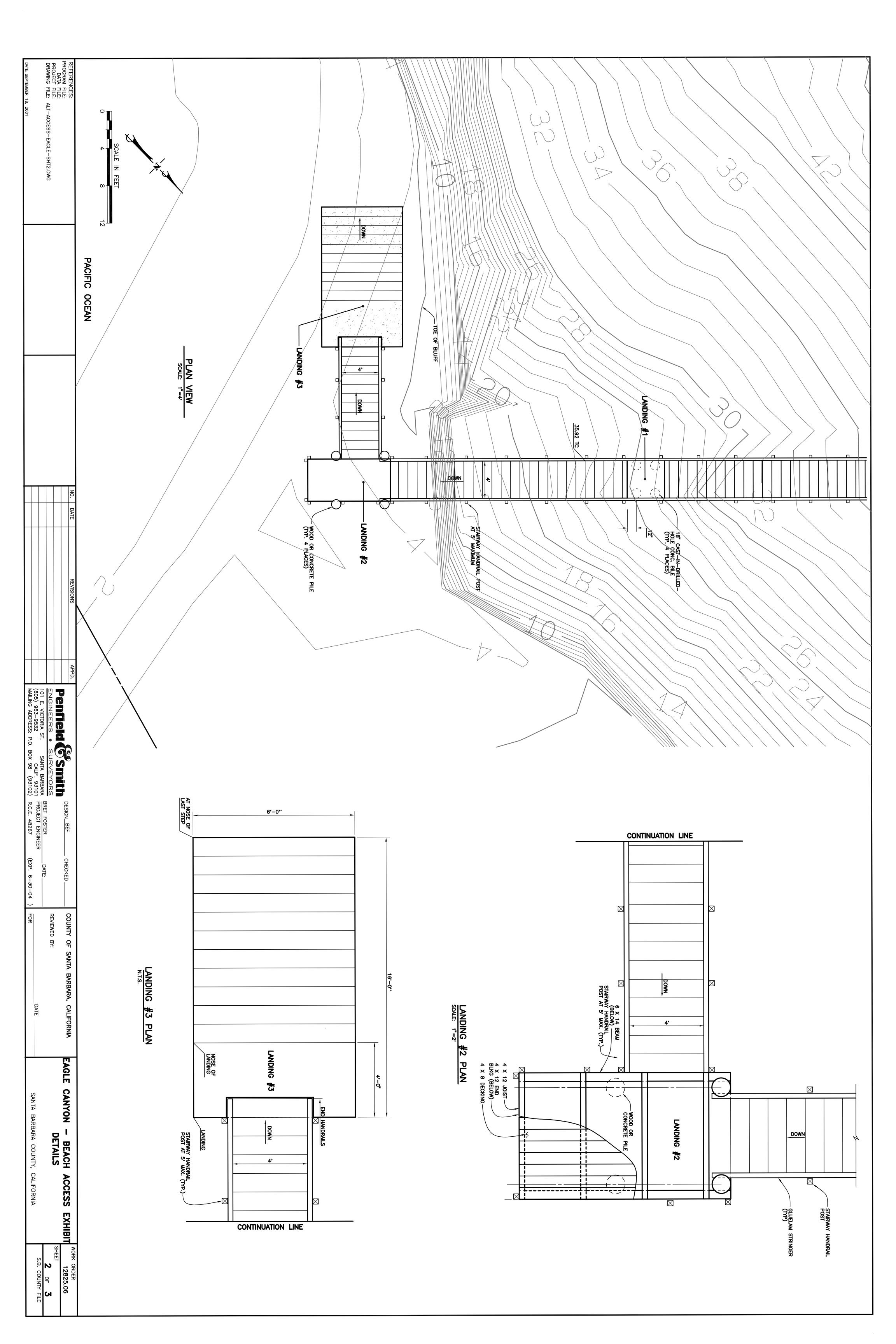


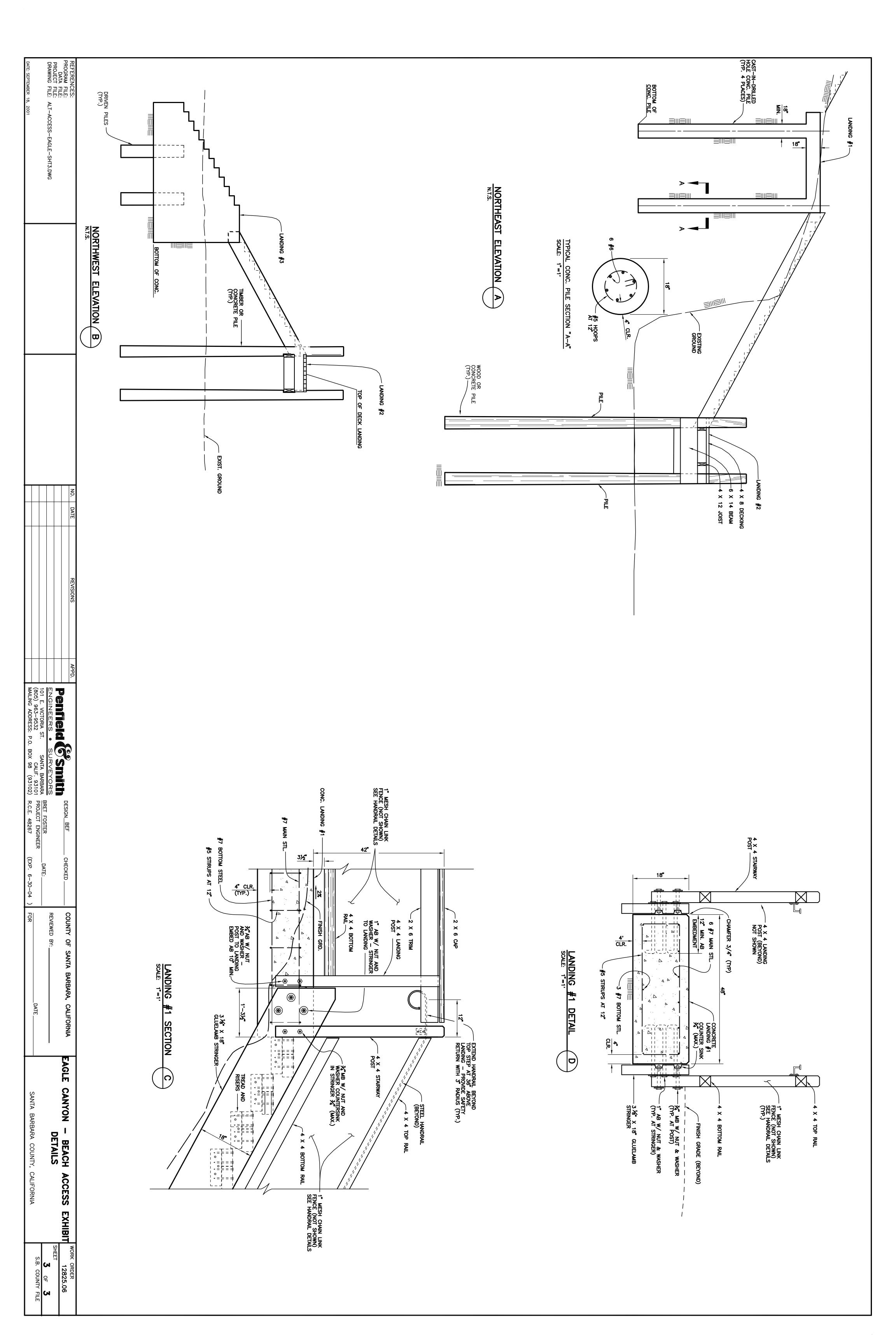
Drainage

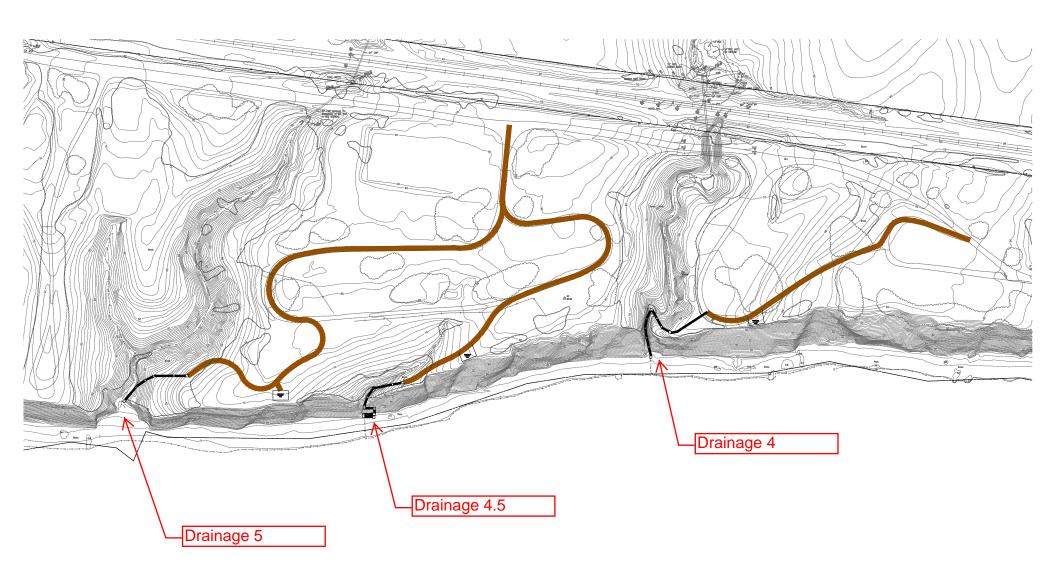
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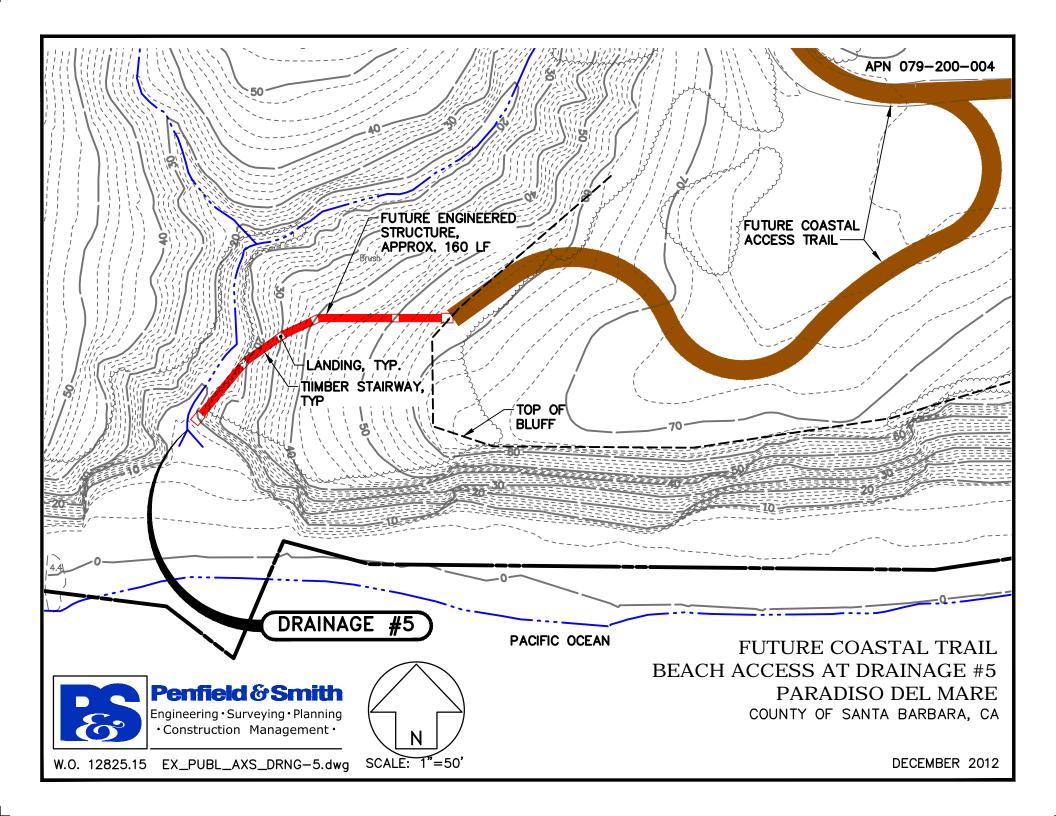
File Name:	EagleCynStairsEst_2010Oct.xls			Date:	8/20/2012
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
	Soft Costs				
1	Design Level Survey	LS	1	\$15,000	\$15,000
2	Engineering Services	LS	1	\$50,000	\$50,000
3	Geotechnical & Geological Services	LS	1	\$30,000	\$30,000
4	Biological Survey	LS	1	\$22,970	\$22,970
5	Permitting	LS	1	\$20,000	\$20,000
	Sub-Total				\$137,970
	Construction Costs				
1	Mobilization	LS	1	\$30,000	\$30,000
2	Construction Survey	LS	1	\$8,000	\$8,000
3	Biological Monitoring	Day	60	\$250	\$15,000
4	Clearing & Grubbing	LS	1	\$6,154	\$6,154
5	Grading	LS	1	\$24,615	\$24,615
6	Erosion & Sediment Control BMPs	LS	1	\$20,000	\$20,000
7	Crane Rental	Day	30	\$1,650	\$49,500
8	Timber Stairs	LS	1	\$61,538	\$61,538
9	Steel Railing	LS	1	\$64,000	\$64,000
10	Protection of Piles from Sea Water	LS	1	\$5,000	\$5,000
11	Piles	EA	12	\$5,000	\$60,000
12	Treatment of Water from Pile Holes	LS	1	\$5,000	\$5,000
13	Concrete Landing & Stairs	CY	60	\$2,000	\$120,000
14	Re-vegetation	LS	1	\$6,154	\$6,154
	Sub-Total				\$474,962
	Contigency	-	20%	\$612,932	\$122,586
	Inflation	-	10%	\$735,518	\$73,552
	Total				\$809,070











Cost Analysis Summary - Public Access & Trails

Project: Paradiso del Mare Estates Location: APN 079-200-004; 079-200-008 Client: CPH Dos Pueblos Partnership

W.O. No.: 12825.15 Calc'd By:

Path Name: W:\...\12825\15 Ranch Estates 2011 RDEIR\Estimates

111 East Victoria St. Santa Barbara, CA 93101

(805)963-9532

Date: 10/12/2012

Public Vehicular Access

File Name: PublicAccessEst.xlsx

Road Improvements, New Gate and Public Parking Lot

\$383,856

Vertical Access Trail

Vertical Access Trail from Parking Lot to California Coastal Trail, see note 4. \$49,500 New UPRR Pedestrian Bridge to Ocean Lot 200' West of Existing Bridge, see note 1. \$686,400

> Total Vertical Access with new Bridge: \$735,900

Alternate 1: Rehab Existing Wooden UPRR Bridge to Ocean Lot (see 10/12/12 email from Bret Foster)

Lateral Access Trail across Ocean Lot

Proposed Calif. Coastal Trail traveling laterally across Ocean Lot, see notes 2., 3.& 4. \$1.327.260

Notes:

1. The new UPRR bridge is assumed to 200' west of the existing bridge to avoid impacting the vernal pool on the south side of the existing bridge.

- 2. A bridge will be required for the California Coastal Trail where it crosses the washed-out Drainage #4.
- 3. The California Coastal Trail was assumed to follow the existing road from Eagle Canyon Creek to the westerly property line. This estimate does not include the proposed vertical beach access at Eagle
- 4. The CCT was assumed to be a Type 4. Improved Main Multi-Use trail with 6-ft Decomposed Granite (D.G.) surfacing, 2-ft shoulders on either side with low plantings and native vegetation for the remaining width of the 20-ft easement.

Cost Analysis - Public Vehicular Access

Project: Paradiso del Mare Estates
Location: APN 079-200-004; 079-200-008
Client: CPH Dos Pueblos Partnership

W.O. No.: 12825.15 Calc'd By: mlo

Path Name: W:\...\12825\15 Ranch Estates 2011 RDEIR\Estimates

- N. D. III A. D



File Name:	PublicAccessEst.xlsx			Date:	10/12/2012
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
	Soft Costs				
a.	Civil Eng. Design & Constr. Suppor	LS	1	\$50,000	\$50,000
b.	Construction Staking	LS	1	\$15,000	\$15,000
C.	Biological Monitoring	LS	1	\$3,000	\$3,000
d.	Soils Report and Testing	LS	1	\$10,000	\$10,000
e.	Archeological Monitoring	LS	1	\$5,000	\$5,000
f.	Caltrans Coordination & Permitting	LS	1	\$10,000	\$10,000
	Sub-Total				\$93,000
	Construction Costs				
1	Mobilization	LS	1	\$30,000	\$30,000
2	Hwy 101 Traffic Control	LS	1	\$30,000	\$30,000
3	Site Preparation	SF	16,000	\$1	\$16,000
4	Road Grading	CY	1,780	\$10	\$17,800
5	20' Paved Entrance Road	SF	6,000	\$6	\$36,000
6	Paved Parking Lot	SF	5,500	\$6	\$33,000
7	New Gate	Ea	1	\$25,000	\$25,000
8	Signing and Striping	LS	1	\$10,000	\$10,000
	Subtotal				- \$197,800
	Contigency	-	20%	\$290,800	\$58,160
	Inflation	-	10%	\$348,960	\$34,896
	Total				\$383,856

Cost Analysis - New UPRR Ped Bridge to Ocean Lo

Project: Paradiso del Mare Estates
Location: APN 079-200-004; 079-200-008
Client: CPH Dos Pueblos Partnership

W.O. No.: 12825.15 Calc'd By: mlo

Path Name: W:\...\12825\15 Ranch Estates 2011 RDEIR\Estimates

File Name:	PublicAccessEst.xlsx			Date:	10/12/2012
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
	Additional Soft Costs				
a.	U.P.R.R. Coordination	LS	1	\$20,000	\$20,000
b.	Bridge Design	LS	1	\$100,000	\$100,000
	Sub-Total				\$120,000
	Construction Costs				
1	Mobilization	LS	1	\$20,000	\$20,000
2	Site Preparation	SF	20,000	\$1	\$20,000
3	Bridge Grading	CY	12,000	\$5	\$60,000
4	UPRR Bridge Steel Deck	LS	1	\$100,000	\$100,000
5	Bridge Pile Supports	Ea	8	\$10,000	\$80,000
6	Concrete and Wood Surfacing	SF	2,800	\$20	\$56,000
7	Bridge Steel Handrailing	LF	560	\$100	\$56,000
8	Bollards	Ea	4	\$2,000	\$8,000
	Subtotal				\$400,000
	Contigency	-	20%	\$520,000	\$104,000
	Inflation	-	10%	\$624,000	\$62,400
	Total				\$686,400

Cost Analysis - Vertical Trail from Prkg. Lot to CCT

Project: Paradiso del Mare Estates Location: APN 079-200-004; 079-200-008 Client: CPH Dos Pueblos Partnership

W.O. No.: 12825.15 Calc'd By:

Path Name: W:\...\12825\15 Ranch Estates 2011 RDEIR\Estimates

111 East Victoria St. Santa Barbara, CA 93101

(805)963-9532

File Name:	PublicAccessEst.xlsx			Date:	10/12/2012
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
1	Mobilization	LS	1	\$10,000	\$10,000
2	Site Preparation	SF	8,000	\$1	\$8,000
3	Grading	CY	300	\$5	\$1,500
4	10' Vertical Acces Trail Approaches	SF	4,000	\$3	\$12,000
6	Planting	SF	4,000	\$2	\$6,000
	Subtotal				\$37,500
	Contigency	-	20%	\$37,500	\$7,500
	Inflation	-	10%	\$45,000	\$4,500
	Total				\$49,500

Cost Analysis - Lateral California Coastal Trail

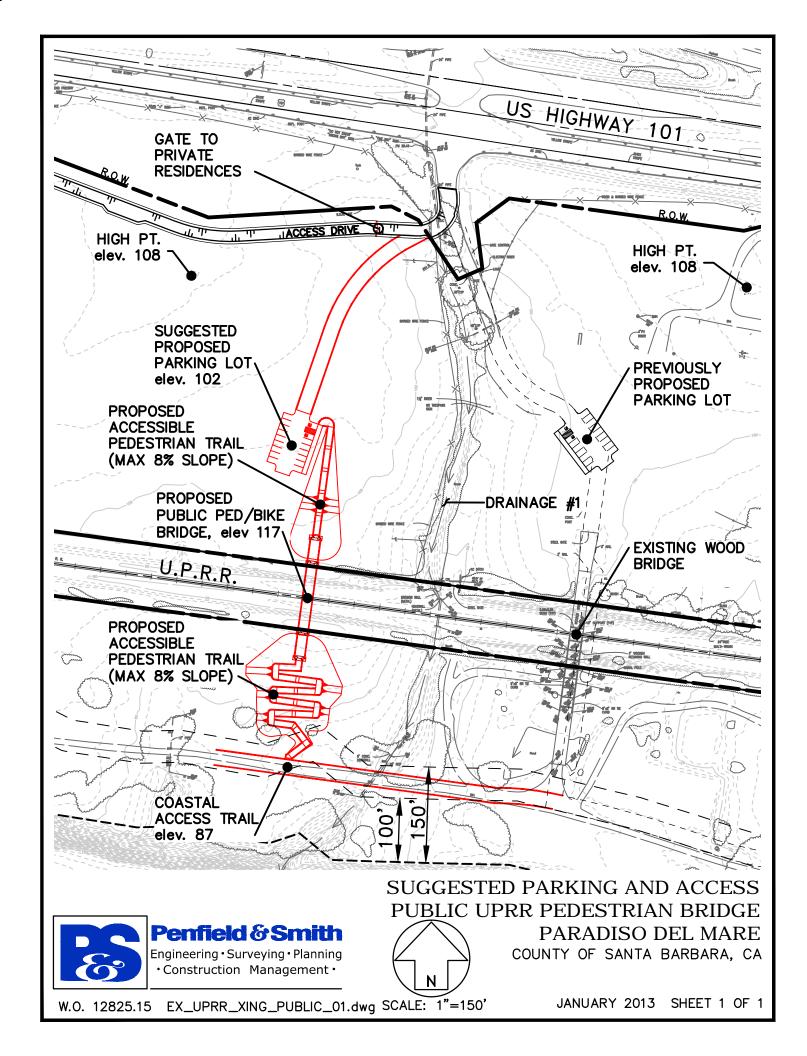
Project: Paradiso del Mare Estates Location: APN 079-200-004; 079-200-008 Client: CPH Dos Pueblos Partnership

W.O. No.: 12825.15 Calc'd By:

Path Name: W:\...\12825\15 Ranch Estates 2011 RDEIR\Estimates



File Name:	PublicAccessEst.xlsx			Date:	10/12/2012
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
	Soft Costs				
a.	Civil Eng. Design & Constr. Suppor	LS	1	\$50,000	\$50,000
b.	Construction Staking	LS	1	\$10,000	\$10,000
C.	Biological Monitoring	LS	1	\$10,000	\$10,000
d.	Soils Report and Testing	LS	1	\$15,000	\$15,000
e.	Archeological Monitoring	LS	1	\$5,000	\$5,000
	Sub-Total				\$90,000
	Construction Costs				
1	Mobilization	LS	1	\$50,000	\$50,000
2	Site Preparation	SF	170,000	\$1	\$170,000
3	Off-haul old AC pavement	CY	6,300	\$10	\$63,000
4	Grading	CY	12,600	\$5	\$63,000
5	D.G. Trail Surfacing	SF	51,000	\$5	\$255,000
6	Shoulder Planting	SF	34,000	\$1	\$34,000
7	Easement Planting	SF	85,000	\$2	\$127,500
8	Drainage #4 Bridge Steel Deck	LS	1	\$75,000	\$75,000
9	Concrete & Wood Deck	SF	1,450	\$20	\$29,000
10	Concrete Bridge Abutment	Ea	2	\$10,000	\$20,000
11	Hand Railing	LF	290	\$100	\$29,000
	Subtotal				- \$915,500
	Contigency	-	20%	\$1,005,500	\$201,100
	Inflation	-	10%	\$1,206,600	\$120,660
	Total				



NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION SIX

and the control of th

SURFRIDER FOUNDATION, a nonprofit corporation, (Super Ct. No. 205750)

Petitioner and Appellant,

v.

CALIFORNIA COASTAL COMMISSION, and DOES 1-50, inclusive,

Respondent.

ARCO OIL AND GAS COMPANY, a Delaware corporation, COUNTY OF SANTA BARBARA, and DOES 51-100, inclusive,

Real Parties in Interest.

2d Civil No. B101510 (Super. Ct. No. 205719) (Santa Barbara County)

FILED

JAN 22 1997

JOSEPH A. LANE, Clerk Deputy Clerk

Surfrider Foundation (Surfrider) appeals from the trial court's judgment denying its petition for a writ of mandate to direct the California Coastal Commission (Commission) to vacate its approval of a coastal development permit. The permit would allow ARCO Oil & Gas Company (ARCO) to construct the Dos Pueblos golf links project (the project) on property located along the Santa Barbara County (County) coastline, west of Goleta. Surfrider contends the Commission failed to make

every finding required under the County's Local Coastal Program

(LCP) and erroneously concluded that the project complies with
all applicable provisions of the Coastal Act. (Pub. Res. Code,
§§ 30000-30900.)¹ In addition, Surfrider contends the project
was approved based upon findings that are incomplete,
irrelevant, and unsupported by substantial evidence. After
reviewing the entire administrative record, we conclude the
Commission made adequate findings and that substantial evidence
supports its decision. Accordingly, we affirm.

Facts

The Project. ARCO proposes to construct one 18-hole and one 9-hole golf course, a driving range, and a putting green on a bluff-top, ocean-front parcel about 10 miles west of Goleta. The project will include other facilities such as a club house and pro shop, maintenance buildings, a turf farm and a 275-car parking area. Fifteen of these parking spaces will be made available for coastal access users. All of these facilities will be open year-round to the public. ARCO anticipates the courses will generate about 80,000 rounds of golf annually.

Most of the structures will be built in areas currently occupied by ARCO's existing oil and gas production and

¹ All statutory references are to the Public Resources Code unless otherwise stated.

For purposes of this opinion, the County's LCP consists of the Santa Barbara County Coastal Land Use Plan (LUP) and the County's Coastal Zoning Ordinance (CZO). All further references to LUP policies are to chapter three of the Santa Barbara County Coastal Land Use Plan. All further references to the CZO are to chapter 35, article II of the Santa Barbara County Code.

storage facilities.² Structures will be set back a minimum of 55 feet from the bluff edge and at least 100 feet from the environmentally sensitive habitat areas.

The golf courses will follow a "links-style" design, popularized during the 1930s, which attempts to minimize grading by conforming the course layout to the site's natural topography. In addition to planting turf, ARCO will replace non-native species of trees with native species and plant native bunch grass on portions of the site. ARCO's construction plan will preserve and enhance the fertility of prime agricultural soils on site.

The Site. During the last 50 years, the project site has continuously been used as an oil and gas processing and storage facility. Most of the parcels surrounding the site, including the adjacent Dos Pueblos Ranch, are large and zoned for agricultural or rural residential use. The site is located about one-quarter mile from the County's western urban/rural boundary, and about one-third of a mile from the approved but unbuilt Hyatt hotel resort project. Portions of the site have periodically been used, in connection with Dos Pueblos Ranch, for cattle grazing and dry farming. There is no water on-site and the water ARCO purchases for industrial use may not be used for agriculture.

Originally, the site was zoned for coastal dependent industry. In 1991, it was rezoned to agriculture-II as part of an LCP amendment designed to consolidate oil and gas facilities

² These include five single family homes, nineteen other buildings, twenty-three wells, two large tanks and miles of oil and gas pipelines. All of these facilities will be removed prior to construction of the project.

on two other parcels. In connection with this consolidation, ARCO's industrial use of the site has declined since 1991. The industrial facilities, however, are operable and ARCO's state leases have about 50 years of oil and gas reserves remaining.

Although the site contains about 60 acres of prime
Diablo Clay agricultural soils, there is no evidence that it has
ever been operated as a stand-alone farm. The prime soils on
site are scattered in isolated pockets, the largest of which is
about 17 acres. These pockets are separated by railroad tracks,
drainages, grassland and environmentally sensitive habitat
areas. Other portions of the site contain non-prime
agricultural soils.

The site contains five environmentally sensitive habitat areas. Tomate and Eagle Canyons, located along the western and eastern edges of the site, have streams and riparian habitats. The site also contains a man-made vernal pool and small, scattered patches of native bunch grass. Finally, a harbor seal haul-out and rookery is located on the beach, at the base of the bluffs along the western end of the site.

Two surf breaks, known as Naples and Naples Reef, are located along the western edge of the site. Over the past 30 years, surfers have worn pathways across the site to reach these surf breaks. ARCO views the surfers as trespassers. In an effort to prevent surfers from crossing the site, ARCO has installed fences, posted signs against trespass, and employed security guards to remove surfers from the beach. The site has no legal beach parking. Thus, to reach the beach, surfers and beachgoers must park along the far side of Highway 101, cross the highway, scale at least one barbed wire fence, cross a

railroad track, and climb down a steep, and at times unstable, bluff.

Permit Conditions. The conditional use and coastal development permits impose more than 80 individual conditions on the construction and use of the project. The conditions at issue here include the following.

Public Access. ARCO must construct, dedicate to the County, and permanently maintain public access facilities allowing lateral access along the bluff-top, vertical access to the beach, and lateral access along the beach. This includes a 1.5-mile long, 24-foot wide coastal trail for pedestrian, handicapped, bicycle and equestrian use. The coastal trail will include a bluff-top viewing area near Eagle Canyon. ARCO must also construct two vertical accessways: at Eagle Canyon to the east, and one near Tomate Canyon to the west. Fifteen parking spaces will be reserved for coastal access users. A horse tieup and bike rack will also be provided near the club house.

Harbor Seal Protection. Harbor seals use a portion of the beach for breeding and pupping each year, activities that are easily disturbed by the presence of human beings. To protect the harbor seals, the Eagle Canyon vertical accessway will be closed during the breeding and pupping season, from February 1 to May 31 each year. During the same period, access to a portion of the beach near the western accessway will also be prohibited. ARCO will employ an on-site monitor to prevent harassment of the seals.

This restricted access plan will be monitored for two years by state and federal agencies. If the harbor seals are adversely affected by the access provided, ARCO must ask the Commission for an emergency coastal development permit before

imposing further access restrictions. Additional restrictions could include permanently closing vertical access to the beach.

Naples Township Lots. The project site is comprised of 23 separate lots, 21 of which are located within the antiquated Naples Township. The Commission required ARCO to merge all 23 lots into 2 large lots. Within 60 days after the lot merger is recorded, ARCO must record a deed restriction which irrevocably precludes the re-subdivision of both new lots.

Water Supply. ARCO will use reclaimed water, purchased from the Goleta Water District, to irrigate the golf courses. The water will be delivered through a new, eight-inch line to be constructed between the Sandpiper Golf Course and the project, a distance of approximately one mile. The line will carry only non-potable water, may not be converted for potable water, and may not serve any additional users. ARCO will purchase potable water from the Goleta Water District.

Procedural History

The County planning commission and board of supervisors considered the project for nearly two years before approving it. During that time, the County held five public hearings, drafted and adopted an environmental impact report (EIR), and imposed seventy-nine separate conditions on ARCO's conditional use permit (CUP). The Commission's consideration of the project lasted for more than one year and included four public hearings. Commission staff drafted three staff reports, each of which recommended that the permit be denied. Initially, the Commission followed the staff recommendation. It later granted ARCO's request for reconsideration, and voted to approve the project. Surfrider filed its petition for writ of mandate

after the Commission issued final revised findings supporting that decision.

Standard of Review

Our review of the Commission's findings, like the trial court's, is governed by the substantial evidence standard. (Code Civ. Proc., § 1094.5; Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 511 (hereafter, Topanga).) We must, "determine whether substantial evidence..... supports the findings of the [Commission] and whether the findings support" the Commission's action. (Topanga, supra, 11 Cal.3d at p. 511.) This requires us to "examine all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it " (Desmond v. County of Contra Costa (1993) 21 Cal.App.4th 330, 335.) We must also determine whether the findings address all applicable requirements of the County LCP and the Coastal Act. (Topanga, supra, 11 Cal.3d at p. 516; City & County of San Francisco v. Board of Permit Appeals (1989) 207 Cal.App.3d 1099, 1109.) Substantial evidence review includes "the duty to determine whether the agency committed errors of law in applying the facts before it. " (Id., at p. 1111.)

Although we must consider the entire administrative record, we may not substitute our judgment for that of the Commission. (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564.) Instead, it is the Commission's responsibility to resolve conflicts in, determine the weight of, and draw inferences from the evidence. (Sierra Club v. California Coastal Com. (1993) 12 Cal.App.4th 602, 610; Pescosolido v. Smith (1983) 142 Cal.App.3d 964, 970-971.)

We may reverse "'only if, based on the evidence before
the agency, a reasonable person could not reach the conclusion
reached by the agency.' (McMillan v. American Gen. Fin. Corp.
(1976) 60 Cal.App.3d 175, 186 [131 Cal.Rptr. 462].)" (Sierra
Club v. California Coastal Com., supra, 12 Cal.App.4th 602, 610
[italics and footnote omitted].) Thus, it is Surfrider's burden
to demonstrate that "there is no substantial evidence whatsoever
to support the findings of the [Commission]..." (Saad v.
City of Berkeley (1994) 24 Cal.App.4th 1206, 1212.)

Discussion

The Commission Made Adequate Findings.

CZO section 35-172.8 requires findings on nine separate issues before a major CUP may be issued. Only two of those issues (public access and consistency with the intent of the AG-II zone district) were in dispute at the Commission's

³ The required findings are: "1. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the [proposed] type of use . . . [¶] 2. That adverse environmental impacts are mitigated to the maximum extent feasible. [¶] 3. That streets and highways are adequate and properly designed to carry the . . . traffic generated by the proposed use. $[\P]$ 4. That there are adequate public services . . . to serve the project. [¶] 5. That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood [\P] 6. That the project is in conformance with the applicable provisions and policies of [the CZO and LUP.] [\P] 7. That in designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area. 8. That the project will not conflict with any easements required for public access through, or public use of the property. 9. That the proposed use is not inconsistent with the intent of the zone district."

hearings. Its findings discuss those issues at length and rely on the County's findings to "address the remaining items found in [CZO Section] 35.172.8 as well as other provisions of the LCP not specifically discussed in these findings. To the extent that the County's findings and conditions do not conflict with the Commission's, they are adopted as further support for the Commission's decision."

inadequate because they do not separately address every issue raised in CZO section 35-172.8. Because the Commission adopted only those County findings which "do not conflict with" its own analysis, Surfrider objects that it is impossible to determine which County findings were adopted and, therefore, to determine the basis for the Commission's decision. We disagree.

The Commission's final revised findings are adequate to "enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action."

(Topanga, supra, 11 Cal.3d at p. 514; City & County of San Francisco v. Board of Permit Appeals, supra, 207 Cal.App.3d at p. 1109.) The Commission had no obligation to separately identify each County finding with which it agreed. Instead, it was entitled to avoid making repetitive findings by adopting portions of the County's findings, its staff reports, or any other document in the record. (Sierra Club v. California Coastal Com. (1993) 19 Cal.App.4th 547, 556; McMillian v. American Gen. Fin. Corp., supra, 60 Cal.App.3d at pp. 183-184.) We conclude that the Commission's analysis is clear enough to allow the parties and the court to determine which County

findings are in conflict with the Commission's findings, and which are not.

Surfrider argues the Commission could not rely on the County's findings because it considered different evidence and a project proposal that was modified after the County made its (Respers v. University of Cal. Retirement System findings. (1985) 171 Cal.App.3d 864, 872. ["Allowing the Board to rely on findings from a prior proceeding involving different evidence does not satisfy the purposes of the findings requirement because the prior findings do not reflect consideration of the 'raw evidence' at issue."].) Respers does not require more extensive findings. Most of the evidence presented to the Commission was also before the County. To the extent the Commission considered new evidence, it addressed that evidence in its own findings. 4 ARCO's project modifications related only to public access and the merger of the "Naples lots." These modifications were discussed by the Commission and were not so extensive as to prevent the Commission from relying on the County's findings.

The Project Is Not Inconsistent With The Intent
Of The AG-II Zone District.

CZO section 35-172.8, subdivision (9) requires a finding that the project is "not inconsistent with the intent of the zone district[,]" for the project site. The project site is located in an "AG-II" zone district. CZO section 35-69.1 provides that the intent of the AG-II zone district is to

⁴ For example, the Commission discussed evidence it received concerning the viability of the site as a commercial farm, and evidence concerning the proposed reclaimed water pipeline.

"establish agricultural land use for large prime and non-prime agricultural lands in the rural areas of the County (minimum 40 to 320 acre lots) and to preserve prime and non-prime soils for long-term agricultural use."

The Commission found the project was not inconsistent with the intent of the AG-II zone district because an agricultural use would be very difficult to establish on the arangan pelangan pelangan penangan pangan pangan pangan pangan pangan penangan penang Penangan penanga site given its scattered prime soils and lack of water for and the control of th irrigation. In addition, uncertainty concerning the development potential of the Naples lots would undermine long-term investment in agriculture at the site. The Commission concluded that merger of the Naples lots would remove this uncertainty and create the large lots preferred under CZO section 35-69.1. also found that the project would preserve prime soils for future agricultural use because few buildings would be constructed, prime soils would be preserved and enhanced, and ARCO would follow soil maintenance practices similar to those used in commercial agriculture. Finally, the Commission noted that available alternatives, such as continued oil and gas production or residential development, would be more inconsistent with the AG-II zone district.

Surfrider argues these findings are legally irrelevant because subdivision (9) required a finding that the project was consistent with the establishment of agricultural land uses, even if it is difficult to do so. Surfrider reads subdivision (9) too narrowly. The Commission is not required to find that the project is consistent with the intent of the AG-II zone district. If such a finding was required, the Commission could never approve a major CUP. By definition, a major CUP allows a use that is not fully consistent with the principal permitted

uses. (CZO § 35-172.1.) The CZO, however, expressly allows some partially inconsistent uses with a major CUP, even in the AG-II zone district. (CZO §§ 35-69.4; 35-172.1.)

Subdivision (9) instead requires a finding that the project is not inconsistent with the intent to establish agricultural uses on large parcels and to preserve soils for long-term agricultural use. (CZO § 35-69.1.) The finding that an agricultural use would be very difficult to establish on the site is legally relevant to that question. If the site cannot feasibly support an agricultural use, permitting a different use is not inconsistent with an intent to establish agricultural uses on other, more suitable parcels. Because the Commission found that agricultural use of the site was not feasible, it was entitled to consider whether the project would conflict with agricultural uses on other parcels or prevent the future agricultural use of this one. Having found that neither circumstance would occur, the Commission was entitled to approve the project.

Substantial evidence supports the finding that agriculture would be very difficult to establish on the site. A United States Department of Agriculture (USDA) soils survey determined that the site had enough prime agricultural soils to be used for farming. However, ARCO's soils consultant presented more recent and more detailed evidence to the Commission which cast doubt on the USDA's conclusion. In addition, Fruit Growers Laboratory prepared a soil analysis demonstrating that the site was not suitable for most commercial agricultural uses.

Representatives of the County's agricultural community agreed. The County's EIR reached substantially the same conclusion.

Commission's decision. (Sierra Club v. California Coastal Com., supra, 12 Cal.App.4th 602, 610; Gherini v. California Coastal Com. (1988) 204 Cal.App.3d 699, 708.)

Similarly, the Commission was entitled to conclude that the lack of irrigation water would prevent commercial agriculture on the property, even though farmers across the County also contend with water shortages. First, this site does not have a "shortage" of irrigation water. It has no irrigation Chinese State Control of the Control and the second s water at all. There is no evidence that dry farming on the site had ever been profitable. Surfrider submitted the opinion of one expert that the site would support commercial agriculture. Other experts, including representatives of the County's agricultural community, disagreed. In fact, ARCO's consultant testified that a dry farm would operate at a loss and the County's EIR described the site as marginally viable for agriculture. An agricultural use could not support the high cost of bringing irrigation water to the site. Under these circumstances, the Commission was entitled to credit the opinions expressed by ARCO's experts over those expressed by Surfrider's. (Sierra Club v. California Coastal Com., supra, 12 Cal.App.4th 602, 610; Desmond v. County of Contra Costa, supra, 21 Cal.App.4th 330, 335-337.)

Surfrider attacks the Commission's finding that the project will preserve prime agricultural soils, claiming that ARCO will "bury" those soils, preventing their future agricultural use. The permit conditions, however, require ARCO to remove and stockpile the top soil, amend the subsoils to improve fertility, and then replace the top soil in its original location. These conditions will help to preserve the prime agricultural soils on site. Surfrider's unsupported fear that

ARCO will violate these permit conditions "is not a reason to ignore the substantial evidence in the record." (Lucas Valley Homeowners Assn. v. County of Marin (1991) 233 Cal.App.3d 130, 153.)

Surfrider objects to the Commission's finding that use of the site for a golf course will increase its potential for future agricultural use. According to Surfrider, the property will become too expensive to be used for farming. CZO section 35-172.8, subdivision (9) does not require the Commission to guarantee that land will revert to agricultural use in the future. Instead, it requires only a finding that agricultural soils are preserved for long term agricultural use. For the reasons stated above, the Commission's finding to that effect is substantially supported.

Finally, the Commission's parcel merger findings are supported by substantial evidence. While residential development is generally prohibited in the AG-II zone district, the Supreme Court's recent decision in Morehart v. County of Santa Barbara (1994) 7 Cal.4th 725, 764-765, creates uncertainty about whether the County may enforce those regulations against Naples lots. ARCO's agreement to permanently merge the lots removes that uncertainty and creates the large parcels favored by CZO section 35-69.1.

The Project Complies With Land Use Policy No. 8-2

Policy 8-2 of the County's Coastal LUP provides: "If a parcel is designated for agricultural use and is located in a rural area not contiguous with the urban/rural boundary, conversion to non-agricultural use shall not be permitted unless such conversion of the entire parcel would allow for another priority use under the Coastal Act, e.g., coastal dependent

industry, recreation and access, or protection of an environmentally sensitive habitat. Such conversion shall not be in conflict with contiguous agricultural operations in the area and shall be consistent with Section 30241 and 30232 of the Coastal Act." The Commission found that the project meets each of these criteria. The finding is supported by substantial evidence.

First, the project provides coastal access and protects the harbor seal haul-out and rookery. These are priority uses under the Coastal Act. (§§ 30210, 30240.)

Surfrider argues these features do not amount to a priority use because they are merely "incidental" to the project's "primary" goal of providing golf courses. The argument fails because policy 8-2 requires the Commission to find that the project will "allow for another priority use . . . ," not that it will allow exclusively for such a use. The Commission need not focus solely on the intended "primary" use for the project, but may consider secondary uses in determining whether the project complies with policy 8-2.

Second, the Commission's finding that the project will not conflict with contiguous agricultural uses is substantially supported. The project EIR concluded that project-generated noise and traffic would have an insignificant impact on surrounding agricultural uses. Nor will the project strain existing water supplies. Instead, its use of reclaimed water will free up for agricultural use the water ARCO currently purchases.

Third, the Commission properly found that the project is consistent with Coastal Act sections 30241 and 30242. It concluded that section 30241 did not apply because

"the site . . . does not have the potential to be farmed commercially"⁵ It found the project complied with section 30242 because agricultural use of the site was not feasible, prime agricultural soils would be preserved, and the project was compatible with adjacent uses.

Surfrider argues that section 30241 applies to this project because policy 8-2 requires a finding that the project is consistent with the statute. The argument is without merit.

Section 30241 limits the conversion of "prime agricultural land" to non-agricultural use by requiring that such lands "be maintained in agricultural production" to protect the area's

Section 30242 provides: "All other lands suitable for agricultural use shall not be converted to nonagricultural use unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands."

⁵ Section 30241 provides: "The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy " Conflicts between agricultural and urban uses must be minimized: "(a) By establishing stable boundaries separating urban and rural areas, including . . . clearly defined buffer areas [\P] (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development. $[\P]$ (c) By permitting the conversion of agricultural land surrounded by urban uses . . . (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands. [¶] (e) By assuring that public service and facility expansions and nonagricultural development do not impair viability [\P] (f) By assuring that all agricultural divisions of prime agricultural lands . . . and all development adjacent to prime agricultural lands shall not diminish the productivity of prime agricultural lands."

"agricultural economy[.]" As the Commission found, however, the project site has never been "in agricultural production" and has never made a significant contribution to the County's agricultural economy. Substantial evidence supports these findings. Under these circumstances, section 30241 does not apply.

finding that the project is consistent with it. Section 30241, subdivision (b) permits the conversion of agricultural lands "around the periphery of urban areas . . . where the viability of existing agricultural use is already severely limited" The project site is on the periphery of a developed area because it is approximately one-quarter mile from the urban/rural boundary and one-third of a mile from a proposed resort hotel complex. Its viability for agricultural use is severely limited by the scattered prime soils, unavailability of water, and potential for division into parcels too small for farming. Because conversion would be allowed under section 30241, subdivision (b), the Commission could properly have found that the project is consistent with the statute.

Surfrider argues the Commission made an irrelevant finding when it concluded that the site is not suitable for commercial agricultural use. According to Surfrider, policy 8-2 applies to all land zoned for agricultural use, even if the land cannot be farmed at a profit. Policy 8-2, however, does not require the Commission to ignore the plain language of section 30241. If the site cannot feasibly be used for agriculture, its conversion to another use will comply with section 30241 because land will not be removed from agricultural production nor will the area's agricultural economy be harmed. The viability

finding is also relevant to the Commission's finding that the project complies with section 30242 because that section allows conversion where "continued or renewed agricultural use is not feasible "

Surfrider contends that the Commission did not, and could not find the project complied with Coastal Act and County policies requiring strict adherence to the urban/rural boundary. Surfrider, however, reads these policies too narrowly. Coastal Act section 30241, subdivision (a) does not prohibit all development outside the urban/rural boundary. Instead, it permits development along the periphery of an urban area to serve as a buffer against development in more rural areas. Similarly, the County LCP does not include a policy to prohibit all development outside the boundary. Under CZO section 35-172.8, such development can occur with a major CUP.

Both the Commission and the County concluded that the project would not destabilize the urban/rural boundary because it would not extend public services beyond the boundary or increase pressure to develop surrounding parcels. These findings are supported by substantial evidence. Existing roads, police service and fire protection are adequate to serve the project. The reclaimed water line will not destabilize the boundary because it is sized to serve only this project, and may not be used to carry potable water or to supply other users. Although some contrary opinions were expressed to the Commission, those opinions assumed that the water line could be converted to carry potable water. That assumption was unfounded. Accordingly, the Commission was entitled to

disregard opinions based upon it. (Lucas Valley Homeowners

Assn. v. County of Marin, supra, 233 Cal.App.3d at pp. 157-158.)

The Project Provides Adequate Public Access

The Coastal Act and the County LCP place a high priority on public access to the shoreline. (See, e.g., §§ 30001.5, 30210; LUP Policy Nos. 7-1, 7-2, 7-18.) To carry out this policy, section 30211 provides: "Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization . . ."

Section 30212 requires all new developments to provide public access to the shoreline "except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources" The Commission must, however, implement the public access policy "in a manner that takes into account the need to regulate the time, place, and manner of public access" (§ 30214.)

The Commission found that the project's public access features complied with the Coastal Act and the LCP. Surfrider argues this finding is unsupported because the project does not provide enough public parking, will destroy established access routes along the west side of the property, and will require beachgoers to walk much further to reach the beach. Surfrider also complains that access restrictions designed to protect the harbor seals are unreasonable.

The Commission's public access findings are supported by substantial evidence. First, the permit requires ARCO to provide and maintain open public access to and along the beach. For the first time, beachgoers will enjoy access without parking illegally, dashing across an interstate highway, climbing over barbed wire fences and a railroad track, shimmying down a steep

bluff, or being escorted off the property by security guards. They will have a legal place to park and free access to paved pathways that follow a safe route to the beach. The route will add less than one mile and only a few minutes' walk to the route currently favored by surfers. Although Surfrider complains that the number of public parking spaces is insufficient, the California Department of Transportation agreed that 15 spaces would be adequate.

Nor will the project destroy any access rights that may have been acquired through public use. The Commission did not decide whether such rights existed, nor could it.

(§ 30211.) Its permit conditions require ARCO to acknowledge that the question remains undecided. This was sufficient to satisfy section 30212.

Finally, Surfrider's objections to the harbor seal protection conditions are without merit. State and federal agencies informed the Commission that these restrictions were required under federal law. (See, e.g., 16 U.S.C. §§ 1361-1421h.) Even the LCP recommended that access to this area be limited. The record also demonstrates that endangered harbor seals will not breed or raise their pups when humans are present. Under these circumstances, it was reasonable for the Commission to restrict access. (§ 30214.) The permit guards against unnecessary additional restrictions by requiring a public hearing and an emergency permit before public access may

⁶ "In order to protect the marine resources of Naples Reef and the adjacent beach as a hauling out area for harbor seals, intensive recreational use shall not be encouraged. Access to the site should continue to be by way of boats." (Policy No. 7-19.)

be permanently closed. These conditions satisfy both the Coastal Act and the County LCP.

Conclusion

The Commission's findings are adequate, relevant and supported by substantial evidence. Accordingly, the judgment is affirmed. Costs to respondents.

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NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

STONE, P. J.

GILBERT, J.

Patrick L. McMahon, Judge Superior Court County of Santa Barbara

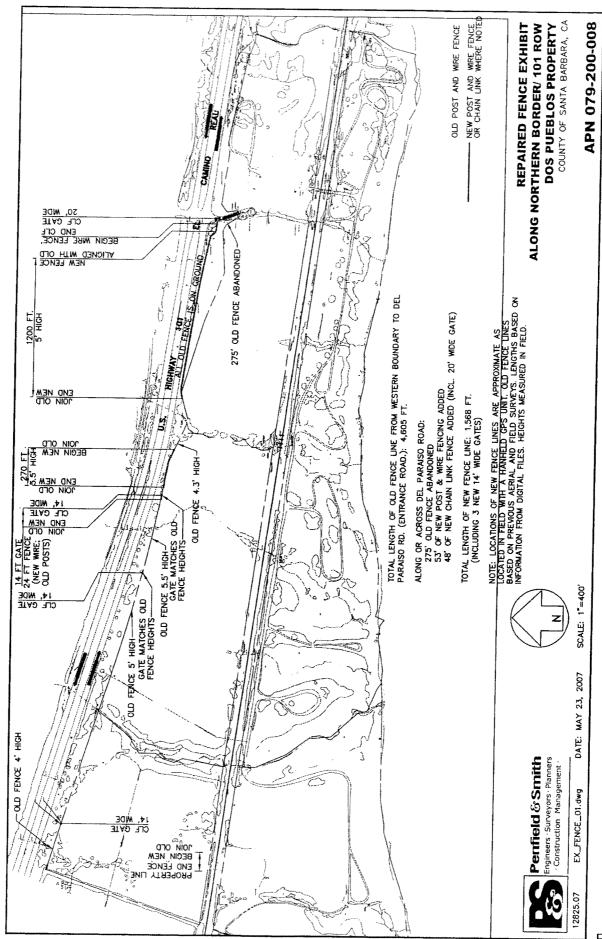
Deborah A. Sivas, Nicole J. Walthall; Conservation Law Project, for Appellant.

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Daniel E. Lungren, Attorney General; Roderich E. Walston, Assistant Attorney General; Jan S. Stevens, Supervising Deputy Attorney General and Jamee Jordan Patterson, Deputy Attorney General, for Respondent.

David C. Fainer, Jr.; Richard, Watson & Gershon a Professional Corporation, and Steven H. Kaufmann, for ARCO, Real Party in Interest.

Stephen Shane Stark, County Counsel, County of Santa Barbara; Alan L. Seltzer, Chief Deputy, for County of Santa Barbara, Real Party in Interest.



Geraghty, Amber@Coastal

From: Sent: Mark Wilkinson < mwilkinson@sbtrails.org>

Thursday, March 27, 2014 3:58 PM

To:

Geraghty, Amber@Coastal

Cc: Subject: Otis Calef; Ainsworth, John@Coastal; Hudson, Steve@Coastal

Paradiso del Mare Project



Hello Amber,

The Santa Barbara County Trails Council (Trails Council) has been following and commenting upon the Paradiso del Mare Project over the last several years. While we recognize there are many different community perspectives on this proposed project, the Trails Council is focused upon obtaining easements for trails and facilitating their ultimate construction. Initially, although supportive of the proposed offer to dedicate easements for the California Coastal Trail, a parking area and a connecting access trail, the Trails Council was deeply concerned that the project would close a longstanding informal coastal access trail to Seals Beach and the Naples Surf Break without providing feasible replacement access. However, as discussed below, these concerns have now been addressed and we support the proposed project.

We are now supportive of the proposed project for the following reasons:

- We are excited about the developer's offer to dedicate a bluff top Coastal Trail that will
 extend for over 1.1 miles along the scenic Gaviota Coast. We very much appreciate the
 developer's generous offer to dedicate easements for the California Coastal Trail spanning
 the width of this property. We think the bluff top location for this proposed trail sets an
 excellent precedent for other Gaviota area development projects (e.g., Santa Barbara and
 Las Varas Ranches).
- 2. We support the offer to dedicate easements for a parking area for at least 20 vehicles, a vertical trail connecting the parking area to the Coastal Trail, an auxiliary loop trail and offers to dedicate easements along the dry sandy beach for public access.
- 3. We have accepted the developers offer to provide \$500,000 in seed funding for trail planning and construction to the Trails Council for improvements on this property. Trail improvements on this property will be extremely expensive as they involve construction of a bridge across the Union Pacific Railroad, a time consuming and costly undertaking. This money will greatly facilitate completion of these trail improvements.
- 4. This offer to donate \$500,000 to the Trails Council muted the feasibility of coastal access issues that have been the cornerstone of our concern about the project. This is particularly relevant because we are convinced that physical constraints including very steep coastal bluffs and the presence of a harbor seal haul out limit the potential for approval and construction of vertical coastal access on the properties involved in the Paradiso del Mare project. Instead, we believe that formal public access most appropriately belongs in one or two small canyons located well west of the seal haul out on the Naples Township. Our detailed study of this mater (see below) and previous County and Coastal Commission

actions on this matter confirm that one or perhaps both of these canyons are far more suitable for development of formal public coastal access to eventually replace the existing informal access. Thus while we deeply regret the potential closure of the informal access trail on this property, we believe that suitable replacement access can and should be provided to the west in the future. We look forward to the opportunity to work with the Commission and owners of these properties to provide such access in the future.

The trail system proposed as part of this project is consistent with that envisioned by the Trails Council for this property as part of our recently completed **Gaviota Coastal Trail and Access Study.** This scenic new trail across **Paradiso del Maré** will be the *gateway* to the planned 20 mile long segment of the California Coastal Trail, which when completed will reach from Bacara Resort and Spa to Gaviota State Park. On Monday the Trails Council received a *Public Involvement/Education Award* at the annual Association of Environmental Planners (AEP) conference in Huntington Beach for our **Gaviota Coastal Trail and Access Study**. We will be providing copies of this study to the Coastal Commission and staff.

In summary, we support this project based on its offers to dedicate easements for key segments of the California Coastal Trail, parking, a connecting access trail and the donation of \$500,000 to the Trails Council for construction of these improvements. While we recognize that there are tradeoffs involved in approval of this project, from a trails planning and long term coastal access perspective, we believe that, with the above listed offers, the project on balance is beneficial to public coastal access and recreation.

Regards,

Regards,

Mark Wilkinson Executive Director

Santa Barbara County Trails Council

805.708.6173 | website



The Land Trust for Santa Barbara County

և preserving natural lands and our agricultural heritage ⋈

MAR 26 2014

Californic Coastal Commission

March 21, 2014

Amber Geraghty California Coastal Commission 89 South California Street, Suite 200 Ventura, CA 93001-2801

Re: Coastal Commission Appeal No. A-4-STB-14-0010 - Paradiso del Mare Project

Dear Ms. Geraghty:

I am writing to confirm the Land Trust for Santa Barbara County's potential role as grantee of the conservation easement proposed as part of the above application and appeal. The Land Trust takes no position either for or against the Paradiso del Mare project or the appeal.

Our organization has been approached by the project applicant to consider accepting a conservation easement that would be granted to permanently protect approximately 117 acres of the site as natural wildlife habit. The Land Trust is able and willing to accept, monitor and ensure compliance with the proposed easement, once documented to contain terms acceptable to, and approved by, the parties.

The Land Trust presently holds conservation easements on 31 properties, protecting 15,535 acres of important scenic, agricultural, habitat and community open space land throughout Santa Barbara County. We have begun drafting a conservation easement that will incorporate those county permit conditions that apply to the easement area and that will comply with the permit conditions applicable to that area.

If the Commission has any questions regarding the terms and administration of the proposed conservation easement, I am available by phone and may also attend the appeal hearing, schedule permitting.

Sincerely,

Carolyn Chandler

Acting Executive Director

CC/cr

Geraghty, Amber@Coastal

From: Sent: To: Subject:	Karen Christensen <kchristensen805@gmail.com> Monday, April 07, 2014 2:08 PM Geraghty, Amber@Coastal Paradiso Project Support</kchristensen805@gmail.com>	
Dear Coastal Commissione	rs:	
	e would like to express our support for th e proposed trail development and coastal access being mmission this week as part of the Paradiso project.	
general public. With the dev Trail, we believe that the ge The trail access plan will ind development. Key features opportunities along Gaviota	portant Santa Barbara County resource that has not been easily, and safely, accessible to the velopment of a parking lot, multi-use trail, beach access and connection to the California Coasta eneral public and, more specifically, avid trail runners will be able to use and enjoy this resource corporate many useful features and is a great model for future trail planning, expansion, and of the project that we appreciate include providing safe public access and recreational a coast, the potential for a parking lot with trail access to the planned California Coastal Trail, and bluff top trails and beach access.	
We hope you reject the app running community to enjoy	peals and allow this project to move forward creating a more publicly accessible area for our trail	
Thank you for your consideration.		
Sincerely,		
Karen Christensen, L.Ac.		
Jim Sloan, CEO SloanLED		
Elda Rudd, VP Marketing Tempest Telecom Solutions		
Ida Kane, CFO RightScale		

Chris Crabtree Agenda Item # Appeal No. A-4-STB-14-0010

AFR 08 2014

April 7, 2014

Letter to the California Coastal Commission (Commission) Regarding the April 10 Commission Hearing - Agenda Item # Appeal No. A-4-STB-14-0000 (Smoke Street, Santa Barbara Co.)

I have been fortunate to have frequented the Paradiso del Mare Ocean and Inland Estates project site and adjoining beach area on a regular basis since 1974. I have accessed the project site from every possible angle and have observed the harbor seals in the adjacent rookery and near shore waters in every month of the year. I provide the following comments regarding Mitigation Measure (MM) Bio-12, Harbor Seal Handout, as proposed in the Paradiso del Mare Ocean and Inland Estates Final Environmental Impact Report 09EIR-00000-00003 (Revised February 2013), as modified by EIR Revision Letter RV1 dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013 and the updated August 2013 Biological Resources section of the EIR, its Appendices contained within Final EIR Volume I, February 2013 (Final EIR Appendices F3.1 through F3.3, F3.8 and F3.13, Draft Revised EIR Appendices 1.0 and 3.2 through 3.14) EIR Revision Letter RV1, EIR Revision Letter RV2, and the updated August 2013 Biological Resources section of the EIR.

MM Bio-12 proposes to close public access to the beach 300 yards in each direction of the harbor seal hardout during the harbor seal pupping/breeding season (i.e., February 1 to May 31). It amszes me that a landowner, as part of a deal to build two homes, can effectively close 600 yards of coastline and State Lands to public access for 5 months of the year. Historically, people have walked up and down this coastline and through the harbor seal rookery without using the project property for access. MM Bio-12 should not apply to people that access this coastline in this way. It is morally and perhaps legally wrong to take this right away from the public just so someone can build a few homes.

In addition to the constraints on public access associated with MM Bio-12, there are some that want to convert the Naples seal rookery into the Carpinteria seal rookery experience, in other words, permanently close off public access to this part of the coastline. One of the reasons why the experience at the Carpinteria seal rookery is so uncontroversial as far as constraining public access is that is it easy for a beach walker, as they approach the rookery, to climb up the cliff and access the adjacent coastal trail and once past the rookery, quickly return back to the beach. This is not possible at the project site, as there is no legal access to accommodate such a detour. Any proposal to close public access along the beach through the Naples seal rookery must be contingent on the project applicant first developing two vertical access points, along with the lateral access proposed in the FEIR, to enable people to circumvent the rookery by land. There are two locations on the property owned by the applicant that can readily be used to create vertical access points - at Eagle Canyon and the most western ravine on the property.

I realize that the Naples rookery is a sensitive resource and that it perseveres in spite of distructions from the public. My observations tell me that over the years, the population has fluctuated but remained fairly stable. I believe that two main causes of mortality are decreases in food supply and the combination of high tide and large swells (high wave run-up events) carly in the pupping season that can batter to death and/or drown newborns. While the historical public use of the beach has not made life better for the seals, I do not believe it has caused much in the way of mortality in the population. The seals have adapted to our presence for better or worse. And so I recommend that at project initiation, monitor the seal population without obstructing public access that originates from locations other than the project site to

define the baseline population. If it is determined that this access activity has an insignificant effect on the seal population, do not implement any prohibitions on this access.

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Thank you for your time and consideration.

Chris Crabtree 3818 Crescent Dr. 5anta Barbara, CA 93110 805-708-7540 ccrabsb@yehoo.com

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Geraghty, Amber@Coastal

From:

Karim Kaderali <karim@sbaxxess.com>

Sent:

Monday, April 07, 2014 5:55 PM

To: Subject: Geraghty, Amber@Coastal Paradiso del Mare Project

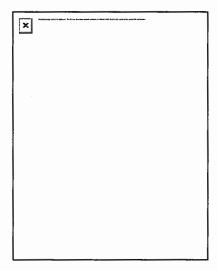
Dear Ms. Geraghty,

I would like to express my support for the Paradiso del Mare project and request that my support be shared with the Coastal Commission for this week's hearing on the project. I am pleased to hear that a thoughtful plan has been proposed that will provide public access to Gaviota Coast. As a regular hiker and trail runner, I am eager to enjoy the beauty of this area. The project would offer more access to coastal areas of Santa Barbara that are not currently available to our community. The key reasons for my support of the project are:

make new public easements and significant funding (\$500,000) for safe and legal access to this area of Gaviota ø provision of a major connection for the California Coastal Trail, a trail that is envisioned to span the entire coastline of Santa Barbara and beyond someday.

I know that I am not the only user group that can take advantage of a safe and scenic area to enjoy the resources available on the central coast, which is why I fully support the project and expansion of public access along the Gaviota Coast shoreline.

Thank you for your consideration.



Karim Kaderali, **President & CEO**

Santa Barbara Axxess | www.sbaxxess.com Conejo & Simi Valley Axxess www.axxessconejovalley.com

121 E. Mason St., Ste. B | Santa Barbara, CA 93101

main 805.884.0307 | fax 805.962.0666

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Geraghty, Amber@Coastal

From:

dawn thatcher <dthatcher98@yahoo.com>

Sent: To: Monday, April 07, 2014 7:42 PM Geraghty, Amber@Coastal

Subject:

Paradise residential project

Dear Coastal Commissioners,

I am writing you in support of the proposed Paradiso Del Mar project that will create safe, public beach and trail access along the Gaviota Coast for our Santa Barbara community. This proposed development would provide public easements for high-priority public access and recreation amenities all while preserving over 100 acres of open space and protecting marine life in this area.

The proposed development will actually enhance the public's access to the Gaviota Coast. Currently, accessing the beach along this area of Santa Barbara's coastline is informal and very limited. The proposed development would allow for public trails, beach access, and a parking lot. The ability to access a part of Santa Barbara County that is currently not available will offer both visitors and local residents a unique opportunity to safely enjoy such a remarkable coastline.

Contrary to suggestions that the plan is being created by, "an Orange County developer coming in to McMansionize the Gaviota Coast," this plan thoughtfully considers the best use of land that benefits the public and still protects the marine life and the natural habitat. The fact that this property owner is requesting to build only two homes on 6 acres while dedicating the rest of their 140+ acre lots to agriculture and land conservation, in addition to providing over \$500K to protect seals that use the beach and to help fund development of public trails, parking and beach access, demonstrates his commitment to our community and resource protection.

By approving the project and creating this public access opportunity, our community will be able to safely enjoy all that makes Santa Barbara so unique. To be able to safely use bluff top trails and beaches with my family within a beautiful natural area that will be protected for future generations is exactly why we choose to live in Santa Barbara. I urge the Coastal Commission to reject the appeals and approve the proposed project at this week's hearing.

Sincerely, Dawn Thatcher DMD, MS 1819 State St Suite E Santa Barbara, Ca 93101 805-682-2700

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Paradiso del Mare A-4-STB-14-010 (Brooks Street)

Date and time of receipt of communication: March 31, 2014, 10:00 a.m.- 11:15 a.m.

Location of communication: Santa Barbara

Type of communication (letter, facsimile, etc.): In person conference

Person(s) initiating communication: Supervisor Doreen Farr, 3rd District County of Santa Barbara; Chris

Henson, staff

Detailed substantive description of content of communication:

Supervisor Farr is the County Supervisor whose District includes the Gaviota Coast. She participated in the County's unanimous decision to approve the Paradiso del Mare CDP/CUP for the two residences and the water line. She indicated that it was one of the hardest decisions she had ever had because so many members of the community, her constituents, expressed such serious concerns about the project and its potential for setting a bad precedent for the Gaviota Coast.

She explained that the County acted in the belief that it was very constrained in making this decision. In a normal circumstance she would have insisted upon not only a plan for the two residences on this portion of the property, but also would have insisted on a full plan for the additional, so called 'Naples lots', so that all of the impacts of the development plans could be studied together. However, the County was aware of the terms of the Coastal Commission settlement, and the applicant's decision to apply separately for these two homes.

She believes that there will have to be two homes approved somewhere on this property eventually, and because the two parcels are separated by a fee parcel owned by the UP railroad, she was focused on how, if approved, this project could serve as a positive model for such additional development as could be approved in the future along the Gaviota Coast. She did not know whether the UP's intervening parcel extends along the coast past the Naples lots and the Santa Barbara Ranch property, but assumed it did. Her bottom line was, if we were going to use this as an example, absent a 'conservation buyer', how good a deal is this?

She concluded, despite her concerns, that the positive benefits of the project, in particular, the Offers to Dedicate both vertical and lateral access easements to replace the informal public access over the years, the importance of their location to connect with the (eventual) California Coastal Trail, and the elimination of the dangerous existing access paths across the freeway, that this could serve as a positive model.

She acknowledged that there was no certainty that these access ways would be constructed and available in a reasonable period of time, or otherwise economically feasible, and that in this case the County did not have any backup requirement in place if either the separate permits for the trails, access stairs, and parking lot were challenged by neighboring property owners, and/or if the UP refused to negotiate or failed to agree to use of the existing bridge as access from the proposed new public parking. The Trails Council withdrew their appeal. She thought the \$500,000 the developer committed to the trails would be a significant help.

She is very concerned about the public's right to use the existing access. She advised that currently the owners generally have become more aggressive about trying to keep the public off the property, having installed fences and maintaining guards. She did not know whether they had applied for or received coastal permits for the fencing.

She discussed that these OTD were to be 'floating' easements, until their precise alignment was determined in the CUP process for the trails and stairs. She was unclear as to whether there was provision for the bluff top easement to be ambulatory, so that it could be relocated landward as the bluff erodes. She felt that because of the extensive setbacks imposed, there would not be a need in the future for a bluff protection device in any case.

We discussed that one of the appellants' main issues regarding access was that even though the initiated Gaviota Plan identified an additional vertical access on the Naples lots, at the Tomate drainage, as various trail alignments through the Naples lots, that was not pursued in this application. She still feels that this Tomate West access will be very important going forward, and the County absolutely intends to pursue it, but they did not require it here because they are having to deal with the two residences separately from the so called Naples lots.

She expressed very serious concern with the water supply and infrastructure issues. There is no coherent document that sets forth the water supply issues for the Gaviota Coast; she thinks the County Flood Control/Water Agency should be more involved than they have been. She was very frustrated that the Goleta Water District annexed this rural land to serve water for new development, and is concerned that they may continue to annex land going west toward Gaviota, in disregard of the drought and the overall water supply issues. We discussed that no one agency seems to have a coherent understanding of how the existing and future infrastructure for water supply in the Gaviota area relates to pending and future projects, particularly in light of the drought.

There is a pending application for the Las Varas Ranch, also a reconfiguration of existing legal lots which is served by a GWD pipe, but the water does not meet water quality standards. The existing residences on the ranch are receiving bottled water. We discussed that allowing a permit for a 10" water line across this property could facilitate development not only for the McCaw property to the east, and for the Paradiso "up to ten" Naples lots, and that a line this size could potentially serve many, many more parcels, and leapfrog development further into the agricultural areas. She mentioned that she thought the Santa Barbara Ranch project, which the County approved but which is somewhere in the appeal process, included a requirement that their water would come from the State Water Project, which is not delivering water now. She did not know whether the construction of the 10" pipe from Goleta might induce further agreements to serve those lots as well.

We discussed that the 10" pipe was not explicitly required, in fact the finalFire Department condition letter states only the standard condition for urban development that hydrants with a minimum flow of 750 gpm for single family residence would be required. The Fire Department had stated that an oversized line should be required to be constructed now to 'plan for the future' development, but she felt that is a planning issue for the Board of Supervisors, not for the Fire department. She also advised that there were legal issues discussed at the Board hearing by the appellants and the offsite easement grantors as to whether the offsite easement for the 10" pipe actually authorized any more than two homes, but she stated that the GWD had threatened to use their power of eminent domain to acquire that easement to accommodate the next phase of the application, for the Naples lots owned by these applicants.

As to the impacts to biological resources, she did conclude that the protection of the habitat of the White Tailed Kite through the restoration and management of the dedicated conservation easement area was a much better solution than trying to protect a single nesting tree. She also was troubled by appellant's apparent position that the public's presence on the beach and in the water along the Naples Reef area was acceptable, but that the impacts of the sight and sounds of a single house on the bluff and its occupants would be intolerable to the seals.

She also had struggled with the fact that it was this pipe that would result in the only Class I project specific impact under CEQA, to cultural resources. This impact was clearly connected to the additional potential development at the Naples lots, and the appellants had urged that the County require the Tomate easements identified in the initiated Gaviota Plan, because the development of these two lots would have impacts to existing access, by eliminating the informal access. She concluded also that even though the placement of the two estate homes at the eastern end of the parcels might avoid the need to extend the water pipes all the way across the parcel, that location would be unsuitable in terms of the access easements and greater biological impacts. So overall she felt the approval was the best outcome for a very constrained site, based on the tools available to the County.

Date: April 5, 2014

/s/ Jana Zimmer Signature of Commissioner

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Paradiso del Mare A-4-STB-14-010 (Brooks Street)

Date and time of receipt of communication: April 4, 2014 10:00 a.m. - 11:30 a.m.

Location of communication: Santa Barbara

Type of communication (letter, facsimile, etc.): in person conference

Person(s) initiating communication: Dianne Black, Assistant Planning Director, Santa Barbara County, with Ann Almy, Supervising Planner, John Storrer, County biologist

Detailed substantive description of content of communication:

Dianne Black: She provided a map of ownership of the Gaviota coast properties from the Bacara to the Gaviota pass, which was not included in the Commission site visit packet from April of 2013, and which will be submitted to Commission staff under separate cover.

She very much agrees with the staff report's characterization of the County's action. They looked at this project very carefully, drafted two EIRS, and recirculated once. They looked at compatibility with the Gaviota Coast, and at the project's growth inducing and cumulative impacts with up to 10 lots on the parcels owned by these applicants west of the Tomate drainage (the Naples lots). However, they did not have site specific impact study for the potential 10 additional residences on the Naples lots, because the applicant had chosen to process these two lots separately. They looked at several onsite alternatives for development envelopes for these two residences. The entire property is highly constrained. They concluded that the proposed location of these development envelopes and the public benefits of the project (e.g. the trails and access, and restoration commitments) outweighed the impacts, under CEQA, and emphasized that they worked very closely with Coastal Commission staff throughout the process.

The County considered the Coastal Commission's settlement agreement, and that it acknowledged the ultimate right to placement of two residences on this portion of the property acquired by these applicants. The County did not look at 'unity of ownership' in this case. The certificates of compliance in 1998 reflect that there are two separate legal lots separated by a fee interest in the UP railroad. The UP line runs all the way up the Gaviota coast, and creates similar 'inland' of railroad and 'ocean side of railroad' lots for all properties on the coast. This would apply to the "Naples lots" as well. A lot of new lots have been recognized. They estimated between 100-125 total separate lots.

We discussed the main issues raised by the appellants in some detail:

Access: the County would need to process a major Conditional Use Permit and CDP to enable construction of the trails that have been offered, assuming financing is found, and that permit is also appealable to the Commission. She acknowledged that there are owners along the Gaviota Coast who are very opposed to a bluff top location for the California Coastal Trail, as surfaced during the Gaviota Plan initiation process, and who may be participating in the process.

They looked at sea level rise, and concluded it was not necessary to have a 'no future bluff protection device' condition in this case, as the ocean residence is planned to be 200-300 feet back from the existing bluff edge. Under the bluff erosion rate calculations used in the EIR, they estimated that the retreat, based on +/- one foot per year, would be 85.5 feet, and the setback for the residence is more than required for the LCP 75 year bluff retreat.

The easements in the OTD were described as 'floating' easements, -including the vertical access and the exact location of the portion of the CCT to be constructed by the owners or successors- and that the exact location would be set at the time of the CUP approval for the trail improvements. However, they understand that this is not necessarily the same as 'ambulatory' easements which are required by the Commission in the event of bluff retreat. The Planning Commission conditions initially included this requirement. They will verify whether the omission from the final conditions of the 'ambulatory' requirement was an error.

We also discussed that in the event the proposed access easements were not accepted or built, there would be no further ability to require alternative access from the future owners of this portion of the property. We discussed that the existing, informal vertical access at the Tomate drainage goes through the proposed development envelopes, and would be effectively extinguished by approval of this location for the homesites. The draft Gaviota Plan identified additional trail segment alignments and vertical access on the west side of the Tomate drainage, which is a part of the Naples lots owned by this applicant. The County does intend to try to pursue an OTD for that access at a future time, but they felt they would not be successful in pursuing it at this time.

White tailed kite: the way their LCP is structured, the ESH 'overlay' in the coastal zoning ordinance requires them to look at each individual resource, and then if that resource is affected by development to apply the specific LCP policy for that resource. They acknowledged that there are so many different overlapping sensitive resources affected by development on this site, that the entire site might have been designated ESH, but that they applied their policies on a policy by policy basis.

The County biologist Storrer confirmed that the management and maintenance of the restoration area for kite foraging is an obligation that the owners, or successors are intended to have in perpetuity. He talked about the fact that much of the site and the adjacent Naples lots are foraging area/habitat for the white tailed kite. They forage for only three species, a very narrow set of prey, most significantly the California vole. Audubon wanted voles to be raised in captivity, to provide food, and the County thought that was inappropriate. There was discussion of whether mowing which had been stopped about eight years ago, was good or bad for the kites. On the one hand, it made their prey more visible, but Storrer believes the science was not conclusive. There was a conceptual restoration plan required, and there will be a final plan that will be reviewed prior to development.

Storrer stated that there is an intention to require the applicants to endow the Land Trust, or whoever accepts the easements, for the applicant to fund the restoration and management in perpetuity. In response to public comments, the Planning Commission also required an 'adaptive management plan', if after five years the reduction of invasives, and planting of natives to create better foraging habitat is unsuccessful. So he remains convinced that the restoration and management of the foraging area is a better solution than trying to protect an isolated or single nesting tree, and that the County's conditions are adequate.

Seal rookery: The County does not agree that there will be significant impact to the rookery or MPA. If the presence of surfers, birdwatchers, and other members of the public on the beach and trails does not significantly impact the seals, the presence and use of one residence sited 300 feet back from the bluff edge

would likewise not create a significant disturbance. The County approval includes restrictions on construction noise.

Growth inducing impacts of the water line: We discussed the growth inducing impacts, specifically of the oversized domestic water line, which were identified in the EIR. This water line results in the only identified Class I impact or the project under CEQA, the impact to cultural resources. Specifically, the EIR states that a two inch water line is generally sufficient for two residences, but may vary with the setting. The proposed 6" segments of the reclaimed water line are also larger than required to serve the site's limited agricultural uses. The final Fire Department condition appears to require hydrants for this site (but we discussed that the DEIR for Las Varas Ranch requires no mitigation for wildfire impacts). If there was a concern with protection from wildfire on this site, County staff does not see a reason why reclaimed water could not be used for that purpose. This project proposes a 6" reclaimed water line in addition to the 10" domestic line.

The technical distinction appears to be that the Las Varas property has not been annexed to the GWD. Ms. Black believes that it is the Goleta Water District that may have asked for the 10" line in order to accommodate their delivery of water to the former golf course site and the additional Naples lots. We discussed that they annexed the property to provide water to the former ARCO golf course project, which was approved twenty years ago: 30 AFY of domestic, and 230 AFY of reclaimed water. However, the previous Coastal Commission approval of that project included a condition that the 20 Naples lots be merged. The prior owner paid GWD \$4.5 million dollars in connection with annexation.

County staff agrees that the proposed GWD water line would have growth inducing impacts, and potential cumulative negative impacts to agriculture and the rural landscape in context of the other pending developments in this portion of the Gaviota Coast. These include the Las Varas Ranch which proposes about seven residential lots, and the Santa Barbara Ranch, for which the County had approved residences on 71 lots in the "Naples Townsite", but which requires an LCP amendment and CDPs from the Coastal Commission. In addition, the current owner of Paradiso also owns up to 25 lots in the abutting portion of the Naples Townsite, for which the Settlement Agreement with the Commission allows a separate application for 1-10 lots, in the owner's sole discretion. It is believed that this application for the Naples lots was awaiting the resolution of the Santa Barbara Ranch project. The appeal of that project has been filed with the Commission, but had been tied up in litigation, which concluded in January, and the newest owner of that property has already indicated they will propose a change in plans. Commission staff had recently briefly discussed with County staff whether the Santa Barbara Ranch project, which was approved several years ago, should return to the County or be processed at the Commission.

We talked about the fact that no one agency seems to have a comprehensive understanding of the current water supply picture for the Gaviota coast. She does not believe that the Paradiso owners have an interest in the Naples Water Company, or that their Naples lots could be served from the Naples Water Company supply, which included among other sources, a substantial State Water project allotment. There is a poorly understood GWD water line on the north side of the 101 which was originally intended to serve potable water but the water does not meet water quality standards, so the existing ranch residences on Las Varas are receiving bottled water, and that project is proposing a water treatment facility. The GWD has already accepted \$4.5 million from CPH Dos Pueblos Associates for extending infrastructure to the golf course and Naples lots. There is frustration that the GWD's infrastructure and financial deficiencies should dictate or preempt coastal land use policy.

Ms. Black affirmed that the Planning Department, because of their concern with growth inducing impacts, would have no problem in finding a more appropriately sized water line in conformity with the approved

plans, and no further action would be required from the County if the applicants pulled final permits with that change in specifications. While a smaller line would not diminish the Class I impact to cultural resources from the project, it would address the growth inducing impacts, both of the size of the line and of placing these homes at the far western portion of the site, instead of closer to existing development, which the County is concerned about also.

Ms Black asked about Commission procedures and time allotted for presentations. She stated that County Planning staff intends to be present and to be available to answer Commission questions.

Date April 5, 2014

/s/ Jana Zimmer Signature of Commissioner

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Paradiso del Mare

Date and time of receipt of communication: April 7, 2014 9:00 a.m.-10: a.m.

Location of communication: Santa Barbara Type of communication (letter, facsimile, etc.): telecon

Person(s) initiating communication: Chris Yelich, Howard Zelesky, Brooks Street; April Winecki, Dudek; Steve Kaufman, Attorney

Detailed substantive description of content of communication:

Yelich: Brooks is the investment group involved since 1998. Makar was the partnership which was along with Farallon Capital, the operating partner- involved since the golf course. The name of the partnership is still under the original name, they are no longer an operating partner. Farallon has been a partner of Brooks for about 10 years. Brooks got involved in 2010, and went to coastal staff to really lay the site out.

In 1998 CPH Dos Pueblos purchased the golf course (Farallon and Makar) CCC denied the time extension in 2002. The takings findings said they wanted residential. Litigation ensured. CPH Dos Pueblos presented a plan in 2006 for two homes. From 2006 until this year, they have been working with County. Makar and Farallon went their separate ways, then Brooks steered it in a bit different direction in a collaborative process with the County staff and coastal staff. In 2010 they went through the site constraints to lay the two homes out.

Coastal staff has been really tough but fair.

Kaufman: in the Standstill and Settlement they have the right to apply for 'up to 10' additional lots- they started with the 25 that were part of the Naples Official Townsite. They discussed up to 16, then ended up with the 'up to 10'. They still need to put a constraints map on that property. They will then meet with community to put on the trail. They don't have that. They need to update the biology. The constraints mapping now only goes up to the western boundary of this two lot project. However the Naples lot area was studied in the original project, for the ARCO. The Naples lots were then to be part of the 18 hole golf course. The Naples lots were then to be merged.

Yelich: last year when the Commission did its Gaviota site visit, and visited the site, Jack Ainsworth put up a presentation that showed the golf course project.

Winecki: Mentioned the water line extension to run across McCaw property. She added detail on the history. When this was under the management of Makar there was a DEIR in 2009, which was circulated and generated significant public comment. After that, Brooks got involved and retooled the project. Then they submitted a revised project description

which they thought addressed the impacts. Changes were made in the OTD themselves, and also in the technical information that supported the revised conclusions. There was a proposal for the California Coastal Trail, a single alignment, in some locations not as close to the bluff as coastal staff proposed. In 2009 it had included a vertical access for Eagle Canyon, which is more environmentally sensitive. They have added a public parking lot, as well as the crossing for the railroad. This property has a number of historic easements across the UP. They offered to extinguish some at grade crossing easements to help get a new pedestrian easement for vertical access.

Zelesky: the County submitted an engineering letter to the UP.

Yelich: UP wants to get rid of the at grade crossings.

Zelesky: the idea was that the County would construct a new bridge 100 yards west of where the current bridge exists. He had thought that rehabbing the existing bridge would work, but all others who have looked at it think a new pedestrian bridge would be necessary.

They had put in a contribution for the trails, the \$500,000 that would go to the trails council, which they think can go toward the bridge. The Trails Council had been in discussion with them, then they came up with the \$500,000 number, they thought that could be seed money that would allow them to go raise capital at 3-4:1.

April: the bridge had been estimated to cost \$686,000. Total cost of processing and building out the access improvements was about \$2.5 million, both hard and soft costs.

Zelesky: they have already spent about \$350,000 for the engineering, etc. for the public improvements, which should be helpful.

We discussed that their intent for the easement alignment was for it to remain ambulatory to account for any bluff erosion. It was to be located about 100 feet from the bluff edge. The change that dropped that language out of the condition language for the OTD came from county staff. The County's concern was to be able to nail down environmental review, they thought their CEQA decision would be more sound. That was not at Brooks' request. The trail would still be at about 100'. The trails community had also wanted the easements to be ambulatory.

Zelesky: they are hoping that other property owners in the future would agree to put in access, so they would not have to put in that vertical staircase. When they study the Naples lots, they think there is a potential for access there. They are looking at that property for a trail, it would have to be studied from an environmental standpoint. There will be a notice in the deeds to purchasers of these two estate lots that there might be a continuance of a coastal trail. It would be all based on a constraints map for those lots. There is no bank debt on the Napleslots. It will all be looked at through the biology.

Regarding the water line: In the future they can discuss how that water line will work; the easement with Gaviota Holdings is a private agreement that can be amended in the future. He asserted that the water line itself is sized for fire flow for the two homes. Based on the water district's orders they will be able to serve the other lots with that line.

Kaufman: the water district provides the water. Gaviota Holdings gets to connect through the easement over their property. Its not the only way they can get water to the site. They will have to study how the water lines can get to the Naples lots. It is possible to bring water from another direction. They are not dealing with the Naples lots. Everything relates to timing. They know that SB Ranch is very controversial, they want to figure out what would be the best way and what would be the most environmentally sound way to get water to the project.

Zelesky: on project siting alternatives, they wanted to stay away from Eagle Canyon, that is the most environmentally sensitive. They think it is a solid, good plan given the constraints.

Date: 4/7/2014 Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc. : Paradiso del Mare Marc Chytilo

Date and time of receipt of communication: April 7, 2014 10:00 am.- 11:00 a.m.

Location of communication: Santa Barbara Type of communication (letter, facsimile, etc.): telecon

Person(s) initiating communication: Marc Chytilo, Ana Citrin for Gaviota Coast Conservancy, Ellison Folk, Shute Mihaly and Weinberger, for Surfrider

Detailed substantive description of content of communication:

Chytilo: They recognize that two homes can be built. The problem is that there are two lots that are in the analysis, and the 10 Naples lots are out. That is the core of the flaw in the processing. County did not look in sufficient detail at the impacts on the Naples lots. The precedent for Gaviota Coast is significant, all these agricultural lands to the west are at risk.

They think there are on site alternatives, and also alternatives that include the Naples lots. The Naples lots continue the "one legal lot on either site of the UP railroad" configuration so there are two potential building sites there on the Naples lots as well as on this portion.

The County did not condition the project as fully as they should have.

Why take jurisdiction? It is not their position that there is a 'no project' alternative. They recognize the rights to development. They want the best possible development as a model for the Gaviota Coast, and that is not what the County did.

Ellison Folk: has been involved since 1998-1999 when this was the golf course approval, and this came back for a Coastal Development permit time extension. The Commission denied. This is a proposed partial settlement of the golf course. Surfrider intervened in that litigation. They agreed to that settlement. David Nawi participated on behalf of Surfrider in the mediation, they wanted a conservation solution. They only agreed to a stay. Surfrider is still a party in this litigation.

It can be really appealing to get rid of a lawsuit. It is tempting, but the Standstill Agreement specifically provides, in looking at any development, to look at the totality of the site to condition the project to address the totality. The County did not look at the property at a whole, started from the assumption that these two homes were a given in these locations. They did not look at alternatives that would use/include the Naples lots, provide public access to the coast, and address the white tailed kite habitat and seal rookery.

The water service: in the easement for the pipeline across the neighboring property to the east, the developer agreed to restrict to two homes on the entire property, including the

Naples lots. This is really the first of many projects on the Gaviota Coast on agricultural lands.

The white tailed kite: the nest tree produced 6 fledglings in 2012. The County biologist looked at the buffer, and it is between 75-100 feet from the tree. County biologist said that the area would be sacrificed. LCP requires avoidance of impacts to white tailed kite nesting habitats. The development on the coastal estate does not protect. It is sacrificing that habitat. This is the most concentrated area of white tailed kite nesting and foraging habitat. There is also very good foraging habitat on the Naples lots. Proximity to the foraging habitat is one of the key considerations in why those nests are so successful.

Ana Citrin: the seal rookery is on the beach below the ocean estate. The County only considered impacts from the development on site as an after thought. It was in response to comment on the revised biology section of the EIR that the County attempted to address construction and occupancy analysis. Did not analyze how construction noise would impact the seals, considered it in terms of frequencies that humans would hear. Low frequency noises do not attenuate as rapidly. The condition limits it to 65 Dba, which is the range that humans hear; no analysis of how the low frequency sounds would impact in the near shore. County also overlooked the visibility in nearshore waters; would not be visible from rookery itself, but not from nearshore waters. Affects how they decide whether to haul out.

Also did not analyze in the recreation section the impacts to the seals. All of the conditions would be developed once the vertical accessway is proposed. There will be no interim protections for the seals. People will now be accessing the surf point from Haskell's beach in Goleta, right past the rookery. Will put the rookery in jeopardy.

Chytilo: Peter Howorth has been a consultant for many projects impacting marine mammals. This is the only case in which he has intervened as an appellant because he is so unhappy with the County's effort. His concern is that the rookery may be abandoned. He faults the County's analysis on both the construction-light, noise, dust, vibration, and the occupancy of the ocean estate.

County relied that the house itself would not be visible from the beach. Seals in a vulnerable state in pupping. Mothers could try to give birth in water, would not come on to the beach. The construction period will last years. That is a long time to interfere with the haul out patterns. Condition 20 prohibits construction during pupping season for the vertical access stairway, but Howorth is concerned that the rookery will be abandoned by then because the construction of the residence will have occurred already.

Trails: the trail that goes through this site is the primary access between Haskell's in Goleta and El Capitan. The trail goes through the coastal estate development envelope. It hits the beach approximately 200 feet west of the rookery. Up till now when people would access Naples, they would go up toward the Naples breaks. There is extensive evidence of that trail in particular and the entire site. The 2009 EIR found that to be a Class I impact. Consultant was fired, then made cosmetic changes to the project description. Even the current EIR acknowledges about 200 people per day, including not just surfers, but birders, beachgoers, even bicyle. In 2006 coastal staff gathered declarations; they estimate several hundred

declarations of public use on this property. They would like to ask County staff and coastal staff why those materials were not referenced in the staff reports.

Their basic assessment is that the benefits of the project are illusory. They offer seven possible locations for vertical access, floating easements. All of those accessways are east of the rookery. All involve a significant bluff side structure to carry the stairs over a steep bluff. The least expensive is \$750,000 and exits into Eagle Creek. Trails Council opined at the Board of Supervisors hearing that they did not believe any of them would be built. He volunteered that opinion.

The Tomate West access is in the Gaviota coast plan, and in the golf course approvals the Tomate West alternative was a part. That goes back to the key flaw in the County's analysis, not considering the Naples lots. The Tomate West trail is the right access point, it is the furthest from the rookery and haulout. The County 'mitigated' by closing the public access past the rookery for six months of the year. The 'monitor' program is not feasible and not realistic in that remote location.

He asserts that the Commission needs to take jurisdiction, and consider the whole of the site, and require dedication of an additional alternative at Tomate West now.

The issue of growth inducement of the oversized pipeline. The rationale was for fire flow. He is not aware of any evidence in the record that a 10" line or even close would be required. The Fire Department said that lines below 6" are not even rated. He has not heard anyone say that the reclaimed water line is not adequate for fire fighting. Clearly their purpose is to supply the additional lots. \$4.5 million was paid to the Goleta Water District to make improvements to reclaimed water system elsewhere in western Goleta out past the Bacara. He stated that one could speculate that the S.B. Ranch State Water allotment is not going to support their project.

Folk: Surfrider were not part of the discussion on where they came to the 10 lot number.

In summary, they can live with two house,s but they want the Commission to take jurisdiction to make sure this the best project possible to serve as the model for the Gaviota Coast.

Date: 4/7/2014 Signature of Commissioner

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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA 89 SOUTH CALIFORNIA ST., SUITE 200 VENTURA, CA 93001 (805) 585-1800



Appeal Filed: 2/27/2014 49th Day: 4/17/2014 Staff: A.G. Staff Report: 3/27/14 Hearing Date: 4/10/14



STAFF REPORT: APPEAL

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Approval with Conditions

APPEAL NO.: A-4-STB-14-0010

APPLICANTS: Brooks Street

APPELLANTS: Gaviota Coast Conservancy, Santa Barbara Chapter of the Surfrider

Foundation, Santa Barbara Audubon Society, Peter Howorth, and

Karin Kuyper

PROJECT LOCATION: Gaviota Coast area (approximately one mile west of the City of

Goleta south of U.S. Highway 101), Santa Barbara County

(APNs 079-200-004, 079-200-005 and 079-200-008)

PROJECT DESCRIPTION: Development of: (1) a 5,806 sq. ft., 20 ft. high single-family residence with attached 1,421 sq. ft., 20-ft. high garage/mechanical space, detached 800 sq. ft., 21 ft. high guest house with attached 651 sq. ft., 21 ft. high garage and pool ("Ocean Estate"), (2) a 7,326 sq. ft., 22 ft. high single-family residence with 1,837 sq. ft. basement, detached 800 sq. ft., 22 ft. high guesthouse and pool ("Inland Estate"), (3) an approx. 0.77 mile long shared access driveway, (4) an approx. 24 ft. tall, 215 ft. long, 17.25 ft. wide bridge over the railroad tracks for the access driveway, (5) a 7,500 ft. long 8 to 10-in. potable water line and 4-in. reclaimed water line and 2 private water lines to serve the residences, (6) a 117 acre open space conservation easement, (7) construction of 1,600 ft. long portion of coastal trail, (8) offers to dedicate easements for vertical and lateral public access, (9) contribution of \$500,000 for public access trail implementation and \$20,000 for formation of a Gaviota Seals Watch volunteer group, (10) approx. 23.56 acres of on-site upland and riparian habitat restoration, and (11) approx. 30,170 cu.yds. of grading (16,890 cu.yds. cut and 13,280 cu.yds fill).

MOTION & RESOLUTION: Page 7

SUMMARY OF STAFF RECOMMENDATION: NO SUBSTANTIAL ISSUE EXISTS

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. The **motion** and **resolution** for a "no substantial issue" finding are found on **page 7**.

The appellants contend that the approved project is not consistent with policies and provisions of Santa Barbara County's certified Local Coastal Program (LCP) and Coastal Act policies with regard to: (a) protection of environmentally sensitive habitat area, including White-tailed Kite habitat and the Naples Harbor Seal haul out, (b) protection of public access across and through the site to the beach and Naples surfbreaks, (c) adequacy of driveway access, (d) protection of agricultural resources, (e) protection of visual resources, (f) safety from site contamination/hazards, and (g) the Naples Townsite TDR policy.

The standard of review at this stage of an appeal is whether the County's approvals are consistent with the standards set forth in the certified Local Coastal Program and the public access policies of the Coastal Act (see Page 6 for appeal grounds). The determination is made after a review of the administrative record as a whole.

The 143-acre project site was originally designated for coastal-dependent industrial uses. Oil and gas drilling and production took place on the site from the 1940'to the 1990's. The oil and gas facilities were the subject of County of Santa Barbara permits authorizing their removal; these permits were not appealed to the Commission and removal was completed in January 1998, although some site remediation remains to be completed pursuant to a separate permit.

In 1994, the Commission approved a Coastal Development Permit (CDP) for the Dos Pueblos Golf Links project, heard de novo on appeal from Santa Barbara County, including an 18 hole golf course, 9 hole par 3 golf course, driving range, clubhouse, turf farm and associated infrastructure. The Commission's approval was challenged by the Surfrider Foundation and upheld by the Santa Barbara Superior Court in 1996 and the Court of Appeal in 1997 in an unpublished decision (*Surfrider Foundation v. California Coastal Commission*, 2d Civ. B101510). The golf course project was never built. ARCO sold the property to the current applicant in December 1998. Shortly before the permit was set to expire in 1999, a permit extension request was filed. In 2002, the Commission denied a permit extension request and denied a permit amendment request for the Golf Links project due to changed site circumstances, including identification of wetlands and California Red-legged Frog on the site(s). In 2003, the Commission denied a request for reconsideration. As part of its denial of the permit and the request for reconsideration, the Commission identified alternatives, including a redesigned and reduced golf course project or residential development on the site.

The applicant then challenged the Commission's denial of the CDP, seeking \$55 million in damages alleging, among other causes of action, that a "taking" of its property had occurred. The applicant and the Commission entered into a Standstill and Settlement Agreement in 2005 in order to stay the takings and other claims while allowing the owner to pursue a residential development proposal for the two subject parcels (non-Naples lots) and for up to 10 homes on the applicant's adjacent Naples lots. The agreement gave the applicant the option to pursue the non-Naples lots development either separately from the Naples development, or in combination with that development. The applicant chose to submit a separate application for development of the non-Naples lots (the two subject parcels) to Santa Barbara County. No development of the Naples lots is proposed at this time. The 2005 agreement also reserved any rights the applicant may have regarding the application for the golf course project.

To determine whether a substantial issue exists, the Commission reviews the record of the proceedings in the County and evaluates the degree of factual and legal support for the local government's decision (including whether substantial evidence supports that decision) that the development is consistent or inconsistent with the policies in the LCP and public access policies of the Coastal Act raised by the appellants and has been guided by additional factors including the scope of development, significance of resources affected, precedential value and whether statewide issues are raised (see page 17 for substantial issue factors). An exhaustive review of the record, including the EIR, staff report, staff memos and letters, expert testimony, and site-specific analysis and studies regarding biological resources, visual resources, and hazardous materials, shows that the County supported its findings that the project would be consistent with the policies raised by the appellants.

Regarding the Naples seal haul-out, the County relied on a substantial amount of credible evidence in the record, including scientific data and expert testimony, indicating that potential impacts to seals due to night lighting, construction, and recreational beach users will be avoided and permit conditions were approved which require strict night lighting limitations, construction noise limitations, and other construction-related restrictions including site monitors. Permit conditions were also approved to implement a \$20,000 contribution to form a Gaviota Seals Watch volunteer group to monitor the seal haul out.

Additionally, the County determined that a habitable residential structure setback of 100 feet and driveway setback of 75 feet from the 2013 white-tailed kite nest tree would avoid potential impacts to the habitat area based on site-specific scientific evidence indicating that the permanent preservation of 117 acres and availability of at least 300 potential nesting trees on the project site, combined with white-tailed kite's loyalty to nesting *territories* rather than individual trees, will ensure long-term protection of white-tailed kite nesting habitat. Further, the 23.5 acres of native habitat restoration on the project site will enhance white-tailed kite foraging habitat, as the restoration plan is specifically required by permit conditions to be designed to increase the habitat value for the white-tailed kite's prey base. The foraging habitat restoration, in proximity to potential nesting trees, is further intended to enhance the on-site nesting habitat, as the County found that the adequacy/availability of foraging habitat is of particular importance when kites select nesting locations.

The site has a history of informal use by surfers and others who traverse the site to access the beach and the Naples surfbreaks. The County found that the proposed offers-to-dedicate public access easements for a Coastal Trail along the length of the ocean front parcel (approx. 1 mile), lateral access along the beach, vertical public access, a 20 space parking lot and contribution of a \$500,000 endowment for trail improvements would be consistent with the public access policies of the Coastal Act and LCP. Substantial evidence supports these findings. The County evaluated the potential for temporary impacts to public access prior to formalized trail development and found policy consistency because proposed access would eventually open access to the same beach area in perpetuity for a greater variety of recreational users. The County noted that interim beach access remains available through the informal accessways on the adjacent parcels and by walking upcoast from the public access point at Haskell's beach. Therefore, although public access is a significant resource affected

by the project in the short-term, overall, public access will eventually be greatly enhanced by the project.

The County legally and factually supported its analysis that the project would comply with policies requiring protection of productive agricultural land because the site would not be subject to a land use or zoning conversion to a non-agricultural designation, and the County legally and factually supported its findings that the project is sited and designed to minimize adverse visual impacts as the project would not intrude into ocean views across the site. Further, the County legally and factually supported its findings regarding the adequacy of driveway access to the site from US Highway 101 and that the development is sited to avoid hazards.

As for the additional factors the Commission has considered to determine whether a substantial issue is raised by the appeal, the development is not extensive in scope given the large area of the parcel proposed to be remain undeveloped. The project site is approximately 143 acres with proposed residential development envelopes totaling approximately 4.4 acres and a proposed agricultural development envelope on the Inland lot of 16.3 acres. Additionally, the project is not expected have adverse impacts on significant coastal resources, the project is not likely to serve as a negative precedent for the County's future interpretation of its LCP or the Gaviota Coast Plan given the unique site history, and, although the appeal raises issues of statewide importance, the County's analysis does not present a substantial question regarding policy consistency. Therefore, pursuant to Coastal Act Sections 30603 and 30625, the Commission finds that the appeal does not raise a substantial issue with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP and the public access policies of the Coastal Act.

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I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of Local Coastal Programs (LCPs), a local government's actions on Coastal Development Permit applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean hightide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603[a]). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603[a][4]). Finally, developments which constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603[a][5]).

In this case, the project site is located south of U.S. Highway 101 in the Gaviota area of Santa Barbara County (Exhibit 1). The County's CDP approval is appealable to the Coastal Commission because the site is located in an area between the sea and the first public road.

2. Grounds for Appeal

The grounds for appeal of a local government approval of development shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act (See Public Resources Code Section 30603[b][1]).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the "substantial issue" question. A majority vote of the Commissioners present is required to determine that the Commission will not hear an appeal. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

Pursuant to Section 13117 of the Commission's regulations, the only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised by the appeal.

4. <u>De Novo Permit Hearing</u>

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application de novo. The applicable test for the Commission to consider in a de novo review of the project is whether the entire proposed development is in conformity with the certified Local Coastal Program. Thus, the Commission's review at the de novo hearing is *not* limited to the appealable development as defined in the first paragraph of this Section I. If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On December 4, 2013, the project was heard and approved by the Santa Barbara County Planning Commission (Case Nos. 06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 07CUP-00000-00065, 10CUP-00000-00039, and 10CDP-00000-00094). The Santa Barbara County Planning Commission's approval was appealed by the Gaviota Coast Conservancy, the Santa Barbara Chapter of the Surfrider Foundation, and Santa Barbara Audubon Society. The approval was also appealed by the Santa Barbara Trails Council, but was subsequently withdrawn. The appeal was heard by the Board of Supervisors on February 4, 2014 (Case Nos. 13APL-00000-00027 and 13APL-00000-00028). On February 4, 2014, the Santa Barbara County Board of Supervisors denied the appeal (Case Nos. 13APL-00000-00027 and 13APL-00000-00028), thereby upholding the Santa Barbara County Planning Commission's December 4, 2013 approval of Case Nos. 06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 07CUP-00000-00065, 10CUP-00000-00039, and 10CDP-00000-00094.

The Notice of Final Action for the project was received by Commission staff on February 13, 2014. Notice was provided of the ten working day appeal period, which began on February 14, 2014 and ended on February 28, 2014.

The subject appeals were filed during the appeal period on February 27, 2014 and February 28, 2014. Commission staff notified the County, the applicant, and all interested parties that were listed on the appeal forms and requested that the County provide its administrative record for the permit. The administrative record was received on March 13, 2014.

II. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-4-STB-14-

0010 raises <u>NO</u> substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds **No Substantial Issue**, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-STB-14-0010 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.

III.FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION

Ocean and Inland Estates

The development includes a 5,806 sq. ft., 20 ft. high single-family residence, with an attached 1,421 sq. ft., 20 ft. high garage/mechanical space, a detached 800 sq. ft., 21 ft. high guesthouse with attached 651 sq. ft., 21 ft. high garage, and a pool ("Ocean Estate"). Future structural development and earth disturbance associated with the proposed Ocean Estate would be limited to a 1.9-acre development envelope on the 64 acre parcel ("Ocean lot"). (Exhibits 3-5)

The development also includes a 7,326 sq. ft., 22 ft. high single-family residence with a1,837 sq. ft. basement and garage/mechanical space, a detached 800 sq. ft., 22 ft. high guesthouse and a pool ("Inland Estate"). Future structural development and earth disturbance associated with the proposed Inland Estate would be limited to a 2.5-acre development envelope on the 78 acre parcel ("Inland lot"). The Inland lot would also include designation of a 16.3- acre envelope which would allow agricultural activities such as orchards, row crops, and horse/livestock keeping. Except for fencing and utilities, no buildings, structures or hardscape is permitted within the agricultural envelope. The maximum height of all proposed Inland Estate development is 22 feet, and is designed to be a minimum of 11 feet, 10 inches below the road grade of Highway 101 to maintain the public view horizon and blue water views over the development. (Exhibits 3, 6, and 7)

Total project grading for the residential estates, access road, and driveway bridge over the railroad tracks would include approximately 16,890 cubic yards of cut and approximately 13,280 cubic yards of fill. One blue gum eucalyptus tree would be removed. Landscaping includes native and drought tolerant species including six 36-inch-box size native oaks and 4.7-acres of dwarf and/or semi-dwarf orchard trees. Only organic and biodegradable fertilizers and pesticides/herbicides area permitted for use on-site.

Services and Infrastructure

The Ocean and Inland Estates would be served by a new approx. 0.77 mile long shared access driveway (1.6 acres total). The driveway entrance is located off of U.S. Highway 101 at the east side of the property and the driveway extends west through the property to the Inland Estate. The driveway would then extend from east to west across the north portion of the the Inland parcel, over the UPRR (Union Pacific Railroad) tracks via a new bridge, to the Ocean parcel. (Exhibit 3)

The driveway bridge over the railroad tracks would be 215 ft. long, 17.25 ft. wide and approx. 24 ft. high and would be supported on either side by bridge embankments. Grading for the bridge embankments on the ocean lot would include approximately 110 cy of cut and 9,100 cy of fill, and for the inland lot approximately 75 cy of cut and 3,160 cy of fill. Bridge abutments would be supported on a 3:1 slope on the inland lot and a 2:1 slope on the ocean lot. The bridge will be constructed of weathered steel with wood rail cap and wood decking over a poured concrete deck. The applicant has received design approval and approval of a private easement for the bridge from UPRR.

Water would be obtained from the Goleta Water District. The proposed project would include construction of two private water lines, an 8 to 10 inch potable water line and a 4 inch reclaimed water line, extending from the existing Goleta Water District line to serve the Ocean and Inland Estates. Currently, the Goleta Water District service line terminates off-site near the Bacara Resort. A private water line would be extended through an existing 20 foot easement across the adjacent Gaviota Holdings property (APN 079-200-005) to the project site. The water line would be privately owned and would serve the proposed residential and agricultural development on the ocean and inland lots. The complete water line to serve the Ocean and Inland Estates would be approximately 7,500 feet in length. Sanitary service would be provided through private septic systems as approved by Environmental Health Services. Fire service would be provided by Santa Barbara County Fire.

Public Access Dedications

The project includes several offers to dedicate (OTD) easements for both vertical and lateral public access and recreation facilities (Exhibit 3), as follows:

- 1. A segment of the California Coastal Trail along the length of the ocean lot including a loop trail and lookout points. Portions of the Coastal Trail are defined as "Floating Trail" to allow for the most environmentally preferable initial trail alignment. Approximately 1,600 linear feet of the total length of the California Coastal Trail on-site would be constructed by the property owner;
- 2. Vertical access to the beach from the California Coastal Trail at one of seven potential vertical beach access trail locations:
- 3. An access road from the existing site entry from Highway 101 to a parking lot for up to 20 vehicles (at one of two potential locations);
- 4. Pedestrian access from a parking lot and over the Union Pacific Railroad tracks from the inland lot to the Coastal Trail (at one of two potential alignments); and,
- 5. Access along the length of the property on the beach from the base of the bluffs to the mean high tide line.

A 1,600 lineal ft. portion of California Coastal Trail, proposed to be constructed by the applicant, will be located within a 20 foot easement and will be a multi-use trail consisting of a 6 foot wide decomposed granite path with two foot shoulders and low native vegetation plantings. Construction of this portion of the Coastal Trail will be completed concurrently with the

installation of utility lines and will be fully completed prior to building permit issuance for the first residence constructed.

With the exception of 1,600 feet of Coastal Trail, which is proposed to be constructed by the applicant, the exact location of future trails, parking, vertical beach access and access over the UPRR tracks (including UPRR and Public Utilities Commission easement and design approval) will be determined at a future date by the County of Santa Barbara. The applicant will partner with the County of Santa Barbara to negotiate the approval of the public easement with UPRR and the PUC across the UPRR tracks.

Conservation/Open Space Easement and Habitat Restoration

The project includes a proposed approximately 117 acre Open Space or Conservation Easement extending over both the Ocean and Inland lots from Eagle Canyon to Drainage #5 as depicted on Exhibit 3. Aside from construction allowed under the Open Space/Conservation Easement Management Conditions (Conditions 93, 94, and 95), no development would occur within the easement, in perpetuity. The proposed project includes 23 acres of habitat restoration, implemented by Condition 18, within the easement.

Gaviota Seals Watch

The proposed project includes the deposit of \$20,000 of seed money for the formation of a Gaviota Seals Watch volunteer group. The project applicant is required to deposit the funds with the County of Santa Barbara. Release of the funds is proposed to occur when the first Coastal Development Permit for the proposed project is issued and the Project approval is "final" and no longer subject to administrative or judicial challenge. Condition 1 of the CDP approved by the County implements this funding requirement.

Trails Fund

The proposed project includes contribution of \$500,000 of seed money for the benefit of the Santa Barbara County Trails Council, or similar qualified nonprofit organization or public agency acceptable to the Planning Director, should the Santa Barbara County Trails Council no longer be available to accept and/or utilize the endowment, for the specific purpose of funding implementation (design, permitting, construction and/or maintenance) of the proposed Paradiso del Mare public access easements on the Ocean and Inland parcels (APNs 079-200-004 and 079-200-008). Payment of the public access implementation endowment funds is required when the project approval is no longer subject to administrative or judicial challenge, when all administrative appeal periods have expired without an appeal having been filed; or when all statutes of limitation for judicial challenge to the Project approval have expired without litigation being filed; or, if litigation is filed, when a successful defense in such litigation has resulted in a final judgment upholding the Project approval. Concurrent with issuance of the first building permit for the Paradiso del Mare project, the applicant is required to deposit the \$500,000 public access implementation endowment funds into an interest bearing escrow account, or similar account, to be established and managed by the Santa Barbara County Trails Council, or similar qualified nonprofit organization or public agency acceptable to the Planning Director should the Santa Barbara County Trails Council no longer be available to accept and/or utilize the endowment. Release of funds and any accrued interest from the public access implementation endowment account will occur when County Planning and Development has reviewed and

approved the proposed use of the funds as being consistent with the intent and purpose of this condition. Condition 1 of the CDP implements this funding requirement.

B. LOCATION AND PHYSICAL SETTING

The 143-acre project site is located on a coastal marine terrace immediately east of the Naples area (approximately 1 mile west of the City of Goleta) on the Gaviota Coast of Santa Barbara County. The site is bounded on the north by Highway 101 and along the south by steep coastal bluffs facing the Pacific Ocean. The lands north of Highway 101 are presently open space/agricultural land ascending into the Santa Ynez Mountains of the Los Padres National Forest. Undeveloped open space and grazing lands border the property on the upcoast (west) and downcoast (east) sides.

The historic Naples Townsite is located just to the west of the subject site and contains undeveloped small lots, a portion of which (25 antiquated small lots) is owned by the applicant. (Exhibits 1 and 2) The generally undeveloped parcels located immediately to the east of the subject site are approximately 22 acres and 38 acres in size and are zoned rural residential. The 38 acre adjacent property contains an access road, parking area and pier used by Veneco, Inc. to service offshore oil facilities. The 350-room Bacara Resort is located approximately one mile east of the subject site on an approximately 69 acre oceanfront site.

The Inland lot (APN 079-200-004) is 78 acres in size and the Ocean lot (APN 079-200-008) is 64 acres in size. The two lots are separated by a parcel owned by Union Pacific Railroad (UPRR) and developed with railroad tracks for the length of the property. (Exhibit 2) The two subject lots are zoned for agricultural use (AG-II-100, minimum 100 acre parcel size) allowing one residential development per parcel as a permitted use.

The project site is a coastal marine terrace that contains seven large and intermittent streams, creeks, and drainages which drain from the north to Pacific Ocean to the south. The largest of these drainages are Eagle Canyon along the eastern site boundary and Tomate Canyon along the western side of the site. (Exhibit 3). The smaller drainages are generally shallow over the eastern portion of the site and the drainages grow to deep ravines on the western half of the coastal bluff parcel. The site ranges from 50 to 105 ft. above mean sea level, with a majority of the ocean lot fronted by steep coastal bluffs of 60 to 80 ft. in height.

The most predominant vegetation on the site consists of large expanses of ruderal (non-native) grasslands interspersed with patches of native grasslands and the site also includes significant areas of native riparian vegetation along several of the drainages and particularly Tomate Canyon along the western side of the property and Eagle Canyon bordering the eastern side of the property. Numerous non-native trees, such as cypress, pine, and eucalyptus are concentrated primarily in the southern and eastern portions of the site. White-tailed kite nests have been documented (in 2002 and in 2013) in the non-native trees south of the railroad (described in Section E.1.a, below). Large stands of eucalyptus are located within and adjacent to Eagle Canyon and the UPRR tracks along the eastern portion of the site. Native trees are concentrated primarily within riparian habitats in the drainages and creeks. Eucalyptus groves in or adjacent to Eagle Canyon have served as monarch butterfly aggregation and overwintering sites.

Other habitat on site includes southern tarplant, cliff aster, coastal sage scrub, small isolated wetlands, riparian wetlands and stream corridors, southern willow scrub, and fresh water marsh. Eagle Canyon Creek has been found to contain breeding habitat for the federally threatened California red-legged frog and the federally threatened tidewater goby has been documented in the estuary at the mouth of the creek at Eagle Canyon.

Burmah Beach, fronting the project site below the bluffs, is a known Harbor seal haul out and rookery (described in Section E.1.a, below). Naples Reef, which is considered a unique and sensitive habitat area and a Marine Protected Area, and an important surfing location, is located on the western end of the site.

The site also contains approximately 3.4 miles of deteriorated, formerly paved access roads previously used for oil and gas operations on the property. On the Inland lot, the roads are confined to the eastern portion of the parcel and the Ocean lot contains about a one mile segment of east-west access roads. An existing wooden bridge connects the access roads on the Inland lot to the Ocean lot. This road system provides access to the eastern portion of the site where a trail leads through the riparian corridor at Eagle Canyon to the beach.

Although the site is currently undeveloped, except for the deteriorating roads and a railroad bridge, the site has a long history of development of oil and gas facilities and associated petroleum production and processing. ARCO (The Atlantic Richfield Company) began decommissioning the site in the 1990's through County-issued CDPs for abandonment and removal of oil and gas processing facilities and other structures on the site. The oil and gas facilities included 5 single family homes, 19 other buildings, 23 wells, 2 large tanks and miles of oil and gas pipelines. While many of these structures have been removed, the property is still undergoing site remediation and any new proposed remediation for any remaining soil contamination will need to be approved pursuant to a Remedial Action Plan and associated CDP.

C. PERMIT HISTORY AND BACKGROUND

The project site (formerly owned by Arco Dos Pueblos) was initially given a Coastal Dependent Industry (M-CD) land use and zoning designation in the Santa Barbara County Local Coastal Program (LCP), originally certified in 1982. This designation was based upon the existing oil industrial facilities on the site, and the long-standing use of the site for oil and gas production dating from the mid-1940s. In 1991, the site was rezoned to Agriculture II (AG-II), 100-acre minimum parcel size as part of Major LCP Amendment 3-90 which consolidated oil and gas sites along the Gaviota coast to limit the sprawl of energy facilities. At the time of the rezone, the County considered several possible land use designations, including Recreation (REC) among others. The County did not approve REC because of the wide range of recreational uses allowed under such a designation and the potentially greater impacts. A golf course was a conditionally permitted use under the AG-II zone. The AG-II zone allowed one single family residence and one guest house per parcel.

Arco Dos Pueblos Golf Course Project

On October 25, 1991, ARCO applied to Santa Barbara County for a Conditional Use Permit and Coastal Development Permit to construct two golf courses and appurtenant facilities on the site (which also included the applicant's 25 Naples lots to the west). The project (CUP 91-CP-085) was approved by the County in August 1993 and was appealed to the Commission by Surfrider Foundation.

The Coastal Commission determined that the Surfrider appeal raised a substantial issue with respect to conformity with the County's certified LCP and asserted coastal development permitting jurisdiction over the project (November 17, 1993 hearing). On April 13, 1994 the Commission conducted a *de novo* public hearing on the merits of the appeal and denied the project. The applicant requested a reconsideration of the Commission's action (the first reconsideration of two). On July 3, 1994 the Commission voted to grant reconsideration of the previous denial of the permit. The Commission approved CDP A-STB-93-154 on November 16, 1994, subject to special conditions requiring the consolidation of the antiquated small lots (comprising a portion of the former Naples Townsite) on western end of the site. The CDP also restricted the future redivision of the resultant two large parcels; required the provision of vertical and lateral access easements offered by the applicants; and specifically incorporated all of the County's conditions of approval of the previous CUP into the Commission's permit.

The Commission adopted revised findings reflecting this decision on February 8, 1995. The project approved by the Commission (CDP A-4-STB-154) included construction of a public 18hole golf course (approximately 100 acres) to operate 360 days/year and serve approximately 60,000 rounds of golf (1-4 golfers per round); 9-hole executive golf course (approximately 8 acres) to serve approximately 20,000 rounds per year; driving range and putting green (approximately 12 acres); turf farm (up to 3 acres); approximately 9,300 sq. ft. of clubhouse (restaurant/bar with 130 seats, banquet facilities, pro-shop, meeting rooms, administrative facilities, lockers); 8,012 sq. ft. cart barn; 7,974 sq. ft. maintenance and office building; approximately 15,000 sq. ft. maintenance yard (including wash-off area and fueling island/gasoline tanks, service yard); approximately 5,000 sq. ft. enclosed chemical and trash storage area including 800 sq. ft. chemical storage building; approximately 300 paved parking spaces, including 15 public coastal access parking spaces (clubhouse, cart facilities, parking cover approximately 8 acres, total), 700 sq. ft. accessory building (including snack bar, restrooms, starter station), other restroom facilities and three shelters; two 100 ft. long, 14 ft. high x 14 ft. wide tunnel under-crossings of the railroad tracks (to route golf carts paths through a zigzag course layout, both under-crossings are located within riparian corridors; approximately 310,000 cu. vds. of grading (155,000 cu. vds. of cut; 155,000 cu. vds. of fill, including a maximum elevation change of 25 feet from existing to finished grade, with grading estimated to impact 125 acres); installation of 5,200 linear feet of 8" reclaimed water line from Goleta to site; construction of 4 acre-foot reclaimed water storage lake (8 ft. deep, 30,000 sq. ft. surface area), private on-site septic disposal system reliant on three (3) drywell pits for effluent disposal; dedication, construction, operation and maintenance of various public coastal access improvements; landscaping; installation of acceleration and deceleration lanes in Caltrans rightof-way; merger of all 23 existing lots (including 21 substandard-sized Naples lots) into two parcels totaling 202 acres and applicant's proposal to restrict the resultant parcels from future subdivision; and development setbacks of a minimum of 55 feet from the bluff edge for all permanent, structural developments, and except for public coastal access trails, development

setbacks of a minimum of 30 feet from top-of-bluff seaward edge for all other non-structural development (such as greens, fairways, tee boxes, cart paths, landscaping).

Surfrider Foundation petitioned for a writ of mandate in Santa Barbara County Superior Court challenging the Coastal Commission's approval of the permit. The trial court denied Surfrider Foundation's petition and the Court of Appeal upheld that decision on January 27, 1997. The Court of Appeal found that the Commission's findings and decisions regarding the project (CDP A-4-STB-93-154) were supported by substantial evidence. (*Surfrider v. California Coastal Commission*, Court of Appeal Case No. B101510, unpublished opinion.)

On January 7, 1999 the applicant submitted a time extension request prior to the expiration of CDP A-4-STB-93-154 (set to expire on January 28, 1999). In 1998 ARCO sold the golf course site and CDP A-4-STB-93-154 was transferred from ARCO to the applicant. On June 7, 1999, the Commission denied the request for a CDP time extension in light of new information, confirmed by the U.S. Fish and Wildlife Service, identifying the federally threatened California red-legged frog within Eagle Canyon, which constituted changed circumstances.

Subsequent to the Commission's denial of the time extension request, the applicants submitted a CDP application for a revised project to address the changed circumstances. At the December 11, 2002 Commission hearing, the Commission denied the golf course project (the hearing was to address both changed circumstances (CDP A-4-STB-93-154-CC) and the project amendment (CDP A-4-STB-93-154-A2)). The Commissioned denied the project based on changed circumstances at the site which included identification of the Red-legged Frog, Tidewater Goby, increased population of Monarch Butterflies, increased population size and habitat area of Southern Tarplant, nesting habitat for White-tailed Kite, previously unidentified wetlands, and previously unidentified contaminated soil areas. At the March 5, 2003 Commission hearing, the Commission denied the second request for reconsideration (A-4-STB-93-154-CC-R2). As part of its denial of the permit and the request for reconsideration, the Commission identified alternatives, including a redesigned and reduced golf course project or residential development on the site. In denying reconsideration, the Commission recognized that the two large, non-Naples lots are each entitled to development of at least one residence. (Findings for Denial of Reconsideration, p. 29.)

Standstill and Settlement Agreement

In 2003, the applicant brought an action in Santa Barbara County Superior Court challenging the Commission's denial of the CDP and seeking \$55 million in damages alleging, among other causes of action, that a "taking" of its property had occurred. The applicant and the Commission entered into a Standstill and Settlement Agreement in 2005 in order to stay the legal proceedings while the owner to pursued a residential development proposal. The agreement also reserved any rights the applicant may have regarding the application for the Golf Links project. (Exhibit 11)

The 2005 Standstill and Settlement Agreement recognizes one single family dwelling unit as a permitted use on each of the two lots subject to this appeal, and recognizes the potential for up to

¹ On November 9, 1998 ARCO submitted an application to the Coastal Commission for amendment (-A1) to CDP A-4-STB-93-154 but this was withdrawn and subsequent amendment application was submitted (-A2).

ten single family homes on the Naples lots, subject to environmental constraints. The agreement gives sole discretion to the applicant whether to seek permits and entitlements for the non-Naples lots separately from the Naples lots. The applicant has opted for separate review. However, the agreement reaffirms the Commission's discretion to ensure that the totality of development on the properties (i.e., the Naples and non-Naples lots considered cumulatively) is sited and designed in compliance with the LCP and Coastal Act. Thus, the County's approval of development on the non-Naples lots does not prejudice the ability of the County or the Commission to assure that development of the Naples lots, if and when proposed, complies with the LCP and the Coastal Act.

One provision of the 2005 Settlement Agreement encourages acquisition of the subject lots for open space and resource protection purposes; however, despite repeated efforts on behalf of many of the appellants here, there have been no identifiable potential buyers in this regard. The agreement also requires the Commission staff to coordinate with County staff in good faith to address issues related to development of the site. So, in this context, staff worked with the applicant to ensure that, if there were to be any development on the site, that it be designed so as to minimize impacts to coastal resources to the greatest extent feasible. As a result, a number of alternative siting locations have been considered to locate two residential envelopes on the subject site. The following were eliminated as potential siting alternatives: locating both residential envelopes on the inland lot was considered infeasible due to view impacts from the Highway 101 public view corridor and the extent of identified White-tailed kite foraging habitat; clustering development envelopes on the eastern portion of the property was not feasible due to the extent of ESHA resources associated with Eagle Canyon and view impacts, particularly on the Inland lot; and clustering development near the middle of each parcel was considered infeasible also due to the extent of ESHA resources, including White-tailed kite nesting and foraging habitat, riparian vegetation, and wetlands, and particularly on the Ocean lot, the need to avoid decommissioned oil and gas sites. In addition, although the development potential of the applicant's Naples lots has not been fully evaluated and no development of the Naples lots is currently proposed, an alternative to transfer density from the Naples lots to the subject lots, either through a lot line adjustment or re-division of land, has been found to infeasible due to the known resource constraints on both of the subject lots and the resulting inability of the subject lots to accommodate an increased level of development. Thus, Commission staff is confident that the proposed development locations are the least environmentally damaging locations for the development envelopes and were selected by the County to minimize impacts to coastal resources.

Residential Development Applications for the Paradiso del Mare Project

In 2006, the applicant submitted Coastal Development Permit applications for two single family dwellings with guesthouses and the County deemed the CDP applications complete for filing review in 2007. That project was analyzed under a Draft Environmental Impact Report (EIR) (09EIR-00000-00003) which was published in September 2009 and circulated for public comments. Subsequently, in 2011, in response to public comment, the applicant modified the project design to relocate the development on the lots to the currently proposed locations on the western side of the project site, to add the proposed public access and open space dedications, and to add the 23 acres of proposed habitat restoration. A Revised Draft Environmental Impact

Report was prepared for the revised project. The EIR was released for a 45-day public comment period on September 12, 2012, a public workshop was held on September 20, 2012 by Santa Barbara County, and a public hearing was held on October 18, 2012 to receive comments on the Revised Draft EIR.

The project was brought to the County Planning Commission on March 20, 2013 and, at that hearing, Santa Barbara Planning and Development Department staff was directed to return with additional information for the project regarding issues including hazardous materials and abandoned wells, highway safety, CEQA analysis regarding offsite access locations, water line placement, open space and public access easement issues, issues regarding the seal haul out, rodenticide and pesticide use. The project was scheduled to return to the County Planning Commission on May 1, 2013; however, during seasonal white-tailed kite surveys, the applicant discovered white-tailed kites nesting in a tree within the proposed location for the Ocean Estate development envelope. The County revised and recirculated the Biological Resources Section of the EIR, dated August 2013, for public comment. The project was brought back to the Planning Commission at the hearing on November 20, 2013 for project approval and EIR certification. At a subsequent hearing on December 4, 2013, the project was heard and approved by the Santa Barbara County Planning Commission. The Santa Barbara County Planning Commission's approval was appealed by the Gaviota Coast Conservancy, the Santa Barbara Chapter of the Surfrider Foundation, and Santa Barbara Audubon Society. The approval was also appealed by the Santa Barbara Trails Council, but that appeal was subsequently withdrawn. The appeal was heard by the Board of Supervisors on February 4, 2014. On February 4, 2014, the County of Santa Barbara Board of Supervisors denied the appeal, thereby upholding the Santa Barbara County Planning Commission's December 4, 2013 approval.

The Notice of Final Action for the project was received by Commission staff on February 13, 2014. Notice was provided of the ten working day appeal period, which began on February 14, 2014 and ended on February 28, 2014. The subject appeals were filed during the appeal period on February 27, 2014 and February 28, 2014.

D. APPELLANTS' CONTENTIONS

The County's action was appealed by the Gaviota Coast Conservancy, Santa Barbara Chapter of the Surfrider Foundation, Santa Barbara Audubon Society, and Peter Howorth ("appellants"), represented by the Law Office of Marc Chytilo. The appeal was filed on February 28, 2014, attached as **Exhibit 8**. The appeal asserts that the approved project fails to conform with the following policies of the Santa Barbara County certified Local Coastal Program (LCP) and Coastal Act: (1) LCP Policy 2-11 protecting environmentally sensitive habitat areas, including the Naples Seal Rookery and White-tailed Kite habitat, (2) LCP Policies 9-26 and 9-28 protecting roosting and nesting habitat for White-tailed Kite, (3) Coastal Act Sections 30210, 30211, and 30212 and LCP Policies 7-1, 7-2, and 7-3 protecting public access, (4) LCP Policy 2-6 requiring adequate public or private services including access roads to serve the proposed development, (5) LCP Policy 8-2 and Coastal Act Sections 30241 and 30242 (incorporated into the LCP by Policy 1-1) protecting agriculture, (6) LCP Policy 4-3 and Coastal Act Section 30251 (incorporated into the LCP by Policy 1-1) protecting visual resources, (7) Policy 3-14 regarding siting development to avoid hazardous materials, and (8) LCP Policy 2-13 requiring that the

County discourage development of lots within the Naples Townsite. The appellants also assert there are feasible project alternatives that would conform with the County's LCP and public access policies of the Coastal Act. The appellants' assertions with regard to alternatives are not addressed separately below, as project alternatives are not considered a separate ground for appeal without raising an associated LCP or Coastal Act provision. However, some of the appellant's assertions regarding alternatives have been discussed under the policy issues evaluated below.

An appeal of County's action was also received from Karin Kuyper on February 27, 2014, attached as **Exhibit 9**. Karin Kuyper's appeal did not specifically raise any grounds for appeal relative to the approved project's conformity with policies contained in the certified LCP or the public access policies of the Coastal Act as required by Coastal Act Sections 30603 and 30625. However, the appeal did point to concerns regarding residential development on an agriculturally zoned parcel, biological resources and riparian corridors, visual impacts, cultural resources, water pipeline size and water use, and the size of the residential development. Given the lack of specificity and failure to raise valid grounds with respect to conformity with the LCP, the concerns raised by Karin Kuyper are not discussed separately. However, a response to the concerns are addressed to the extent that the issues overlap with the policy grounds raised in the appeal filed by the Gaviota Coast Conservancy, Santa Barbara Chapter of the Surfrider Foundation, Santa Barbara Audubon Society, and Peter Howorth, discussed in Section E., below.

E. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellants relative to the locally-approved project's conformity to the policies contained in the certified Local Coastal Plan (LCP) or the public access policies of the Coastal Act.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the
 development is consistent or inconsistent with the certified LCP and with the public
 access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, for the reasons discussed below, the Commission determines that the appeal raises **no substantial issue** with regard to the grounds on which the appeal has been filed, as discussed below, including: (a) protection of environmentally sensitive habitat area (LCP Policies 2-11, 9-26, and 9-28 regarding White-tailed Kite habitat and the Naples Seal haul out), (b) protection of public access (Coastal Act Sections 30210, 30211, and 30212 and LCP Policies 7-1, 7-2, and 7-3), (c) adequacy of public and private services and resources (LCP Policy 2-6), (d) protection of agricultural resources (LCP Policy 8-2 and Coastal Act Sections 30241 and 30242), (e) protection of visual resources (LCP Policy 4-3 and Coastal Act Section 30251), (f) hazardous materials (Policy 3-14), and (g) Naples Townsite LCP Policy 2-13.

1. Appeal Grounds Raised by Appellants and Degree of Support for Local Approval

a. Environmentally Sensitive Habitat Area

The appellants assert that the proposed project fails to conform with Coastal Land Use Plan (LUP) policies protecting environmentally sensitive habitat area (ESHA), including the Naples Seal Rookery and White-tailed Kite habitat with regard to the following LCP policies related to protection of biological resources including Policies 2-11, 9-26, and 9-28.

Policy 2-11 states:

All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.

Policy 9-26 states:

There shall be no development including agricultural development, i.e., structures, roads, within the area used for roosting and nesting.

Policy 9-28 states:

Any development around the nesting and roosting area shall be setback sufficiently far as to minimize impacts on the habitat area.

i) Naples Harbor Seal Rookery

The County's LCP identifies harbor seal rookeries and haul out areas as Environmentally Sensitive Habitat Area (ESHA) and designates harbor seal rookeries and haul out areas as part of the ESHA Overlay on the County's Land Use Plan maps. The seal haul out adjacent to the project site is specifically identified in the County's LCP, which states: "[a] pocket beach located approximately .6 kilometers east of Naples Point provides a secluded hauling ground and rookery, utilized during the day and night. Observations indicate as many as 165 harbor seals use these grounds." The seal haul out is located on the beach below the bluff south-southeast of the Ocean lot development envelope, between Tomate Creek and Drainages 4 and 5 (Exhibit 3).

Appellants' Assertions

The appellants assert that the approved project is not regulated to avoid adverse impacts to the Naples seal haul out ESHA as required by Policy 2-11. Specifically, the appellants raise concerns regarding (1) the adequacy of the County's environmental baseline, (2) impacts to seals from night lighting and vehicle headlights, (3) impacts to seals from construction noise and vibration, and (4) human disturbance to seals due to future, permanent re-directed vertical access.

Harbor Seal Rookery Environmental Baseline

The appellants challenge the County's baseline analysis of potential impacts to the seal haul out and contend that "[t]he County's EIR gave very short shrift to impacts on the Naples Seal Rookery; the County's description of the environmental baseline and analysis of impacts associated with the construction and occupation of the Ocean Estate was both untimely and inadequate." (2/28/14 Appeal, p.3) The appellants also assert that the County "ignored extensive technical information collected and offered by Mr. Howorth and others concerning the existing conditions at the rookery and instead relied on extremely outdated, inaccurate and woefully incomplete baseline information." Further, the appellants assert that "[t]he County conducted no analysis of whether the Project complied with the above ESHA policy as applied to the rookery, and only belatedly and summarily addressed how the Ocean Estate might affect the rookery... Due to the substantial flaws and omissions in the County's analysis, it does not support a conclusion that the Project, with mitigation, will avoid adverse impacts on the seal rookery." (2/28/14 Appeal, p. 3)

Night Lighting

Regarding impacts from night lighting, the appellants assert that night lighting and vehicle headlights from the Ocean Estate and railroad bridge will be "visible to and disrupt seals as they are approaching the rookery and deciding whether or not to haul out, constituting a significant adverse impact to the habitat resource." The appellants assert that the County evaluated only whether night lighting would be visible from the rookery itself, on the beach, and that the County "failed to evaluate the visibility of structures within the Ocean Estate development envelope to seals from nearshore waters (which has a great effect on the behavior of seals considering hauling out for pupping, nursing, or resting) and from locations up and down the coast, and undertook no analysis of whether this visibility would adversely impact seal behavior." (2/28/14 Appeal, p. 4) The appeal cites written and oral testimony in the County's administrative record from Peter Howorth, a marine mammal expert, to support the assertion that an analysis from other seal viewing areas in the ocean is warranted. (2/28/14 Appeal, pgs. 4-5) The appeal further states that the project includes no protective measures to avoid impacts to seals associated with the visibility of the Ocean estate. (2/28/14 Appeal, p. 4)

Construction Noise and Vibration

The appellants raise the following concerns regarding the construction noise impact analysis relied on by the County:

- The County "failed to evaluate the audibility of construction noise from any points other than the seal haul out itself and undertook no analysis of whether construction would case adverse impacts to the seals." (2/28/14 Appeal, p.4)
- The County "failed to consider the frequencies detected by harbor seals," and assert that the use of "A-weighting does not take into account the hearing frequency range and sensitivities of marine mammals..." (2/28/14 Appeal, pgs. 5-6)
- "The County undertook no actual analysis of whether introducing construction noise and vibration at this location would cause adverse impacts to seals. Mitigation Measure/Condition Noise 0-2 and Noise 0-4 are standard construction noise mitigation measures to reduce impacts to humans, and the Project includes no mitigation measures at all that address vibration." (2/28/14 Appeal, pgs.6-7)

The appellants point out statements in the EIR, EIR Response to Comment, and Planning Commission hearings where they assert the construction sound information the County relied upon to determine impacts was inaccurate or incomplete, as follows:

- "The dominant construction noise is low frequency (under 1000 hertz [Hz]). Low frequency noise does *not* attenuate rapidly with distance, yet the EIR states that construction noise levels of 95dB will somehow attenuate to 65dB at Bacara Resort, 1440 feet away from the closest construction activity. The EIR states alternatively that noise diminishes by 3dB or 6dB with every doubling of distance but provides no indication of what this distance is (EIR 3.11-15, 17, and 22; also 3.11-10), rendering such statements completely meaningless. Howorth pointed out in his response comments that even sounds of 1000 Hz (higher than construction equipment sounds) will attenuate at only 4dB at 1000 meters (3281 feet)..., thus the EIR statement that lower frequency construction noise will attenuate from 95 to 65 dB in only 1440 feet is literally and completely impossible. Moreover, the Ocean Estate site is only 326 feet from the Naples seal rookery. Howorth pointed out that harbor seals' low frequency hearing threshold is about 70 dB in air and that their hearing frequency range is from 100 Hz to 180,000 kHz, indicating that they certainly could hear the construction noises." (2/28/14 Appeal, pgs.5-6)
- "At the...hearing, one of the Applicant's consultants mentioned that sound levels at the Ocean Estate would be 45 dB and only 35 dB at the rookery, leading County commissioners to believe that that 45 dB level was somehow tied to construction noise. No effort was ever made by the Applicant to measure natural ambient noise at the beach under various conditions, which could easily exceed 45 dB, as proven by noise studies at the nearby Carpinteria seal rookery. In the EIR (Page 3.11-13), the 45 dB level is tied to the ambient noise inside the estate and has nothing whatever to do with construction noise. The EIR does mention that ambient noise levels outside the

dwelling ranged from 53.1 to 68 dB just form traffic on Highway 101 (Page 3.11-11)." (2/28/14 Appeal, p. 6)

- "According to the EIR, construction noise ranges from 75 to 95 dBA for each piece of construction equipment (Pages 3.11-15, 17, and 22). The EIR claims that the total noise level of construction activities will be 95 dBA, yet fails to analyze sound levels generated by multiple types of equipment operation at once. Also, back-up alarms, required on heavy equipment, generate very loud, penetrating sound that can be heard at great distances, yet no mention is made of noise from back up-alarms." (2/28/14 Appeal, p. 6)
- "[S]tatements made in the Response to Comment on the recirculated biological resources section of the EIR disclose that the impact analysis relies primarily on the difference in elevation between the Ocean Estate development envelope and the haulout itself for its conclusion that noise and vibration 'are not expected to affect harbor seal behavior'." (2/28/14 Appeal, p.5)
- "In an attempt to explain that construction during daylight hours and related effects of noise, vibration, and visual disturbance will be less than significant on the seals, the EIR/County analysis contended that the haulout is used primarily at night. In fact, the evidence of the haulout being used primarily at night was based on a single 40-year old study that does not reflect current conditions, which includes daytime haulout use by seals. Numerous harbor seal censuses conducted over many years by the California Department of Fish and Game (now California Department of Fish and Wildlife) and which include the Naples rookery, were never consulted. Mr. Howorth has rescued seals from the Naples rookery many times over the past 38 years. He observed substantial numbers of seals hauled out during the day over this period." (2/28/14 Appeal, p.6)
- "Both in responses to comment and at the Planning Commission, County Staff and the applicant explained that construction noise is similar to train noise, and accordingly that it is unlikely to affect the seals. According to numerous observations by the Carpinteria Seal Watch and Howorth, seals at the Carpinteria rookery, which also lies under a coastal bluff, are still frightened by train sounds. Considering the long duration of the construction activities, Project noise would represent a cumulative impact by itself. Moreover, train noise is transient whereas construction noise is constant in nature. Transient noises are mitigated differently than continuous noises." (2/28/14 Appeal, p.5)

Disturbance from Vertical Public Access and Residents

The appellants also raise issues regarding the potential impacts to the seal haul out from the change in access to the site. According to the appellants, the main route for accessing the beach is currently a trail that crosses the Ocean estate development envelope and drops down to the beach 100-200 feet west of the seal rookery at Tomate Canyon. The proposed project includes an offer to dedicate an easement for vertical beach access at one of seven potential

vertical beach access trail locations from Drainage 5 on the west to Eagle Canyon on the east (Exhibit 3). The appellants assert that because the vertical easement locations are proposed to the downcoast side of the seal rookery and the public would have to walk upcoast through or past the rookery to access the surfing destinations west of the rookery. Additionally, the appellants also assert that "[m]itigation measure Bio-12/Condition 20 does not include meaningful enforcement sufficient to halt existing use of the beach in the vicinity of the rookery, and the public is likely to walk upcoast from Haskell's beach and/or if and when constructed, utilize the Project beach access points even if the beach and/or access way is closed." The appellants also assert that the County "failed to consider impacts to the seal rookery from residents and their animals that could access the beach without restriction." Further, the appellants assert that the County "undertook no analysis of the impacts of facilitating development of up to 10 homes on the applicant's Naples lots" which may impact the seal rookery. (2/28/14 Appeal, p.7)

<u>Degree of Factual and Legal Support for the County's Decision that the Development is Consistent with Policy 2-11</u>

The question is whether a substantial issue exists with respect to the project's conformity with Policy 2-11 regarding seal haul out protection from adverse impacts from the project. The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with Policy 2-11. Policy 2-11 requires development to be "regulated to avoid adverse impacts on habitat resources." Policy 2-11 further states: "Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff."

The approved Ocean lot development envelope will have a minimum setback of approximately 326 horizontal feet and 55 vertical feet from the closest seal haul out point on the beach below. (Exhibit 12) The residential structure for the Ocean Estate will have an approximately 268 ft. bluff setback and is proposed to be located approximately 375 horizontal feet from the seal haul out below. The County approved the permit with conditions to limit night lighting on the site (Conditions 10, 24, and 92), to limit construction machinery noise to 65 dB (Condition 68), to limit construction to the hours of 7 am to 4pm Monday-Friday (Condition 67), and to limit all construction activities to the development envelopes (Condition 66). Additionally, the County approved a project monitoring requirement (Condition 89) which requires a County qualified biologist to monitor construction activities at least twice weekly during the harbor seal pupping/breeding season (February 1 to May 31), to train construction personnel regarding avoidance of disturbance to harbor seals, and to provide monthly reports regarding compliance with protective measures to the County, and also requires notification of construction personnel that they must remain in the construction development envelope to prevent disturbance to seals.

As described above, the appellants the raise concerns regarding (1) the adequacy of the County's environmental baseline, (2) impacts to seals from night lighting and vehicle headlights, (3) impacts to seals from construction noise and vibration, and (4) human disturbance to seals due to re-directed vertical access.

County's Analysis: Harbor Seal Rookery Baseline

The County addressed the issue of the adequacy of the environmental baseline information used to determine potential impacts on the seal haul out in the Board of Supervisors Agenda Letter (responding to the appellants' similar assertions in the local appeal of the project), dated February 4, 2014, as follows:

- "A County-qualified biologist, Mr. John Storrer, assisted in the preparation of the biological resources section of the EIR, helped prepare EIR responses to comment, and responded to questions during the Planning Commission hearings. Mr. Storrer has 37 years of experience with marine mammals, including collection, necropsy, survey, census, and capture and tagging..." (2/4/14 Board Letter, p.10)
- "The discussion of the Naples harbor seal rookery in the DEIR was expanded in the response to comments section of the EIR in consideration of Mr. Howorth's comments on the subject...[t]he text was revised to include a description of regional context, regulatory status, and (most importantly) data collected during a year-long study of the Naples haulout site...This information was used as a basis for the impact analysis and development of mitigation measures. The baseline information, impact analysis, and compensatory mitigation do comply with CEQA guidelines. The expanded analysis was completed largely by Mr. Storrer. In addition, Mr. Storrer provided testimony regarding the baseline conditions at the site during the November 20, 2013 and December 4, 2013 Planning Commission hearings, supplementing the discussion in the EIR." (2/4/14 Board Letter, p.10)

As described by the County above, the County's environmental analysis of the seal rookery was based on information prepared by a qualified biologist with extensive marine mammal experience. Further, baseline information was provided as part of the EIR analysis of the seal haul out and testimony was heard from the appellant, Peter Howorth, as well as the County's biologist, John Storrer, at the Planning Commission hearings on 11/20/13 and 12/4/13.

Further, regarding the appellants' argument that the County conducted no analysis of whether the project complied with Policy 2-11, the appellant is correct that the County's policy findings do not specifically include a written policy consistency analysis of Policy 2-11 as applied to the Naples seal haul out. However, the County did provide a policy consistency analysis of more specific LUP policies that require marine mammal and Naples reef protection, including Policy 9-25, Policy 9-33, and Policy 7-19. Moreover, the County supported its decision with written and testimonial evidence in the record of potential impacts to the seal haul out from the project, and the County included regulatory measures to avoid impacts to the seal haul out in conformance with Policy 2-11, discussed in detail below.

County's Analysis: Night Lighting

The County addressed the issue of potential night lighting impacts on the seal haul out in the Board of Supervisors Agenda Letter (responding to the appellants' similar assertions in the local appeal of the project), dated February 4, 2014, as follows:

• "An exhibit...presented at the November 20, 2013 Planning Commission hearing in response to public comment, clearly demonstrates that the proposed ocean estate development will not be visible from the seal haulout. While the home may be visible from points out in the water, it will be from a long distance (i.e. approximately 1000 feet) and the harbor seals are not particularly averse to lighting or human activity while in the water (Storrer, personal communication, December 23, 2013). They are commonly observed in Santa Barbara Harbor, for example. In addition, harbor seals at the Carpinteria haul-out have increased their use of that site in recent years despite the presence of an industrial pier and parking lot with associated lighting and human activity on the adjacent bluff (Storrer, personal communication)." (2/4/14 Board Letter, p.10)

In this case, the County relied on a graphic depiction showing potential visibility of night lighting from the seal haul out area from beach locations and determined that lighting would not be visible to seals on the beach. (Exhibit 12) The County also considered potential night lighting visibility to seals offshore. The County's biologist, John Storrer, provided information, as stated above, that acknowledged that the home would be visible from points in the water (approximately 1000 feet away) and stated that harbor seals are not particularly averse to lighting or human activity while in the water. Here, although the County did not use site-specific data collected from viewing points in the ocean to determine potential night lighting impacts on seals or seal behavior, as the appellants assert is necessary, the County did base its decision on a determination provided by a County-qualified biologist that night lighting impacts from would not result in adverse impacts. Additionally, the County approved the project with conditions (Conditions 10, 24, and 92) to minimize night lighting at the project site. (Exhibit 10) These special conditions require the applicant to develop a lighting plan requiring that any exterior night lighting installed on the project shall be of low intensity, low glare design, minimum height, and shall be hooded to direct light downward onto the subject lot and prevent spillover lighting; the applicant shall install timers or otherwise ensure lights are dimmed after 10:00 PM.

Specifically, the following lighting plan elements are required by the Conditions 10, 24, and 92 of the approved permits: (1) conserve energy and follow night sky lighting practices, generally conforming to the standards and recommendations of the International Dark-Sky Association (IDA) and the Illuminating Engineering Society of North America (IESNA); (2) through design and installation, and permitted only within the building envelopes, use lamps that are fully shielded such that the lamp image is not directly visible beyond the area of illumination; (3) through design and location within the building envelopes, avoid creating glare, light spillover outside of the building envelopes onto adjacent areas (exterior night lighting only permitted in development envelopes), or upward illumination into the night sky; (4) use low intensity and low glare designs; (5) use motion, light, and time sensors that minimize duration of use (24 hour security lighting shall be avoided); (6) ensure that all light poles, fixtures and hoods are constructed or coated with a non-reflective exterior finish; (7) prohibit uplighting of landscape or structures; (8) minimize location of exterior lighting to that necessary for safety along driveways, roads, and parking areas (the driveway lighting shall be low intensity and indirect with on-demand switching to minimize nighttime light visibility from public viewing places); and (9) all exterior lighting shall be limited to a height of 18" (less any building lighting needed per building code. The Conditions state that the

County will inspect structures upon completion to ensure that exterior lighting fixtures have been installed consistent with their depiction on the final lighting plan.

County's Analysis: Construction Noise and Vibration

Information provided in the record indicates that the County did evaluate potential impacts to seals at the haul out from construction noise and vibration, contrary to appellant's assertions that no analysis was conducted. The County described the information used to evaluate potential construction impacts on the seal haul out in the Board of Supervisors Agenda Letter, dated February 4, 2014 (responding to the appellants' similar assertions in the local appeal of the project), as follows:

- "Construction will occur during daytime hours only and the related effects of noise, vibration and visual disturbance will be less significant on the seals. These issues were addressed through a number of mitigation measures included in the EIR, in the response to comments, and were addressed with extensive staff testimony at the November 20, 2013 and December 4, 2013 Planning Commission hearings." (2/4/14 Board Letter, p.10)
- "A County-qualified biologist, Mr. John Storrer, assisted in the preparation of the biological resources section of the EIR, helped prepare EIR responses to comment, and responded to questions during the Planning Commission hearings. Mr. Storrer has 37 years of experience with marine mammals, including collection, necropsy, survey, census, and capture and tagging..." (2/4/14 Board Letter, pgs.9-10)
- "The discussion of the Naples harbor seal rookery in the DEIR was expanded in the response to comments section of the EIR in consideration of Mr. Howorth's comments on the subject...[t]he text was revised to include a description of regional context, regulatory status, and (most importantly) data collected during a year-long study of the Naples haulout site...This information was used as a basis for the impact analysis and development of mitigation measures. The baseline information, impact analysis, and compensatory mitigation do comply with CEQA guidelines. The expanded analysis was completed largely by Mr. Storrer. In addition, Mr. Storrer provided testimony regarding the baseline conditions at the site during the November 20, 2013 and December 4, 2013 Planning Commission hearings, supplementing the discussion in the EIR." (2/4/14 Board Letter, p.10)

As noted above, the County considered of several sources of information in the record regarding potential construction impacts, including the August 2013 Updated EIR (Biological Resources Section 3.4), the County's Response to Comments on the August 2013 Updated EIR regarding Biological Resources Section 3.4, information provided by the County's consulting biologist, John Storrer, and a construction noise analysis provided by the project applicant.

The County determined that impacts to seals from construction noise and vibration would not be adverse based on sound modeling estimates showing that construction sound is expected to be attenuated due to 326 ft. development envelope setback and 55 ft. high bluff between the development envelope and seal haul out. The County also relied on information in the

record indicating that the haul out is used mainly as a nocturnal haul out. Nevertheless, even if seals are present during the day, the County required several special conditions on the project, including: a condition limiting construction machinery noise at the project site to 65 dB (Condition 68), limiting construction to daytime hours from 7 am to 4 pm M-F (Condition 67), limiting all construction activities to the development envelopes (Condition 66) and requiring a County qualified biologist to monitor construction activities at least twice weekly during the harbor seal pupping/breeding season (e.g., February 1 to May 31), to train construction personnel, and to provide monthly compliance reports to the County, and notifying construction personnel that they are required to remain in the construction development envelope to prevent disturbance to seals (Condition 89).

The underlying data regarding the number and daytime/nighttime seal haul out use, as described in the August 2013 Updated EIR Biological Resources Section, includes information obtained from the 1993 ARCO Dos Pueblos Golf Links EIR (Santa Barbara County 92-EIR-16), information from seal counts at Naples conducted by the California Department of Fish and Wildlife from 1982-1995 (Fluharty 1999), a study of the Naples haul out conducted from 1975-1976 (Sadler 1976), and seal count information documented at the site by John Storrer. (August 2013 Updated EIR, Section 3.4, pages 3.4-64 to 3.4-67).

Nevertheless, although evidence shows predominately night time haul out patterns, the record indicates that the County has considered the potential for the haul out patterns to fluctuate, and has found that, even if seals are present during the day, construction noise would not be above ambient levels at the haul out site. The County relied on memorandum evaluating noise levels at the project site, prepared by the applicant, dated October 4, 2013, in response to the County of Santa Barbara Planning Commission inquiries and Peter Howorth's comments regarding potential disturbances to the seal haul out (Exhibit 13 & 14). The memorandum includes an analysis of potential impacts to the Naples seal haul out from construction noise, vibration, lighting, and human disturbance and referenced various scientific studies about disturbance to harbor seals. This memorandum also included the results from a model ("Distance Attenuation and Barrier Performance Evaluation") to estimate construction noise at the project site based on the distance of the construction site from the seal haul out from the proposed construction equipment use. According to the calculation, the average noise level from construction within the staging area (the closest distance to the seal haul-out) was determined to be 37 dBA and that this would not cause an increase to the existing ambient (CNEL) noise level within the seal haul-out area. (Exhibit 14)

The County approved several permit conditions (Exhibit 10) to limit construction impacts to the seal rookery, including limiting construction machinery noise to 65 dB through acoustic shielding (Condition 68), limiting construction to the hours of 7 am to 4pm Monday-Friday (Condition 67), and limiting all construction activities to the development envelopes (Condition 66). Additionally, the County approved a project monitoring requirement (Condition 89) which requires a County qualified biologist to monitor construction activities at least twice weekly during the harbor seal pupping/breeding season (e.g., February 1 to May 31), to train construction personnel regarding avoidance of disturbance to harbor seals, and to provide monthly reports regarding compliance with protective measures to the County, and also requires notification of construction personnel that they must remain in the construction development

envelope to prevent disturbance to seals. The County Planning and Development Department staff will monitor the condition compliance reports throughout construction.

County's Analysis: Disturbance from Vertical Public Access and Residents

The County addressed the issue of potential impacts on the seal haul out from public access in the Board of Supervisors Agenda Letter (responding to the appellants' similar assertions in the local appeal of the project), dated February 4, 2014, as follows:

"Testimony from the public, including members of Santa Barbara Surfrider and local trails groups has indicated that the existing unauthorized trail on-site that connects to the beach at the approximate center of the seal haul-out area may be used by up to 100 individuals per day. Currently, there is no monitoring program, no posted signage, and no other restrictions in place to protect seals from human disturbance during the pupping/breeding season. However, following implementation of the proposed project, mitigation measures MM-BIO-12 and MM-BIO-13 (conditions 20 and 21) require that access to the beach be closed 300 yards in each direction of the harbor seal haulout during the harbor seal pupping/breeding season, posting of informational signage, and restriction of development of future vertical beach access to the eastern portion of the ocean lot. In addition, the proposed project includes the deposit of \$20,000 of seed money by the applicant for the formation of the Gaviota Seals Watch volunteer group. This group is intended to operate in a manner similar to the Carpinteria Seals Watch, which monitors the Carpinteria haulout during the pupping/breeding season. Please also refer to pages 7-10 of the December 4, 2013 Planning Commission hearing transcript...for a further discussion of protections afforded to seals." (2/4/14 Board Letter, p.11)

Therefore, according to the County, public recreation from vertical access points is regulated to avoid adverse to impact seals because vertical beach access will be moved to the east, away from the existing beach access point currently adjacent to the seal haul out, access will be restricted during the seal pupping and breeding season, and the seal haul out will be monitored.

The permit conditions approved by the County related to access restrictions and monitoring for the seal haul out include Conditions 20, 21, and Condition 1. (Exhibit 10) Condition 20 (Seal Haul Out Protection) requires the County or other public agency or non-government organization constructing, operating, or maintaining the vertical coastal access point to prepare and implement a harbor seal protection/restricted access implementation plan, including closure during the harbor seal pupping/breeding season (e.g., February 1 to May 31). Condition 21 (Public Information) requires posting of any access restrictions, including prohibiting off-leash pets and harbor seal rookery seasonal restrictions, and Condition 1 (Seal Watch) includes the deposit of \$20,000 of seed money for the formation of a Gaviota Seals Watch volunteer group intended to monitor the haul out during pupping and breeding season.

However, Commission staff notes that any future vertical access improvements will require a Coastal Development Permit, either from the County, the Coastal Commission (if the location of the stairway lies within the Coastal Commission's retained jurisdiction), or both.

Therefore, potential impacts to the seal haul out will be further addressed through the Coastal Development Permit and associated special conditions for construction of the public access components of the project. The conditions approved by the County restricting or regulating access cannot be implemented without a CDP for the access improvements, which is subject to review and/or appeal by the Coastal Commission.

Thus, to conclude, the record shows that the County relied on substantial evidence to support its decision that the development would be regulated to avoid adverse impacts to the Naples seal haul out in compliance with Policy 2-11. The County's baseline environmental analysis of the seal haul out was based on information prepared by a qualified biologist with extensive marine mammal experience, information provided as part of the EIR analysis and testimony was heard from the appellant, Peter Howorth, as well as the County's biologist, John Storrer, at the Planning Commission hearings on 11/20/13 and 12/4/13. Regarding potential night lighting impact so seals, the County based its decision on a simulated graphic depiction showing potential visibility of night lighting from the seal haul out area from beach locations and also on information provided by the County's consulting biologist, John Storrer that lighting as viewed from offshore is not expected to impact seal behavior. Further, the County required strict night lighting permit conditions (Conditions 10, 24, and 92) to limit lighting from the property. Regarding construction impacts, the County's relied on evidence in the EIR, on a noise impact analysis, on studies showing that the haul out is used mainly at night, and on information provided by the County's consulting biologist, John Storrer. The County has regulated the project to further avoid impacts by requiring conditions of approval to limit construction noise at the project site and provide monitoring. Lastly, the County provided evidence to support its decision that is regulated to avoid adverse to impact seals because vertical beach access will be moved to the east, away from the existing beach access point currently adjacent to the seal haul out, access will be restricted during the seal pupping and breeding season, and the seal haul out will be monitored. Thus, the analysis and mitigation contained in the record shows that the County has ample substantial evidence to support its claim for compliance with Policy 2-11.

ii) White-tailed Kite

The County's LCP identifies white-tailed kite habitat as areas as Environmentally Sensitive Habitat Area (ESHA). (LCP Section 3.9.4) Surveys of the project site for nesting white-tailed kites have been conducted since 1991 when the site was evaluated for the Arco Dos Pueblos Golf Links Project and surveys of the project site by the applicant's biologists have been conducted on a yearly or twice yearly basis since 2004. More recently, the project site was surveyed for nesting white-tailed kites seven times between March 13, 2013 and June 13, 2013. Two pairs of white-tailed kites displayed breeding behavior on the project site during the survey period in 2013. One pair abandoned a nest constructed in a Monterey Cypress tree along the bluff near the mouth of Eagle Creek. A second pair nested in a Monterey pine tree located within the Ocean lot development envelope and successfully fledged 6 juveniles. As a result of the identified successful nest, the County updated and recirculated the biological resources section of the EIR for the project. The only other successful nest that was document on the site occurred in 2002 according to the EIR. The

only tree proposed for removal is one non-native eucalyptus tree that has not been identified as a white-tailed kite roosting and nesting or perch tree.

Appellant's Assertions: White-tailed kite

The appellants assert that the "Ocean Estate is squarely within the area used for white-tailed kite nesting in clear violation of ... CLUP Policy 9-26." The appellants quote a letter prepared by the County's biologist, John Storrer, dated 7/22/13, which states that "'the area used for roosting and nesting' constitutes more than the tree itself, extending to the area defended from other kites or raptor species or even foraging habitat" and that this conclusion is supported by kite expert Mark Holmgren and by the Santa Barbara Audubon Society. (2/28/14 Appeal, p.9)

The appellants also assert that "the proposed 75-100 ft. buffer between the tree that supported an extraordinary 6-fledgling kite nest and the Ocean Estate development is not sufficient to achieve consistency with these policies, and is not sufficient to reduce impacts below significance." (2/28/14 Appeal, p.9) The appellants again refer to the 7/22/12 letter prepared by John Storrer to support their assertion that the proposed buffer is inadequate. (2/28/14 Appeal, p.9) Further, the appellants assert that "the Dudek reports and the RDEIR rely on the assumption that kites do not reuse nest trees to justify a finding of no significant impact" and that, according to Mark Holmgren, "a successful nest area is very likely to be one used again." (2/28/14 Appeal, p.10) Therefore, the appellants state that a much larger buffer would be required before the County could conclude that the project complies with Policies 9-26 and 9-28 by "avoiding development in the nesting and roosting area entirely and minimizing impacts to the surrounding habitat area that supported this extraordinarily successful nest site." (2/28/14 Appeal, p.10)

The appellants provided a letter, prepared by Santa Barbara Audubon Society Inc. (an appellant in this case), dated October 28, 2013 (Comments on Recirculated draft EIR for Paradiso del Mare) to support the assertions cited in the appeal. (Exhibit 16) It is noted that the County evaluated information in the letter and the County's consulting biologist, John Storrer, responded to the Audubon letter in the County's Response to Comments on the 2013 Updated EIR Biological Resources Section 3.4, Response C-3. (Exhibit 17)

<u>Degree of Factual and Legal Support for the County's Decision that Development is Consistent</u> with LCP Policies 2-11, 9-26 and 9-28

The question is whether a substantial issue exists with respect to the project's conformity with LCP Policies regarding protection of white-tailed kite habitat. The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with Policies 2-11, 9-26, and 9-28. Policy 2-11 requires development to be "regulated to avoid adverse impacts on habitat resources." Policy 2-11 further states: "Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff." Policy 9-26 states that "[t]here shall be no development including agricultural development, i.e., structures, roads, within the area used

for roosting and nesting." Policy 9-28 requires "[a]ny development around the nesting and roosting area to be set back sufficiently far as to minimize impacts to the habitat area."

The County approved the Ocean Estate development with a condition (Condition 16) requiring all structural development (the residence) to be located a minimum of 100 feet away from the canopy of the successful nest tree and requiring the driveway to be located a minimum of 75 feet from the canopy of the nest tree. The County has also included conditions requiring pre-construction bird surveys (Condition 14), protective measures and possible work delays in the event a nest is found (Condition 17), a 23.56 acre restoration plan which includes specific parameters to provide for white-tailed kite foraging habitat (Condition 18), and a 117 acre conservation easement (Conditions 93 and 94). (Exhibit 10)

County's Analysis: White-tailed kite habitat

The County addressed the issue of the project's conformance with Policies 9-26 and 9-28 specifically in the March 20, 2013 Planning Commission Staff Report and in the November 12, 2013 Memo to the Planning Commission. The County also addressed these policies in the Board of Supervisors Agenda Letter (responding to the appellants' same assertions in the local appeal of the project), dated February 4, 2014, as follows:

- "The July 22, 2013 letter was written as a preliminary letter prior to the completion of all research and analysis for the EIR. The conclusions included in the EIR represent the final conclusions of Mr. Storrer. Discussions regarding potential project-related impacts to kite nesting should begin by taking into account site context and the project as a whole. Specifically, the following factors should be considered: [o]n the subject property, kites have not nested in the same tree from year to year; [k]ites, as a species, demonstrate a weak tendency toward nest site fidelity (i.e. kites do not typically return to nest in the same tree from year to year). This is particularly true in areas where there are multiple suitable nest trees, such as the subject property (which contains over 300 potentially suitable nest trees). Therefore, kites are not expected to return to the nest tree utilized in spring of 2013; and [t]he adequacy/availability of foraging habitat is of particular importance when kites select nesting locations. The proposed project includes over 117 acres of open space that would be managed with the primary goal of sustaining breeding and foraging habitat for the white-tailed kites." (2/4/14 Board Letter, p.7)
- "...Coastal Plan Policy 9-28 does require that development be set back from nesting and roosting areas. Specifically, Coastal Plan Policy 9-28 states, 'Any development around the nesting and roosting area shall be set back sufficiently far as to minimize impacts on the habitat area.' Therefore, although kites would not be expected to return to previously used nest trees, establishment of a buffer from the 2013 nest tree has been required by the County. While kites are known to nest in proximity to occupied dwellings (i.e. within 50-100 feet), setbacks of 75 feet for the driveway and 100 feet for the residence were determined to be the minimum reasonable setbacks by the County's biologist, John Storrer. The minimum setback was based upon consideration of white-tailed kite nesting activities and the project as a whole... In a

letter dated December 23, 2013 Mr. Storrer states, with regard to Coastal Plan Policy 9-28, 'Assuming that the intent of the policy is to ensure long-term utilization of the site for nesting by white-tailed kites, then I would argue that preservation and management of a large, contiguous tract of land specifically for that purpose is more essential and constitutes better mitigation than preservation of a single tree that has been used for nesting on one occasion.' (2/4/14 Board Letter, p.7)

- "As mitigated, the development (including agricultural areas and driveways) would be reduced and/or reconfigured to avoid the nest tree and surrounding trees. In addition, as mitigated, all structures would be located a minimum of 100 feet away from the canopy of the nest tree and the driveway would be located a minimum of 75 feet from the nest tree, consistent with minimum setback recommendations from the County's consulting biologist, John Storrer." (2/4/14 Board Letter, p.19)
- "These setbacks are adequate given the following considerations: kites do not typically nest in the same tree from year to year (nor have they done so on the subject property); there are approximately 300 other trees on-site that could be utilized as potential nest sites existing on the lots; MM-BIO-10 (condition 18) would improve foraging habitat for kites (essential to reproductive success) and would establish new trees that could be used for future nesting in closer proximity to foraging habitat; and, kites have exhibited tolerance to regular human activity as seen at UCSB (100 feet to Harder Stadium Facilities) and as close as 50-100 feet to residential structures and public trails (Isla Vista and More Mesa). As discussed...the intent of Coastal Plan Policy 9-28 is to ensure long term utilization of the site for nesting by white-tailed kites and the availability of foraging habitat is key to nesting success. The proposed project would include the preservation and management of a large contiguous tract of land for this purpose and would preserve both previously used nest trees and approximately 300 potential future nest trees. Therefore, the proposed project would minimize impacts on the habitat area." (2/4/14 Board Letter, p.19)

Thus, the appellants raise issues regarding the County's interpretation and application of LCP policies 9-28 and 9-28. The appellants raise issues regarding the definition/meaning of "area used for roosting and nesting," and raise issues regarding the adequacy of the 75-100 ft. setbacks from the 2013 white-tailed kite nesting tree.

County's Policy Interpretation

The terms "area used for roosting and nesting," "nesting and roosting area," and "habitat area," as referenced in the above policies are not defined in the County's LCP. Further, Policy 9-26 and Policy 9-28 do not provide numerical setback requirements for the "area used for roosting and nesting" by white-tailed kites. According to the EIR, "nesting area' [can] be defined in several ways, but fundamentally, it would include the nest tree and a surrounding area sufficient to prevent disruption of breeding behavior." (2013 Revised EIR, p.3.4-106) The County further interpreted the terms "nesting area" and kite "habitat area," as referred to in Policy 9-26 and 9-28, as areas that "may be defined in multiple ways, including just the nest tree itself, or the nest tree and the area used for foraging habitat in proximity to

the nest tree." (2/4/14 Board Letter, p. 8) According to the County, "consideration of all foraging habitat in proximity to the project site and nest tree would expand the 'nesting/habitat area' to an area encompassing four or five parcels and up to 400 acres on and adjacent to the project site where foraging is known to occur" and that this interpretation is "clearly not the intent of the required set back discussed in Coastal Plan Policy 9-28." (2/4/14 Board Letter, p. 8)

Therefore, the County has not provided a static definition of the "area used for roosting and nesting" in its application of Policy 9-26 and Policy 9-28, given that Policy 9-28 requires setbacks to "minimize impacts on the habitat area" and not solely the "nesting and roosting area." The County has read Policies 9-26 and 9-28 together and has focused the policy analysis on appropriate setbacks to avoid and minimize habitat impacts "to ensure long-term utilization of the site for nesting by white-tailed kites." (2/4/14 Board Letter, p.8) When polices 9-26 and 9-28 are read in combination with Policy 2-11, which requires development to be "regulated to avoid adverse impacts on habitat resources" through implementation of "regulatory measures [that] include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation..," the County's policy application is reasonable and supported by substantial evidence.

County's Setback Analysis

The County found that a driveway setback of 75 feet from the 2013 white-tailed kite nest tree canopy and a structural setback of 100 feet from the 2013 nest tree canopy would be sufficient to minimize impacts on the habitat area given the site context and the project as a whole. The setback determination was based on factors including: (1) white-tailed kites, as a species, demonstrate a weak tendency toward nest fidelity and they have not been documented to use the same nest tree on the subject property, (2) kites have exhibited tolerance to regular human activity as seen at UCSB (100 feet to Harder Stadium Facilities) and as close as 50-100 feet to residential structures and public trails (Isla Vista and More Mesa), and (3) approximately 300 other trees on-site are available as potential nest sites, a 117 acre open space conservation easement will preserve these trees, and the 23.56 acre restoration plan will enhance foraging habitat for the white-tailed kite.

The County's factual support for the setback determination is found in the County's record, including the August 2013 Updated EIR Biological Resources Section 3.4, the Response to Comments on the August 2013 Updated EIR Biological Resources Section 3.4, and the 2/4/14 Board Letter, which includes information provided by the County's consulting biologist, John Storrer. The County also relied on several underlying sources of information referenced in the record, including scientific studies and data regarding white-tailed kite behavior summarized in a report prepared by Dudek, dated August 16, 2013. (Exhibit 15)

Nest Fidelity

The County based its policy consistency analysis and setback determination, in part, on data indicating that white-tailed kites typically do not have nest fidelity from year to year and kites have not been documented to use the same nest tree on the subject property based on

the results of at least 10 years of site specific survey data. (2013 EIR, p. 3.4-53) According to the EIR, white-tailed kites tend to be loyal to nesting territories, rather than to specific nest trees and they select nest sites that are proximate to good foraging habitat. (2013 EIR, p.3.4-108) The EIR states that "[w]hile it is possible that kites could use a nesting platform from a previous year, it is more likely they would construct a new nest in another tree." (2013 EIR, p.3.4-108) The EIR cited a long-term study of white-tailed kites in Coastal Santa Barbara County in the late 1960's and early 1970's (Waian 1973) which "observed no instance in which kites used a nest structure more than once." (2013 EIR, p.3.4-108)

Additionally, the County considered multiple published scientific studies, surveys, and monitoring data regarding white-tailed kite nesting behavior within Southern California, the Santa Barbara region, and on the project site, summarized in a report prepared by Dudek, which have documented low evidence of nesting site reuse. (Exhibit 15- 8/16/13 Dudek 2013 Nest Survey Results, pgs.8-11) Additionally, according to a November 15, 2013 letter to the Planning Commission prepared by Dudek, based on data compiled in a 2009 survey of 158 white-tailed kite nests, only five trees (or 3%) were reused. (Exhibit 15- 11/15/13 Dudek letter, citing Holmgren 2009) Thus, although appellants assert that "the assumption that kites will not reuse the same nest tree is false" and a "successful nest tree is very likely to be one used again" (2/28/14 Appeal, p.10), data gathered on the subject site and regionally shows that the potential for nest re-use is low. Nevertheless, the County has acknowledged that the nest tree could potentially be used again and has applied setbacks to minimize impacts on the habitat area, described below.

Tolerance to Human Disturbance

The County also based its setback determination, in part, on data indicating that white-tailed kites exhibit tolerance to human activities given the presence of suitable nesting trees and nearby foraging habitat. According to the EIR, "the intent of a development setback is to avoid disturbance to nesting birds that might result from noise, lighting, pets and other sources of disturbance associated with human activity" and "the adequacy of a development setback depends on several factors, including the tolerance of a species to human activity and the context of the nest site (e.g. solitary tree or copse of trees)." (2014 Revised EIR, p.3.4-107)

The County considered several sources of documented evidence of white-tailed kites nesting in trees adjacent to structural development and human activity in the Santa Barbara area presented in reports prepared by Dudek and referenced in the EIR. (Exhibit 15- 8/16/13 Dudek 2013 Nest Survey Results, pgs.9-10) The Dudek report indicates that kites will nest near development as long as open space is available nearby for foraging and referenced a successful nest located in Isla Vista that was located in a tree 70 ft. from adjacent structures and 300 ft. from open space (citing Rincon 2010). (Exhibit 15- 8/16/13 Dudek 2013 Nest Survey Results, p. 10) The Dudek report also noted that white-tailed kite nests were documented in eucalyptus trees at the northern end of Harder Stadium at U.C. Santa Barbara in 1999, 2001, 2003, and 2009, noting that foraging habitat was located within 700 ft. of those nests at Goleta Slough and Storke Wetland (citing Holmgren 2009 and Rincon 2010). (Exhibit 15- 8/16/13 Dudek 2013 Nest Survey Results, p. 10) Further evidence was provided

of a white-tailed kite nest site 100 ft. from Mesa Rd. and 150 ft. from office buildings in the Goleta Slough. (Exhibit 15- 8/16/13 Dudek 2013 Nest Survey Results, p. 10). The County's consulting biologist, John Storrer, found that white-tailed kite behavioral response to human presence is highly variable, but, in general, kites are relatively tolerant of human activity. (Exhibit 17).

Conservation and Restoration of Nesting and Foraging Habitat

The County also based its setback determination on the following factors regarding availability of foraging nesting and foraging habitat: approximately 300 other suitable nest trees on the subject property are available as potential nest sites, a 117 acre open space conservation easement will preserve the existing nesting trees, and the 23.56 acre restoration plan (Condition 18) will enhance foraging habitat for the white-tailed kite. (2/4/14 Board Letter, p.19 and 12/23/13 Storrer Letter)

The County relied on information cited in the EIR indicating that an abundance of nesting habitat is present on the site, including 300 or more suitable nest trees, which are located mostly on the Ocean Lot, east of the proposed Ocean Estate residential development envelope, between Drainage 1 and Drainage 5. This area contains the densest clusters of suitable trees and has been documented as the most intensely used area for white-tailed kite nesting and perching and supported the 2002 documented nest. (Exhibit 18). This area is included within the 117-acre Open Space or Conservation Easement that will extend over both the ocean and inland lots from Eagle Canyon on the east to the edge of the property on the west, where no development will occur in perpetuity other than proposed development envelope and driveway, utilities, and public access trails. (Exhibit 3)

According to the Revised Biological Resources Section of the 2013 EIR for the project, systematic surveys for white-tailed kites, consisting of multiple visits with methodology designed to detect breeding and foraging behavior, were conducted onsite in 2002, 2004-2007, 2011, and 2013. (2013 EIR, p.3.4-53). These surveys indicate that the site has been used for foraging on a year-round basis in most, if not all years and that kites seemed to prefer native and non-native grasslands and open scrub-grasslands on the subject property for foraging. (2013 EIR, p.3.4-53). An apparent decline in kite use of the site has been occurring over the past decade, according to the EIR, reflected by changes in land management (discontinued mowing) and the spread of highly invasive black mustard which hinder the foraging ability of white-tailed kites by obscuring the ability of individuals to spot prey. (2013 EIR, p.3.4-57). The County found that foraging habitat, which is essential to reproduction success, would be enhanced through implementation of a restoration plan designed to increase the hunting habitat value for the primary prey, the California vole.

The County required permit conditions 18, 93, 94, and 95 to implement the restoration plan and conservation easement. Condition 18 specifically requires the 23.5 acre restoration area to be managed for long-term maintenance in a manner that sustains high to moderate kite foraging habitat and requires the restoration of: 4.56 acres of California sagebrush scrub, 0.11 acre of arroyo willow thicket, and 5.92 acres of purple needlegrass grassland, and also requires that 5.88 acres of the currently proposed 12.97-acre exotics-free buffer zone shall be

seeded with native grasses that would provide 1:1 replacement of high quality white-tailed kite foraging habitat. Condition 18 further requires six 36-inch box coast live oak trees and twenty 1-gallon coast live oak saplings to be planted in a location proximate to suitable foraging habitat as future potential nest trees. The trees are required to be arranged so as to provide maximum cover or canopy area to enhance nesting potential for white-tailed kites. Condition 18 also specifically requires that the proposed 117-acre conservation easement area to be managed for the life of the project in order to prevent the spread of invasive black mustard and to prevent the transition of the existing mosaic of herbaceous plants to shrubby areas opaque to kites and improve habitat value for native rodents, including the California vole. (Exhibit 10)

Therefore, in conclusion, the record shows that the County relied on substantial evidence to support its decision that the development is consistent with Policies 9-26, 9-28, and 2-11 regarding white-tailed kite habitat protection. The County provided the underlying factual data to support its determination that a 75 ft. driveway setback and 100 ft. structural setback from the 2013 white-tailed kite nesting tree canopy would be appropriate to minimize impacts to the habitat area.

b. Public Access

The subject site and properties to the west are fronted by Burmah Beach and the Naples surfbreaks. At low tides, beach users can access the beach and surfbreaks by walking west along the beach from Haskell's Beach public access point located approximately 0.75 miles east of the subject site. Surfers and other recreational users have accessed the beach and the Naples surfbreaks through the subject site since the 1960's. To access the site, beach users park on Calle Real across U.S. Highway 101 north of the project site, cross over the highway, and then access the coast via a network of informal trails that cross the subject site. Vertical access to the beach is primarily obtained on the project site via a trail extending through the location of the proposed Ocean Estate development envelope and down the bluff face in multiple locations, including between Tomate Canyon and Drainage 5. (Exhibit 3) The informal trails that cross the subject parcels are also used by the public to obtain off-site vertical access to the beach. Off-site vertical access includes access to the beach via the Naples property just to the west of Tomate Canyon and access to the beach on the eastern side of the site through Eagle Canyon. (2013 EIR, p.3.13-4)

The appellants assert that a substantial issue exists with respect to the project's conformity with following public access policies of the Coastal Act and LCP:

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational 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.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) states:

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.
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected.

Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

LCP Policy 7-1 states:

The County shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline. At a minimum, County actions shall include:

- a. Initiating legal action to acquire easements to beaches and access corridors for which prescriptive rights exist consistent with the availability of staff and funds.
- b. Accepting offers of dedication which will increase opportunities for public access and recreation consistent with the County's ability to assume liability and maintenance costs.
- c. Actively seeking other public or private agencies to accept offers of dedications, having them assume liability and maintenance responsibilities, and allowing such agencies to initiate legal action to pursue beach access.

LCP Policy 7-2 states:

For all development between the first public road and the ocean granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:

- a. Another more suitable public access corridor is available or proposed by the land use plan within a reasonable distance of the site measured along the shoreline, or
- b. Access at the site would result in unmitigable adverse impacts on areas designated as "Habitat Areas" by the land use plan, or
- c. Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or
- d. The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner. In no case, however, shall development interfere with the public's right of access to the sea where acquired through use unless an equivalent access to the same beach area is guaranteed.

The County may also require the applicant to improve the access corridor and provide bike racks, signs, parking, etc.

LCP Policy 7-3 states:

For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where bluffs are less than five feet, the area to be dedicated shall be determined by the County, based on findings reflecting historic use, existing and future public recreational needs, and coastal resource protection. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access shall be removed as a condition of development approval.

Appellants' Assertions:

According to the appellants, the project site includes the most heavily used vertical beach access point between Haskell's beach to the east (downcoast) in Goleta and Refugio State Beach to the west (upcoast). The appellants state: "[t]he Naples surfbreaks including Naples Reef and Naples Beach were first documented in the 'Surfing Guide to Southern California' in the early 1960's, and have lured generations of surfers to the property. The property is also used by hikers, birdwatchers, and BMX riders (whose tracks are well defined and visible in aerial photographs, including a 'course' within the Ocean Estate development envelope)." (2/28/14 Appeal, p.11). The appellants assert that the project would terminate informal access across the site and to the beach and the Naples surfbreaks "enjoyed by the public for generations" and "impliedly dedicated to the public for recreational use." (2/28/14 Appeal, p.12).

The appellants assert that the project is inconsistent with Policy 7-1(a) which requires that "[t]he County shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline," including "[i]nitiating legal action to acquire easements to beaches and access corridors for which prescriptive rights exist consistent with the availability of staff and funds." The appeal states that this policy is violated because "the County has failed to investigate, much less protect and defend the public's right to access the beach and ocean" and "[r]ather than initiate legal action to acquire easements that would memorialize the public's right to access the beach as they have for generations, the County turned a blind eye to the overwhelming evidence that prescriptive rights exist across the property and through the Ocean Estate development envelope." (2/28/14 Appeal, pgs.12-13).

Next, the appellants assert that "the offer to dedicate easements in the future does not achieve compliance with Coastal Act Section 30212 or CLUP Policy 7-2 for several reasons" and cite issues regarding the locations proposed for vertical access. (Exhibit 3) The appellants raise issues regarding the need for a bluff stairway to access the beach and state "the locations of the floating vertical access easements present significant logistical challenges, requiring massive and impactful bluffside stair structures." (2/28/14 Appeal, p.13). The vertical locations are also not adequate, according to the appellants, because "even if beach access is

established at one of the 'floating' easement locations, access to the Naples surfbreaks is not available under all tidal conditions" and "all of the proposed vertical beach access locations are east of the Naples Seal Rookery and would be closed from February - May." (2/28/14 Appeal, p.13). The appellants point to a more desirable beach access location at "Tomate West" on the applicant's Naples Townsite lots to the west of the project site and assert that "Tomate West" would allow access to Naples surfbreaks year round. (2/28/14 Appeal, pg. 15) (The appellants provided an exhibit to Commission staff depicting the Tomate West location, see Exhibit 21)

The appeal also raises issues regarding the conclusions reached in the 2009 DEIR compared with the conclusions reached in the 2013 EIR regarding public access impacts and raises various assertions regarding flaws in 2013 EIR's analysis of public access. (2/28/14 Appeal, pgs. 13-15) Issues regarding CEQA impact classifications and significance determinations are not grounds for appeal pursuant to Section 30603 and 30625 of the Coastal Act. Therefore, the appellants' allegations regarding deficiencies in the CEQA public access and recreation analysis are not addressed herein.

<u>Degree of Factual and Legal Support for the County's Decision that Development is</u> Consistent with Public Access and Recreation Policies raised by Appellants

The question is whether a substantial issue exists with respect to the project's conformity with the public access LCP and Coastal Act policies raised by the appellants. The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the public access policies raised.

As noted above, the site has a history of informal public access; however, the site is currently fenced and gated without the benefit of the required CDP for such development. The project, as approved by the County, would open the site for public access upon the County's acceptance of the access easements and upon construction of the parking lot, trails, bridge over the railroad, and vertical access. More specifically, the approved project includes the following offers to dedicate (OTD) easements for vertical and lateral public access and recreation facilities: (1) a segment of the California Coastal Trail along the length of the ocean lot including a loop trail and lookout points, (2) vertical access to the beach from the California Coastal Trail at one of seven potential vertical beach access trail locations, (3) an access road from the existing site entry from Highway 101 to a parking lot for up to 20 vehicles (at one of two potential locations), (4) pedestrian access from a parking lot and over the Union Pacific Railroad tracks from the inland lot to the Coastal Trail (at one of two potential alignments), and, (5) lateral access along the length of the property on the beach from the base of the bluffs to the mean high tide line. (Exhibit 3) The project also includes construction of 1,600 feet of the Coastal Trail segment on the Ocean lot which will be constructed concurrently with installation of the utility lines.

Policy 7-1 requires the County to take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline and lists three actions the County "shall" take which include: (a) initiating legal action to acquire easements, (b) accepting offers of dedication, and (c) actively seeking other private or public agencies to accept offers of

dedications. The County found that the project would be consistent with Policy 7-1 because "the County's ability to accept offers of dedication will increase opportunities for public access and recreation and the project includes a number of offers to dedicate (OTD) easements both for vertical and lateral public access and recreation facilities." (11/12/12 Memo to the Planning Commission, p.18)

Although the appellants argue that Policy 7-1(a) requires the County to initiate legal action to acquire easements across the property, Policy 7-1(a) specifically limits the County's requirement to initiate legal action to acquire easements based on "the availability of staff and funds." The County recognized that the project will change existing public access and that Ocean Estate development envelope will be located atop an informal trail, which is visible in 1983 aerial photos according to the County. (3/27/14 Planning Commission Staff Report, p.6) However, the County here did not initiate legal action to obtain easements, as the County cited to the fact that the applicant had already offered to dedicate lateral and vertical public access easements across the property to the same beach. The County, therefore, did not need to initiate legal action to obtain the easements pursuant to Policy 7-1(a) as the appellants assert.

The County has also stated its intent to also accept the OTDs as required by Policy 7-1(b) (11/12/12 Memo to the Planning Commission, p.18). However, the County acknowledges that "[a]cceptance or non-acceptance of the offers-to-dedicate (OTD's) will be at the discretion of the Board of Supervisors." Nevertheless, the County has stated that "the applicant has already prepared and submitted to the Planning and Development Department an irrevocable OTD (offer-to-dedicate) to the County all areas on the Inland and Ocean lots within which permanent public easements for public pedestrian access and passive recreational use are proposed." (2/4/14 Board Letter, p.13)

Further, the County has actively sought other agencies to assume responsibilities for implementation and maintenance of the public access trails, in compliance with Policy 7-1(c), as evidenced by the fact that the Santa Barbara Trails Council is identified in the project description as the entity intended accept and utilize the \$500,000 endowment for design, permitting, construction and/or maintenance of the public access easements. Additionally, the County's policy consistency findings in the Planning Commission staff report indicates that "[t]he applicant has held discussions and begun negotiations with a number of local conservation groups regarding acceptance of the easements for these offers to dedicate" and "[t]he applicant, in coordination with County staff, has initiated the process with UPRR to obtain approval of an easement and bridge design for access over the UPRR tracks." (3/27/13 Staff Report, p.36). Thus, the County has provided substantial evidentiary support for its policy consistency analysis regarding Policy 7-1 and the proposed OTDs for vertical and lateral public access easements will be implemented through Conditions 1 and 96 of the approved permit. (Exhibit 10)

Next, Coastal Act Section 30212 requires new development projects to provide public access from the nearest public roadway to the shoreline and along the coast except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Coastal Act Section 30212 does not require dedicated access to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. Additionally, Policy 7-2 requires a mandatory access easement to allow vertical access to the mean high tide line for all development between the first public road and the ocean, subject to exceptions, and further provides that "[i]n no case, however,

shall development interfere with the public's right of access to the sea where acquired through use unless an equivalent access to the same beach area is guaranteed."

The County found the project to be consistent with these policies because the project includes the granting of offers to dedicate public access to the beach and shoreline as well as along the shoreline from the base of the bluffs to the mean high tide line. (11/12/13 Memo to the Planning Commission p.20) In its findings, the County referred to the EIR which states that "[a]s proposed, the project would ultimately result in safer access to the shoreline, would make the area available to a greater variety of recreational users, and would secure the legal right for the public to access the property." (2/4/14 Board Letter, p.13) The County reiterated at the Planning Commission hearing that "with implementation of the trails, despite the fact that they may not be constructed immediately, it would provide safe, legal access to the property. Whereas, today those accessing the site park across the freeway...[and] run across the freeway with their surfboards and access the site in an unauthorized manner." (12/4/13 Planning Commission Hearing Transcript, Vol II, p.13)

The appellants assert that "the offer to dedicate easements in the future" does not comply with Coastal Act Section 30212 or Policy 7-2 and raise issues regarding the floating vertical access easement locations. It is noted that the OTDs for public access easements in this case are not proposed to be dedicated at some point in the future, as appellants assert, but are included as part of the project and are required to be submitted to the County following approval of the project pursuant to Condition 96 of the approved CDP. (Exhibit 10) As noted above, the applicants have already submitted the required OTD documents to the County. Further, Coastal Act Section 30212 does not require new development projects to provide access immediately, but states that "dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway."

Additionally, the appellants raise issues regarding the locations proposed for vertical access and the logistical challenges involved in realizing the access, citing the need for an engineered bluff stairway that is estimated to cost in excess of \$750,000. The County acknowledged that "it is recognized that development of public lands does normally take time and that funds would be required to complete physical improvements on-site for legal public access" and "the acquisition and acceptance of public access offers-to-dedicate easements is the critical first step in providing legal public access on the subject property (as envisioned for the California Coastal Trail in the Gaviota Cost Plan)." (2/4/14 Board Letter, p.13) As described by the County, the applicant's contribution of a \$500,000 endowment is intended to fund the initial implementation of the trail improvements.

Further, the appellants state that, because the proposed vertical access points are east of the Naples surfbreaks, access would not be available to the Naples surfbreaks under all tidal conditions. The appeal also states that, without beach access at "Tomate West" on the applicant's Naples Townsite lots, "the project fails to conform to the applicable recreational access policies." The cited Coastal Act and LCP policies require development between the first public road and the sea to include vertical access, consistent with public safety and the protection of fragile coastal resources, and Policy 7-2 requires equivalent access to the same

beach area. As noted above, the County found that the floating vertical access easements would be consistent with the above cited policies because the proposed access would eventually open access to the same beach area in perpetuity for a greater variety of recreational users. (2/4/14 Board Letter, pgs. 12-13) Additionally, the County did not require an analysis of providing access at the Tomate West location because it found that the floating vertical easement locations comply with the policies requiring public access, cited above. (2/4/14 Board Letter, p.13 and 11/12/13 Memo to the Planning Commission, p.20) The Commission notes that access at the Tomate West location will be considered when the applicant proposes to develop the Naples lots. The County's findings are supported by substantial evidence.

Appellants also raise concerns that "all of the proposed vertical beach access locations are east of the Naples Seal Rookery and would be closed from February - May." As addressed in Section E.1.a, above, this permit will not implement access restrictions or beach closures for seal pupping season. A future CDP will be necessary for all access improvements, including the beach stairway and any access program will be evaluated at that time.

Therefore, the record shows that the County provided a high degree of factual and legal support that the project is consistent with the public access and recreation policies of the LCP and Coastal Act because the project includes OTDs for lateral and vertical access easements and other access improvements, described in detail above, and the project includes \$500,000 to implement the improvements.

c. Public and Private Services (Access to the site from U.S. Highway 101)

The appellants assert that the project fails to conform with LCP Policy 2-6 which requires that the County make a finding that adequate road access to the project site is available prior to approving a CDP.

LCP Policy 2-6 states:

Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.

Appellants' Assertions

The appellants assert that "[a]lthough the County made this finding, several letters from Caltrans are highly critical of the County's analysis and concludes that in fact roadway access is not adequate." (2/28/14 Appeal, p.16) The appeal cites letters prepared by Caltrans commenting on the Draft and Final EIR for the project regarding the safety of the driveway

access point and the need for vehicles to make northbound left hand turns across U.S. Highway 101.

<u>Degree of Factual and Legal Support for the County's Decision that Development is</u> Consistent with Policy 2-6

The question is whether a substantial issue exists with respect to the project's conformity with Policy 2-6 regarding the adequacy of the County's finding that adequate roads exist to serve the proposed development. The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with Policy 2-6. The project would include access to the Ocean and Inland lots by a new shared access driveway. The driveway would enter the site via the existing site entrance off of U.S. Highway 101 at the east side of the property and extend west through the property to the Inland Estate. The driveway would then extend from the Inland Estate, over the UPRR tracks via a new bridge to the Ocean Estate. (3/27/14 Staff Report, p.20)

County's Analysis:

The County addressed the adequacy of access to the project site from the highway required by Policy 2-6 in the Board of Supervisors Agenda Letter (responding to the appellants' similar assertions in the local appeal of the project), dated February 4, 2014, as follows:

"The adequacy of access to the property has been covered extensively. Adequacy of access is discussed in the Transportation and Traffic portion of the EIR (Section 3.14), was addressed in detail in staff's memo to the Planning Commission dated November 12, 2013, and was addressed by Senior Transportation Planning Supervisor, Will Robertson from the Public Works Transportation Division at the November 20, 2012 Planning Commission hearing. The infeasibility of obtaining access via an alternative route to the one proposed is discussed extensively on pages 6.0-6 and 6.0-10 of the Alternatives Section (6.0) of the EIR. The County's traffic consultant, ATE, has confirmed that the project meets County traffic thresholds and Caltrans design criteria, [and] has confirmed that appropriate trip generation methodology was used in the traffic analysis... As discussed on pages 3.14-18 through 3.14-21 of the Final EIR, existing conditions provide a recessed access opening consistent with Caltrans criteria, site distance above Caltrans requirements, and adequate spacing between access openings per Caltrans requirements. Accident data for the project intersection is below the statewide average for similar intersections. The conclusions in the EIR have all been reviewed, and substantiated at the hearing, by Senior Transportation Planning Supervisor, Will Robertson from the Public Works Transportation Division..."(2/4/14 Board Letter, p.17)

Given the fact that the County relied on information in the 2013 EIR, testimony provided by the Public Works Transportation Division, and analysis provided by the County's traffic consultant, the record shows that the County relied on substantial evidence to support its decision that access to the project site would comply with Policy 2-6.

d. Agricultural Resources

The appellants assert that the project fails to conform with LCP Policy 8-2 and Coastal Act Sections 30241 and 30242 requiring protection of agricultural resources.

LCP Policy 8-2 states:

If a parcel is designated for agricultural use and is located in a rural area not contiguous with the urban/rural boundary, conversion to non-agricultural use shall not be permitted unless such conversion of the entire parcel would allow for another priority use under the Coastal Act, e.g., coastal dependent industry, recreation and access, or protection of an environmentally sensitive habitat. Such conversion shall not be in conflict with contiguous agricultural operations in the area, and shall be consistent with Section 30241 and 30242 of the Coastal Act.

Coastal Act Section 30241 (incorporated into the LCP by Policy 1-1) states:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.
- (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Coastal Act Section 30242 (incorporated into the LCP by Policy 1-1) states:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (l) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or

concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Appellants' Assertions

The appellants point out that the project site is zoned for agriculture and the Ocean Estate development envelope, a portion of the Inland Estate development envelope, and a portion of the driveway will be constructed over 1 acre of prime soils. (2/28/14 Appeal, p.16) The appellants state that the project site is not contiguous with the urban/rural boundary and that the project extends urban services into a rural agricultural area "allowing for residential development not only of the two project lots, but also of the adjacent 25 Naples Townsite lots, which are also designated for agriculture." (2/28/14 Appeal, p.17) The appellants assert that the project is not consistent with the above cited policies because the project will convert prime soils to non-agricultural use, no agricultural use is proposed, and that the project "forecloses future use of the site for agriculture." (2/28/14 Appeal, p.17)

<u>Degree of Factual and Legal Support for the County's Decision that the Development is</u> Consistent with LCP Policy 8-2 and Coastal Act Sections 30241 and 30242

The question is whether a substantial issue exists with respect to the project's conformity with LCP Policy 8-2 and Coastal Act Sections 30241 and 30242 protecting agricultural resources. The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the agriculture protection policies above.

County's Analysis:

The County provided the following agricultural policy consistency analysis in the Board of Supervisors Agenda Letter (responding to the appellants' similar assertions in the local appeal of the project), dated February 4, 2014, as follows:

"The project is not proposing the conversion of agriculture to another use, as development of single-family homes is an allowed use within the AG-II-100 zone under the Coastal Zoning Ordinance, the property would remain zoned for agricultural use, and both parcels would have areas specified for agriculture. Furthermore, agricultural uses have not occurred on the project site in more than 20 years and the site has never been farmed as a "stand alone" viable farming unit, but rather only as part of the former, larger, Dos Pueblos Ranch. The parcels' lack of viability is due to the parcel size, lack of a developed water supply, only moderate agricultural suitability for crops, lack of existing agriculture and inability to qualify for the agricultural preserve program. While conversion of the parcel is not proposed, as development of single-family homes is an allowed use within the AG-II-100 zone, the proposed project does also provide for additional priority uses under the Coastal Act. Specifically, the project would provide for recreation and access through the proposed public access easements and would provide protection of environmentally

sensitive habitat areas through the proposed 117-acre open space or conservation easement." (2/4/14 Board Letter, p.20)

The County's policy consistency analysis is supported by the fact that a single-family home is a permitted use on a parcel zoned AG-II and the parcel is not proposed to be converted to another land use or zoning designation. The Inland lot would also include designation of a 16.3- acre envelope which would allow agricultural activities such as orchards, row crops, and horse/livestock keeping. The residential use and the 117 conservation easement approved as part of the project may, in essence, prevent large portion of the 143 acre site from being used for farming or other agricultural uses. However, the County's analysis is correct that protection of the environmentally sensitive habitat is also a priority "use" under the Coastal Act, and in fact, as required by Section 30240 of the Coastal Act, and incorporated by Coastal Land Use Plan Policy 1-1, only uses dependent on the environmentally sensitive habitat itself are allowed uses within such habitat, in effect, precluding agriculture within the environmentally sensitive habitat. Thus, the County has provided support for its decision that the project is consistent with the agricultural resource protection policies cited above.

e. Visual Resources

The project site is located on a coastal plain along the eastern edge of the Gaviota Coast and the area is rural in character. Development in the Gaviota area between U.S. 101 and the ocean is sparse and only limited development can be seen from the highway. (2013 EIR, p. 3.1-2) The primary public views of the site are from U.S. Highway 101 and the railroad. According to the EIR, the Inland parcel is highly visible from U.S. Highway 101 and sweeping views of the site and the ocean are available while traveling northbound along U.S. Highway 101. Heading north on U.S. Highway 101, the ocean comes into view just at the crest of the hill towards the eastern portion of the project site and these are the first uninterrupted views of the ocean along this stretch of the highway for several miles. Due to the elevated topography on the western portion of the site, views of the ocean are limited while traveling southbound on U.S. Highway 101 (2013 EIR, p.3.1-8 and Figures 3.1-6 through 3.1-8)

The appellants assert that the project fails to conform with Coastal Act Section 30251 (incorporated into the LCP by Policy 1-1) and LCP Policy 4-3 requiring the protection of visual resources.

Coastal Act Section 30251 states:

If a parcel is designated for agricultural use and is located in a rural area not contiguous with the urban/rural boundary, conversion to non-agricultural use shall not be permitted unless such conversion of the entire parcel would allow for another priority use under the Coastal Act, e.g., coastal dependent industry, recreation and access, or protection of an environmentally sensitive habitat. Such conversion shall not be in conflict with contiguous agricultural operations in the area, and shall be consistent with Section 30241 and 30242 of the Coastal Act.

LCP Policy 4-3 states:

In areas designated as rural on the land use plan maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment, except where technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms; shall be designed to follow the natural contours of the landscape; and shall be sited so as not to intrude into the skyline as seen from public viewing places.

Appellant's Assertions

The appellants assert that "the Project, and in particular the Inland Estate and new bridge crossing the railroad, are not sited or designed to protect public views of the ocean and scenic coastal areas. (2/28/14 Appeal, p.18) The appellants state that the dwarf citrus trees proposed to be planted for visual screening adjacent to the Inland Estate will take time to mature and could easily be destroyed by pests and may lack irrigation water in the future due to use restrictions. The appellants raise community compatibility issues regarding the residences and the bridge over the railroad and assert that "the estate compounds are two to three times the size of the existing Gaviota Coast residences, and include building heights of up to 22 feet." (2/28/14 Appeal, p.18)

The appellants assert that there are feasible alternatives on the east end of the property that would be less visible that would avoid the need for the bridge and eliminate the 1.6 acres of driveway. (2/28/14 Appeal, p.18)

<u>Degree of Factual and Legal Support for the County's Decision that the Development is</u> <u>Consistent with Coastal Act Sections 30251 and LCP Policy 4-3</u>

The question is whether a substantial issue exists with respect to the project's conformity with Coastal Act Section 30251 and LCP Policy 4-3 protecting visual resources. The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the visual resource protection policies above.

The County provided a consistency analysis for Coastal Act Section 30251 and LCP Policy 4-3 in the March 2013 County Planning Commission Staff Report, as follows:

• "Proposed development on the site would be visible from US Highway 101, but would not obstruct blue water views. The proposed residences and accessory structures are clustered on the western edge of the property and would be limited to development envelopes of 1.9 acres (Ocean Estate) and 2.5 acres (Inland Estate). MM-AES-3b and condition no. 7 requires that all proposed and future development be limited to these envelopes. The homes would be one story in height and would not exceed the height of the trees on the project site. On the Ocean Estate, the maximum height of the residence and garage is 20 feet and the maximum height of the proposed guest house is 21 feet. The maximum height of all proposed Inland Estate development is 22 feet. All Inland and Ocean Estate structures have been designed to be a minimum of 11 feet, 10 inches below the road grade of US Highway 101 to maintain public horizon and blue water views over the development. In addition, MM

AES-3c (condition 8) requires future structures and any revisions to currently proposed structures to be restricted to 22 feet in height. Both homes and related structures would be designed to be subordinate to the existing landscape. Appropriate design would be further ensured by measures MM-AES-1b, MM-AES-3a, MM-AES-4 (conditions 4, 9, and 10), which require review and approval of the final home and landscaping designs by the Central Board of Architectural Review (CBAR), use of building materials and colors compatible with the surrounding environment and lighting restrictions to ensure that lighting is low intensity and low glare." (3/27/13 Planning Commission Staff Report, p.22)

- "Additionally the project includes the proposed planting of new dwarf and semi-dwarf citrus orchards between the proposed new estate developments and the highway. These orchards would provide screening of the homes from HWY 101. MM-AES-1c (condition no.5) requires maintenance of the proposed orchards to ensure that the trees are maintained at a height below the grade of HWY 101 and that the orchard is maintained for the life of the project." (3/27/13 Planning Commission Staff Report, p.22)
- "The proposed project would result in the disturbance of approximately 10 acres on the 143 acre site...the remainder of the site would be maintained as open space..." (3/27/13 Planning Commission Staff Report, pgs. 22-23)

The County also provided an analysis of the project's consistency with Policy 4-3 in the Board of Supervisors Agenda Letter, dated February 4, 2014 (responding to the appellants' similar assertions in the local appeal of the project) and found that "the height, scale, and design of structures would be compatible with the character of the surrounding natural environment; structures would be subordinate in appearance to natural landforms; structures have been designed to follow the natural contours of the landscape; and, structures have been sited so as not to intrude into the skyline as seen from public viewing places. (2/4/14 Agenda Letter, p.21) The County found that the "development, including the proposed access bridge, would not obstruct blue water views; would be clustered on the western edge of the property; would be one story in height; and, would be subordinate to the existing landscape." (2/4/14 Board Letter, p.21) The County explained that the berms supporting the access bridge were designed to tie into the natural topography of the surrounding terrain and would be revegetated with native vegetation.

The County indicated that it specifically relied on the aesthetics analysis on pages 3.1-32 through 3.1-50 and 3.1-52 through 3.1-60 of the EIR. (2/4/14 Board Letter, p.21) The EIR contains photographs of the site and graphic simulations of the proposed structures from several viewing angles, including U.S. Highway 101 northbound and southbound and the railroad. Although the appellants assert that the project is not sited and designed to protect views of the ocean and scenic coastal areas, the graphic simulations in the EIR show that views of the ocean will be available given the proposed design and location of the structures. Although simulations show that the bridge over the railroad will be visible, the EIR indicates that it will not stand out in the landscape given the site topography and distance from U.S.

Highway 101. (2013 EIR, p. 3.1-40) (Exhibit 19) No evidence is presented that the EIR visual simulations and visual analysis are unreliable.

Thus, the record shows that the County provided adequate factual evidence, including visual simulations prepared as part of the EIR, to support its decision that the development would comply with the visual resource policies above.

f. Hazardous Materials

The appellants raise LCP Policy 3-14 requiring siting and designing development to avoid hazards from oil and gas contamination:

LCP Policy 3-14 states:

All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited for development because of known soil, geologic, flood, erosion, or other hazards shall remain in open space.

Appellants' Assertions

The appellants point out that extensive oil and gas development has historically occurred on the project site and note that three abandoned oil wells are immediately adjacent to the Ocean Estate development envelope. The appellants assert that "there are hazards associated with these abandoned oil wells that impact the safety of the Ocean Estate." (2/28/14 Appeal, p.18) The appellants raise concerns about hazards, such as soil contamination, and rely on expert testimony in a letter prepared by Dr. Kram which states that project documents "failed to thoroughly characterize the extent of contamination, have not evaluated whether contamination has reached the groundwater or whether it is currently discharging to the ocean and the seal haul-out area, and failed to evaluate whether vapor intrusion (VI) risks exist." (2/28/14 Appeal, p.18 citing a 1/30/14 letter by Dr. Kram). The appellants assert that the potential exists for explosion and that Dr. Kram recommends a 100 ft. development setback. (Dr. Kram's November 25, 2013 letter to the County planning Commission was provided to Commission staff on March 13, 2013 and was also provided by the County as part of the administrative record, see Exhibit 20) Therefore, according to the appellants, the Ocean Estate development envelope is not suited for development pursuant to Policy 3-14 because of the hazard risks described by Dr. Kram.

<u>Degree of Factual and Legal Support for the County's Decision that Development is Consistent with Policy 3-14</u>

The question is whether a substantial issue exists with respect to the project's conformity with Policy 3-14 regarding the adequacy of the County's finding that the project does not present the risk of contamination hazards. The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's

decision. Policy 3-14 requires, in part, that "[a]reas of the site which are not suited for development because of known soil, geologic, flood, erosion, or other hazards shall remain in open space."

County's Analysis:

The County explained that remediation of the former oil and gas facilities at the project site is a separate project from the proposed project and is an ongoing process that has been underway for the past 10 years by the former oil and gas operator ARCO/BP and much of the remediation is already complete. (2/4/14 Board Letter, p.5)

The County specifically addressed the issue potential contamination and hazards in the Board of Supervisors Agenda Letter (responding to the appellants' similar assertions in the local appeal of the project), dated February 4, 2014, as follows:

- "As noted...the development envelopes for the proposed project have been tested for hazardous materials. Both the EIR and the testimony of County hazardous materials experts support the conclusion that the ocean and inland estates may be safely developed with residential structures with application of the recommended mitigation measures. Existing mitigation measures applied under the EIR require that, prior to issuance of Coastal Development permits for the two proposed residences, a County approved remedial action plan (RAP) with review and oversight by the County Hazardous Materials Unit (HMU), be developed, implemented, and completed. It will not be necessary to relocate the development envelopes proposed as a part of the project because...the extent of contamination has been sufficiently characterized to confirm that residential development can occur in the locations proposed. If for some unexpected reason, relocation of either estate became necessary, the applicant would need to return for a revision to the project or for a new permit approval." (2/4/14 Board Letter, p.5)
- "In addition, a Development Envelope Human Health Risk Assessment was provided by AECOM (consultant for ARCO) on October 25, 2013. The Assessment analyzed both TPH (total petroleum hydrocarbon) and metals and specifically looked at the coastal/Southern Development Envelope...the conclusions of the Assessment clearly show that the extent of contamination is not 'unknown' as asserted by the appellant." (2/4/14 Board Letter, p.6)
- "All water for the proposed project (domestic, agricultural and fire protection) would be provided by the Goleta Water District and no water wells or use of groundwater is proposed. Nonetheless, the topic of groundwater was addressed extensively at the November 20, 2013 and December 4, 2013 Planning Commission hearings...The HMU representatives confirmed that groundwater was not encountered in borings drilled up to 75 feet below the surface and that both S.B. County and the Regional Water Quality Control Board hold the position that groundwater investigations are not warranted when groundwater is that far below the known area of contamination.

Therefore, there is no concern that residents of the proposed homes would be exposed to groundwater contamination." (2/4/14 Board Letter, p.6)

According to the County's responses, above, the County relied on information in the 2013 EIR, expert testimony provided by the County's Hazardous Materials Unit staff, and information prepared by AECOM, the consultant for ARCO regarding the assessment of potential hazardous materials and site contamination. Additionally, the County included Condition 49 (Remedial Action Plan which requires a separate CDP) and Condition 50 (contamination or odor detection) related to hazardous materials. (Exhibit10) Therefore, the record shows that the County relied on substantial evidence to support its decision that structures will not be sited in areas subject to hazards/contamination and would comply with Policy 3-14 regarding siting and design.

g. Naples Townsite Policy 2-13

The appellants assert that the project fails to conform to LCP Policy 2-13.

LCP Policy 2-13 states:

The existing townsite of Naples is within a designated rural area and is remote from urban services. The County shall discourage residential development of existing lots. The County shall encourage and assist the property owner(s) in transferring development rights from the Naples townsite to an appropriate site within a designated urban area which is suitable for residential development. If the County determines that transferring development rights is not feasible, the land use designation of AG-II-100 should be reevaluated.

Appellants' Assertions

The appellants assert that "[t]he Project involves the extension of urban services to the applicant's 25 Naples lots, *encouraging* as opposed to *discouraging* residential development in a manner contrary to CLUP Policy 2-13." The appellants also state that the County has not evaluated transferring development rights on the 25 Naples lots as part of this project. Further, the appellants argue that "[t]he County's miserly CEQA review, driven by the applicant's insistence on piecemeal environmental review of their development, precludes consideration of comprehensive solutions that could integrate TDR, clustering of development at higher densities, and better protection of the sensitive resources on this site as is generally contemplated by CLUP Policy 2-13." (2/28/14 Appeal, p.20)

<u>Degree of Factual and Legal Support for the County's Decision that Development is</u> Consistent or Inconsistent with LCP Policy 2-13

The question is whether a substantial issue exists with respect to the project's conformity with Policy 2-13 and the first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with LCP Policy 2-13. Here, the County did not provide a policy consistency analysis for Policy 2-13 and did not make findings regarding Policy 2-13. The County stated that the applicant has submitted no plans or applications for

development on the Naples lots and, therefore, the Naples lots are not part of the proposed project. (2/4/14 Board Letter, p.3) The applicant owns 25 antiquated small Naples lots adjacent to the project site. However, the County is unable to review the applicability of LCP policies to the adjacent Naples lots because they are beyond the scope of the proposed development. Therefore, the County's decision not to apply Policy 2-13 to the subject project is reasonable given that the proposed project does not include the Naples lots to which the policy is specifically applicable.

The appellants raise the issue that the extension of urban services onto the subject site does not "discourage" future development of the applicant's adjacent 25 Naples lots pursuant to Policy 2-13. While the County has not provided a specific analysis of Policy 2-13 with regard to the extension of services to the two subject (non-Naples) lots, the County's record analyzed the project's potential growth inducing impacts (p.5.0-3, 2013 EIR, Section 5.2), particularly the extension of the water line and its potential to contribute to the development of the Naples lots.

The development includes a 7,500 ft. long private water line from the western boundary of the City of Goleta through the adjacent property to the east (APN 079-200-005) onto the subject site. According to information in the administrative record, the size of the proposed water lines (8-10 inch potable water and 4 inch reclaimed water) is driven by the length of the water line necessary to reach the residential structures (approximately 1.5 miles) and the water flow rate necessary to meet the County's Fire Department's requirement of 750 gallons of water per minute. The County Fire Department requires all development within a water purveyor's district boundaries to have fire water infrastructure provided by that purveyor. The Fire Department only permits water protection through use of on-site water storage tanks in areas that are not served by a water purveyor and with approval of the Fire Chief. In this case, the subject lots, as well as the 25 Naples lots under the same ownership, have been annexed into the Goleta Water District boundary. The California Court of Appeals upheld the annexation of the subject lots and the 25 Naples lots into the Goleta Water District. As a result of this annexation, the use of water tanks, in lieu of a water line extension, to serve the proposed development would not meet the requirements of the County Fire Department for fire protection. (p. 5.0-3, 2013 EIR, Section 5.2)

The water lines for the proposed project are of a size that could provide water service for more than the two residential estates and agricultural uses on the two subject lots, according to the EIR (Section 5.2), and the potential exists for future extension of water service to the applicant's undeveloped Naples lots immediately to the west of the project site. While not directly addressed in a finding, which would have been preferable, the County's EIR analysis implicitly acknowledges that the 2005 Standstill and Settlement Agreement (discussed in Section III.C herein) renders some level of new development (subject to environmental constraints) on the adjacent Naples lots reasonably foreseeable. The Standstill and Settlement Agreement recognizes one single-family residence as a permitted use on each of the two lots subject to this appeal, and recognizes the potential for up to ten single-family residences on the Naples lots, provided they are sited and designed in a manner that maximizes protection of coastal resources. Therefore, the County implicitly determined in this case, that the water line will not be growth inducing beyond the level of development that is foreseeable pursuant the 2005 Standstill and Settlement

Agreement. This implicit finding finds support in the 2005 agreement between the Commission and the applicant.

Further, record evidence demonstrates water service is not necessary for properties to the west of the applicant's undeveloped Naples lots, including the Santa Barbara Ranch and Morehart properties, because these properties have an existing water provider, the Naples Water Company (a private water company). (June 2008, Santa Barbara Ranch EIR) Therefore, the County's EIR analysis of growth inducement impacts has factual and legal support in the record. While an explicit finding regarding policy 2-13 would have facilitated Commission review of this issue, the record supports the County's implicit conclusion that it is not encouraging secondary growth in contravention of Policy 2-13.

h. Conclusion regarding County's Factual and Legal Support for Policy Consistency

The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the policies of the certified LCP and with the public access policies of the Coastal Act as raised by the appellants. The County supported its findings based on extensive information contained in record, including the EIR, staff report, staff memo, expert testimony, site-specific studies, reports, and surveys. As analyzed herein, based on the above analysis of the County's record, the County has provided a high degree of factual and legal support for its decision that the proposed development is consistent with the the following certified LCP policies and Coastal Act policies regarding: (a) protection of environmentally sensitive habitat area (LCP Policies 2-11, 9-26, and 9-28 regarding Whitetailed Kite habitat and the Naples Seal haul out), (b) protection of public access (Coastal Act Sections 30210, 30211, and 30212 and LCP Policies 7-1, 7-2, and 7-3), (c) adequacy of public and private services and resources (LCP Policy 2-6), (d) protection of agricultural resources (LCP Policy 8-2 and Coastal Act Sections 30241 and 30242), (e) protection of visual resources (LCP Policy 4-3 and Coastal Act Section 30251), (f) hazardous materials (Policy 3-14), and (g) Naples Townsite LCP Policy 2-13.

2. Additional Substantial Issue Factors Considered by the Commission

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In evaluating the issue of whether the appeals raise a substantial issue, in addition to considering the degree of factual and legal support for the local government's decision (first factor), as analyzed above, the Commission also considers the following additional factors: the extent and scope of the development as approved or denied by the local government, the significance of coastal resources affected by the decision, the precedential value of the local government's decision for future interpretation of its LCP, and whether the appeal raises only local issues, or those of regional or statewide significance.

a. Extent and Scope of the Approved Project

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved by the County. As described above in Section III.A., the project includes the development of two residential estates, the Ocean Estate and the Inland Estate. The Ocean Estate includes a 5,806 sq. ft., 20 ft. high single-family residence, with an attached 1,421 sq. ft., 20 ft. high garage/mechanical space, a detached 800 sq. ft., 21 ft. high guesthouse with attached 651 sq. ft. The Inland Estate includes a 7,326 sq. ft., 22 ft. high singlefamily residence with a 1,837 square foot basement and garage/mechanical space, a detached 800 sq. sf., 22 ft. high guesthouse and a pool that will be located within a 2.5 acre development envelope. A designated 16.3 acre envelope on the Inland lot would allow agricultural activities such as orchards, row crops, and horse/livestock keeping, and would not allow structures or hardscape except for fencing and utilities. The project site is approximately 143 acres and the proposed residential development envelopes will total approximately 4.4 acres. Therefore, approximately 138.6 acres will be largely undeveloped except for public access trails and 16.3 acres of agricultural use. Overall, given the large size of the property and the fact that development includes one residential estate on each lot (the Inland lot is 78 acres and the Ocean is 64 acres), the scope of development is not expansive.

b. Significance of Coastal Resources Affected by the Approval

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. As noted above, the site was used for agricultural operations historically as part of the larger Dos Pueblos Ranch operations (during the 19th and early 20th centuries). However, from the 1940's to the 1990's, the site was used for drilling, production, storage and distribution of oil and gas. The Coastal Act Chapter 3 policy issues raised by the project and addressed by Santa Barbara County during its approval process include: protection, enhancement, and restoration of environmentally sensitive habitats, protection and expansion of public access to and along the shoreline and recreational opportunities, protection of archeological resources, protection of the scenic beauty of coastal landscapes, protection of productive agricultural lands, and concentrating new development to avoid sprawl. Biological resources and public access are discussed below, as these particular issue areas were emphasized by the public and the appellants during the local hearings.

Biological Resources

As noted above, despite the past oil and gas development, the site contains extensive biological resources and environmentally sensitive habitat area including wetlands, riparian corridors, white-tailed kite foraging and nesting habitat, butterfly aggregation areas, southern tarplant, cliff aster coastal sage scrub, small isolated wetlands, riparian wetlands and stream corridors, southern willow scrub, fresh water marsh, an estuary in the mouth of Eagle Canyon, tidewater goby, red-legged frogs and the Naples reef and Harbor seal haul out is located at beachfront areas at the foot of the bluffs. As provided by the County's analysis and reviewed herein, the project has been sited and designed to avoid and minimize impacts to biological resources. The proposed project includes the removal of one tree (a non-native blue gum eucalyptus that has not served as a white-tailed kite nesting tree) and the habitable residential structures are set back at least 100 feet from all ESHA resources on the site, including the white-tailed kite nesting tree identified in 2013. The project also includes a 117 acre open space conservation easement and

restoration of more than 23 acres of native habitat, including enhancement of vegetation to increase the habitat value for the white-tailed kite's prey base. Although the appellants raised issues regarding potential impacts to white-tailed kite habitat and the Naples harbor seal haul out and raised numerous concerns regarding the County's analysis, as described above in detail above, a review of the underlying data relied upon by the County to evaluate potential impacts shows that these ESHA resources are not expected to be affected by the development.

Public Access

Surfers and other recreational users have accessed the beach and the Naples surfbreaks through the subject site since the 1960's. The Ocean Estate development envelope is proposed to be located where an existing trail has been used by the public to access the beach below. Although the project will impact an existing trail the public uses to get to the beach, as described in Section III. A., above, the project includes OTDs for a public parking lot, vertical access to the beach, lateral access along the entire Ocean lot and along the base of the bluff, and a \$500,000 endowment to begin trail construction.

Recognizing that it will take time for the trails to be developed and built, including the bridge over the railroad tracks and the vertical access stairway, and that existing public access will be impacted in the interim, providing this link in the California Coastal Trail network will significantly enhance public access. It is expected that an easement for the railroad bridge is feasible to obtain given that the applicant here has obtained an easement for the driveway bridge over the railroad and the applicant has committed to work with the County of Santa Barbara to obtain the easement. Further, although the cost of the bluff stairway may be high, similar public stairways have been constructed along coastal Santa Barbara. Additionally, the County of Santa Barbara has stated it intends to accept the OTDs for trail easements and the Santa Barbara Trails Council has demonstrated a strong interest in working to facilitate trail construction. Thus, it is foreseeable that access will be realized and, once constructed, a broader range of the public will be able to access the coast and access will be available for future generations.

Furthermore, although access the beach and the Naples surfbreaks across the subject property will be limited in the interim, the public is able to access the beach through the informal accessways on the adjacent parcels. The public is also able to access the beach and the Naples surfbreaks by walking upcoast from the Bacara Resort/Haskell's beach during low tide. It is recognized the appellants would prefer, as stated in the appeal, to have access to the beach provided at Tomate West, which is located on the applicant's adjacent Naples lots to the west of the project site. However, formal access may be considered in that location when the property owner applies for development permit on that property. Therefore, although public access is a significant resource affected by the project in the short-term, overall, public access will eventually be greatly enhanced by the project.

Thus, although the site contains important and extensive coastal resources, significant adverse impacts to such resources are not expected based on information provided in the County's administrative record. The record demonstrates the project would be consistent with the certified Local Coastal Plan and applicable Coastal Act policies.

c. Precedential Value of the Local Government's Decision

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for future interpretation of its LCP. Santa Barbara County is preparing a planning document for the Gaviota area, the Gaviota Coast Plan, which will eventually be submitted to the Coastal Commission for certification as part of the County's Local Coastal Plan. The Environmental Scoping Document for the Gaviota Coast Plan ("GCP") was released for public comment in January 2014. The Gaviota Coast Plan will eventually provide the policies and provisions that will be the standard of review for development in the Gaviota coast area, including development on the subject parcel. Therefore, the Gaviota Coast Plan warrants discussion in relation to the the precedential value of the local government's decision for future interpretation of its LCP.

The Gaviota Coast Plan area encompasses 158 square miles (101,199 acres) of unincorporated land within the County of Santa Barbara. The Plan area is bounded by Eagle Canyon to the east, Jalama County Beach to the west, the crest of the Santa Ynez Mountains on the north, and the Pacific Ocean on to the south. The subject site is located within the planning area of this document as the most eastern parcel, as the property is bounded by Eagle Canyon on the east. According to the 2014 Environmental Scoping Document, the purpose of the GCP is to update the goals, policies, land use designations, and implementation actions that define and regulate land use and development within the Plan area. The GCP will be organized into six chapters including (1) Natural & Cultural Resources Stewardship, (2) Agriculture, (3) Parks, Recreation and Trails, (4) Land Use, (5) Visual Resources, and (6) Transportation, Energy and Infrastructure.

The objectives of the Gaviota Coast Plan, according to the 2014 Environmental Scoping Document, are to: protect and ensure continued suitability and productivity of agricultural lands; protect and enhance interconnected habitat areas and watersheds from the ridgeline to the ocean; preserve and enhance public access to the coast, including a robust interconnected coastal and inland trail system; preserve and enhance important scenic views of the valley, mountains and coastal open spaces; ensure public infrastructure is scaled to the community and water and wastewater systems are protected, enhanced and sustainably managed and maintained; protect, enhance and preserve important cultural and historic resources; ensure the transportation system is well-planned and maintained and the traffic level of service standards are consistent with the goals and policies in the Comprehensive Plan; support a safe, complete, pedestrian friendly, and sustainably managed and maintained transportation system that provides full multi-modal access to the community, and connections regionally and between commercial and residential areas.

Generally, the project will be consistent with the proposed objectives and policies of the 2013 Draft Gaviota Coast Plan. The land use and zoning designations are not proposed to change for the subject parcels and development of a single-family residence on AG-II-100 zoned parcels will remain a permitted use. The proposed project could be seen as setting a precedent for approving estate-style residential development on rural agricultural parcels along the Gaviota Coast area. However, this project site is distinguishable from other parcels on the Gaviota coast because this site is not currently in agricultural production, has a limited history of agricultural use and potential for agricultural viability as determined by the County, and has an extensive history of disturbance from oil and gas development. In fact, the site was originally zoned for

Coastal Dependent Industrial in the Santa Barbara County LCP until 1991 when the site was redesignated and rezoned as Agriculture II (LCP Amendment 3-90) as part of an attempt to limit the expansion of energy facilities along the coast. Therefore, given the unique history of this particular project site, opportunities for agricultural production are limited. For these reasons, this project is not likely to set a precedent for estate-style development on agriculturally zoned parcels along the coast.

Additionally, it appears that the main policy change proposed by the 2013 Gaviota Coast Plan that would apply to the subject parcel is the "Critical Viewshed Corridor Overlay." The Gaviota Coast Plan would apply the Critical Viewshed Corridor Overlay across all parcels within the Coastal Zone from the subject site west to Gaviota State Beach and includes policies similar to the existing view corridor overlay in the certified LCP. The proposed overlay policies include:

Proposed Policy VIS-16 states:

Building height south of Highway 101 shall not exceed one story or 16 feet above existing grade, unless an increase in height would facilitate clustering of development and result in greater view protection, or a height in excess of 16 feet would not impact public views to the ocean.

Proposed Policy VIS-17 states:

For properties within unobstructed broad views of the ocean, development shall be designed so that exposed structural elevations are at an appropriately proportioned mass and scale to the unobstructed broad views of the ocean.

The Ocean and Inland Estate development is proposed to exceed 16 feet in height. The Inland Estate is proposed to be 22 ft. in height and the bridge crossing over the railroad will be approximately 24 ft. in height. However, the proposed policies allow buildings above 16 feet if an increase in height would facilitate clustering of development and result in greater view protection, or a height in excess of 16 feet would not impact public views to the ocean. Here, the residential structures have been clustered to the western edge of the property and the County has found that broad views of the ocean will not be impacted. Therefore, although new visual policies would apply to the subject site, the project could be found consistent with the new policies and would not set an adverse precedent regarding visual resources. In this case, the project is not expected to set an adverse precedent for future interpretations of the County's LCP and future Gaviota Coast Plan, especially in light of the unique history of the project site.

d. Local Issues and Issues of Regional and Statewide Significance

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. In this case, the approved project includes two residential estates on 143 acres of agriculturally zoned land, agricultural envelopes, and public access improvements, as described in Section III.A, above. The AG-II-100 Coastal Zoning Ordinance designation allows one single-family development per parcel. This appeal does raise a variety of issues of local, regional, and statewide significance including protection of environmentally sensitive habitat area, protection of public access, protection of agricultural resources, and protection of visual resources.

In particular, this project also raises land use issues regarding development of coastal rural agricultural areas with estate-type residential development, which is an issue of statewide significance. However, as described above, although the project includes two large residential estates on agriculturally zoned parcels along a largely undeveloped rural coastline, the site does not have a history of agricultural production and includes a vast array of biological resources and environmentally sensitive habitat area. The project, as approved, will include a 117 acre conservation easement, more than 23 acres of restoration, and only approximately 4.4 acres of the 143 acre site will include residential development. Also, it is noted that the Land Trust for Santa Barbara County submitted a letter to Commission staff, received on March 26, 2014, indicating that the Land Trust is interested in accepting, monitoring, and ensuring compliance with the conservation easement. The project also includes an approximately one mile long segment of the California Coastal Trail along the ocean front parcel with a parking lot and vertical access to the beach. The Santa Barbara County Trails Council has expressed interested in working with the County to realize implementation of the trails. Therefore, while resources of statewide significance exist on the site and nearby, this project does not raise a substantial question regarding issues of statewide significance. The unique characteristics of the project site appear to make commercial agriculture infeasible, the residential development is limited in scope, and the project has beneficial components protecting ESHA and providing formalized public access.

F. CONCLUSION

For the reasons discussed above, no substantial issue is raised with respect to the consistency of the approved development with the policies of the County's certified LCP. Applying the five factors identified above, the Commission finds the County provided a high degree of factual and legal support that the development is consistent with the following LCP policies and public access policies of the Coastal Act: (a) protection of environmentally sensitive habitat area (LCP Policies 2-11, 9-26, and 9-28 regarding White-tailed Kite habitat and the Naples Seal haul out), (b) protection of public access (Coastal Act Sections 30210, 30211, and 30212 and LCP Policies 7-1, 7-2, and 7-3), (c) adequacy of public and private services and resources (LCP Policy 2-6), (d) protection of agricultural resources (LCP Policy 8-2 and Coastal Act Sections 30241 and 30242), (e) protection of visual resources (LCP Policy 4-3 and Coastal Act Section 30251), (f) hazardous materials (Policy 3-14), and (g) Naples Townsite LCP Policy 2-13.

In addition, the development is not extensive in scope given the large area of the parcel proposed to be retained in open space, the project is not expected have adverse impacts on significant coastal resources, the project is not likely to serve as a negative precedent for the County's future interpretation of its LCP or the Gaviota Coast Plan given the unique site circumstances, and, although the appeal raises issues of statewide importance, the above analysis indicates that no substantial question regarding policy consistency exists based on the project components and unique site circumstances. Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the grounds raised by the appellants relative to the project's conformity to the policies contained in the certified LCP and the public access policies of the Coastal Act.

APPENDIX A

Substantive File Documents

Certified Santa Barbara County Local Coastal Plan; Final Environmental Impact Report 09EIR-00000-00003 (Revised February 2013 as modified by EIR Revision Letter RV1, dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013; updated 2013 EIR Biological Resources Section 3.4; Planning and Development Department Agenda Letter for Board of Supervisors Hearing, February 4, 2014, Appeals (Case No. 13APL-00000-00037 and 13APL-00000-00038) and attachments thereto; Santa Barbara County Planning Commission Staff Report (Case Nos. 06CDH-00000-00038, 06CDH-00000-00039, 07CUP-00000-00065, 09CDP-00000-00045, 10CUP-00000-00039, 10CDP-00000-00094), dated February 21, 2013 for hearing of March 20, 2013 and attachments thereto; Santa Barbara County Planning and Development Department Memorandum to the Santa Barbara County Planning Commission, dated November 12, 2013 and attachments thereto; Santa Barbara County Planning and Development Department Memorandum to the Santa Barbara County Planning Commission, dated March 19, 2013 and attachments thereto; Coastal Development Permits A-4-STB-93-154, A-4-STB-93-154-CC, A-4-STB-93-154-CC-R1, A-4-STB-93-154-CC-R2, and A-4-STB-93-154-A2 (ARCO Dos Pueblos Golf Links).



Project Location



Exhibit 2
A-4-STB-14-0010
Parcel Boundaries

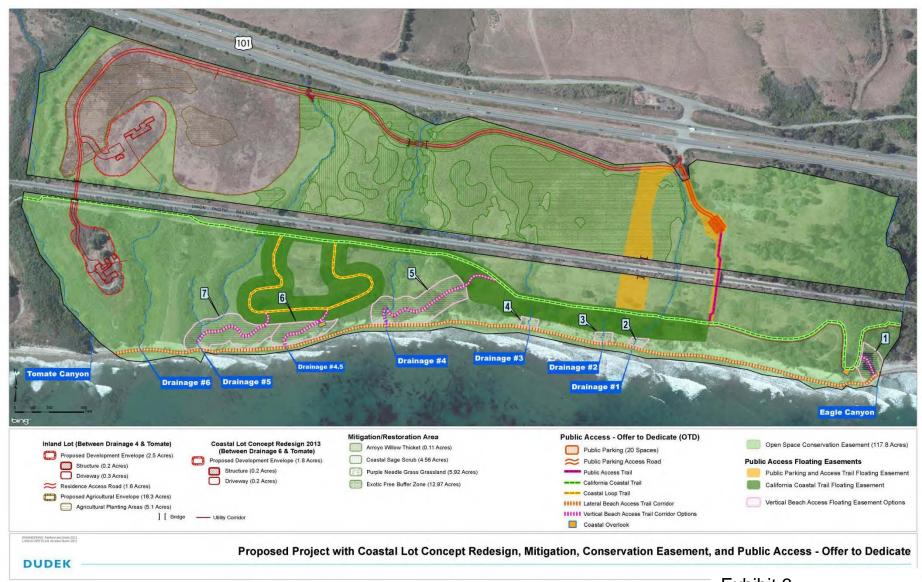
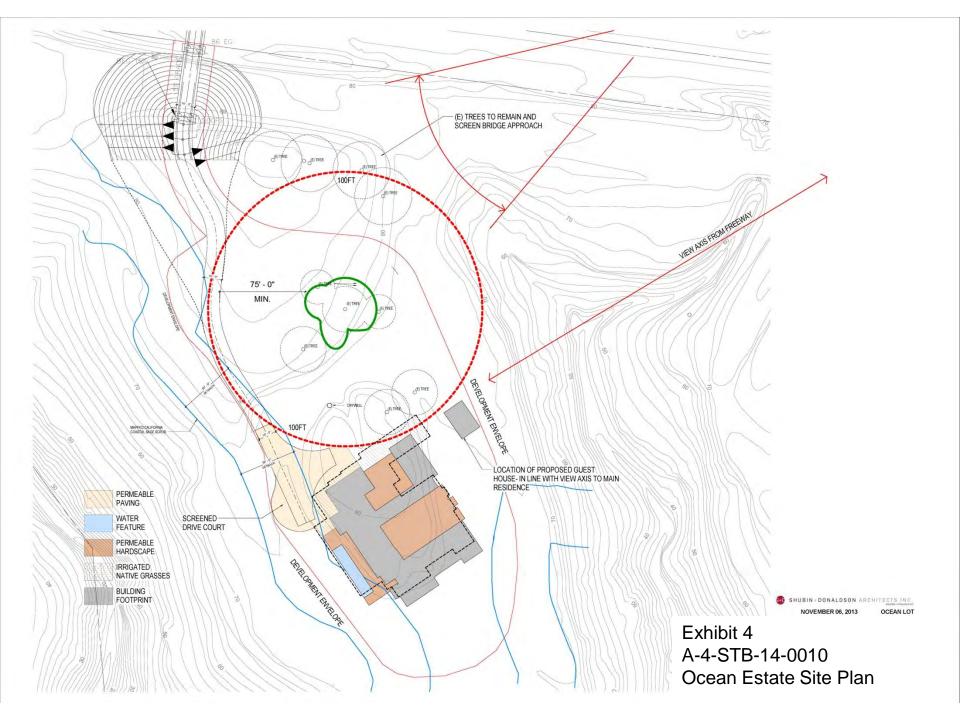
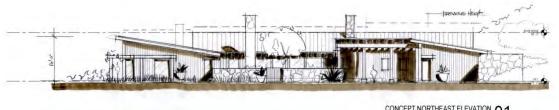
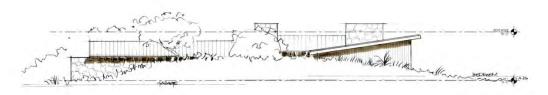


Exhibit 3 A-4-STB-14-0010 Site Plan

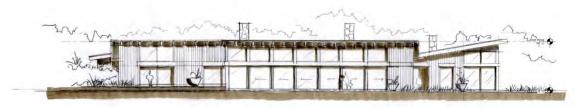




CONCEPT NORTHEAST ELEVATION SCALE: 188° = 110° 01



CONCEPT NORTHWEST ELEVATION 02



CONCEPT SOUTHWEST ELEVATION OSCALE 1887-1109 03



CONCEPT SOUTHEAST ELEVATION SCALE 118"=110" 04

Exhibit 5 A-4-STB-14-0010 Ocean Estate Elevations

SHUBIN + DONALDSON ARCHITECTS INC.

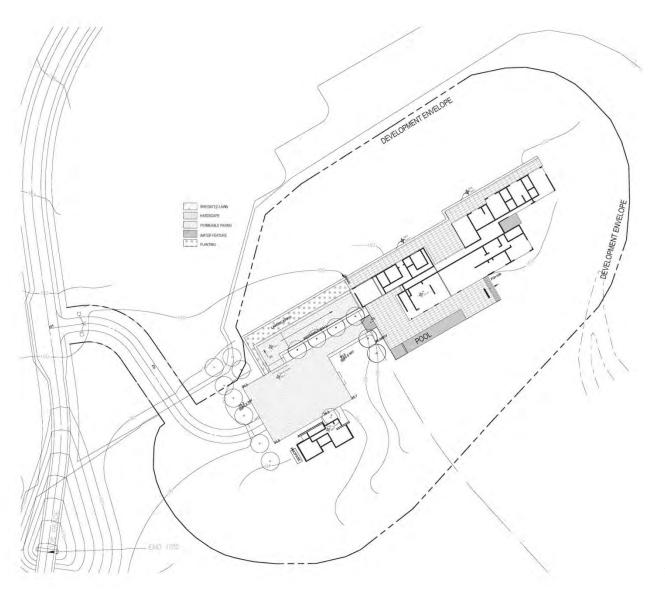


Exhibit 6 A-4-STB-14-0010 Inland Estate Site Plan

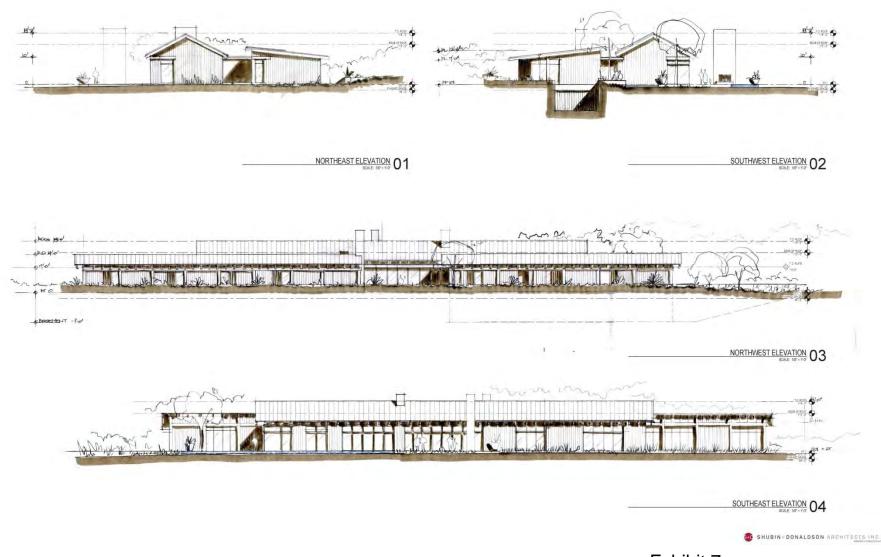


Exhibit 7 A-4-STB-14-0010 Inland Estate Elevations

CALIFORNIA COASTAL COMMISSION

-4-STB-14-0010 Received

FEB 28 2014

SOUTH CENTRAL COAST DISTRICT OFFICE 89 SOUTH CALIFORNIA STRET, SUITE 200 VENTURA CA 93001-4508 VOICE (805) 585-1801 FAX (805) 641-1732





APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Gaviota Coast Conservancy, SB Surfrider, SB Audubon Society, Peter Howorth

Law Office of Marc Chytilo, P. O. Box 92233

City: Santa Barbara

Zip Code: 93190

(805) 682-0585

SECTION II. Decision Being Appealed

Name of local/port government: 1.

County of Santa Barbara

2. Brief description of development being appealed:

Paradiso del Mare Ocean and Inland Estates Project (Coastal Development Permit Nos. 06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 10CDP-00000-00094, 07CUP-00000-00065 and 10CUP-00000-00039). Consists generally of two residential estate complexes and construction of two water lines.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

South of Highway 101 approximately 1 mile west of the City of Goleta in the Gaviota area; Assessor Parcel Nos: 079-200-004 and 079-200-008.

- 4. Description of decision being appealed (check one.):
- \boxtimes Approval; no special conditions
- \boxtimes Approval with special conditions:
- П Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial

decisions by port governments are not appealable.

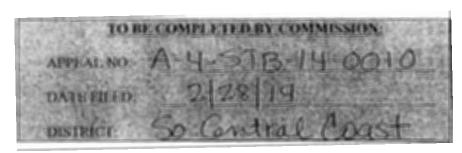


EXHIBIT 8 A-4-STB-14-0010 2/28/14 Appeal

APPEAL FROM COASTAL	L PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)
	was made by (check one):
 □ Planning Director/Zon □ City Council/Board of □ Planning Commission □ Other 	
6. Date of local governmen	t's decision: February 4, 2014
7. Local government's file	number (if any):
SECTION III. Identification	of Other Interested Persons
Give the names and addresses of a. Name and mailing address	of the following parties. (Use additional paper as necessary.)
Brooks Street Chris Yelich and Howard Zelefsky 1300 Quail Ave., Suite 100 Newport Beach, CA 92660	Dudek April Winecki 621 Chapala Street Santa Barbara, CA 93101
 Names and mailing address the city/county/port hearin should receive notice of this 	ses as available of those who testified (either verbally or in writing) as g(s). Include other parties which you know to be interested and appeal.
(1) See Attached List of Interested	Parties
(2)	
•	
(3)	

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The Project fails to conform with the standards in the County's certified Local Coastal Program (LCP) and the public access policies of the Coastal Act. Specifically, the Project fails to conform with Coastal Land Use Plan (CLUP) Policy 2-11, protecting environmentally sensitive habitat areas (ESHAs) including the Naples Seal Rookery and White-tailed Kite habitat, with CLUP Policies 9-26 and 9-28 protecting roosting and nesting habitat for White-tailed Kite, with Coastal Act sections 30210, 30211, 30212 and CLUP Policies 7-1, 7-2, and 7-3 protecting public access, with CLUP Policy 2-6 requiring that adequate public or private services including roads are available to serve the proposed development, with CLUP Policy 8-2 and Coastal Act sections 30241 and 30242 (incorporated into the LCP by CLUP Policy 1-1) protecting agriculture, with CLUP Policy 4-3 and Coastal Act section 30251 (incorporated into the LCP by CLUP Policy 1-1) protecting visual resources, with CLUP Policy 3-14 prohibiting development on areas of a site which are not suited for development because of known hazards, and with CLUP Policy 2-13 requiring that the County discourage residential development of lots within the Naples Townsite. Additionally, there are feasible alternatives that avoid and/or substantially reduce the Project's conflicts with the LCP and coastal access policies of the Coastal Act.

Project's conflicts with the LCP and coastal access policies of the Coastal Act.

Please see attached letter for a detailed discussion of the reasons supporting this appeal.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

Agent Authorization

Ana Citrin

Section VI.

I/We hereby

authorize

The information and facts stated above are correct to the best of my/our knowledge.

Signature of Appellant(s) or Authorized Agent 2/27/14 Date: Note: If signed by agent, appellant(s) must also sign below. to act as my/our representative and to bind me/us in all matters concerning this appeal. Date:

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

February 28, 2014

California Coastal Commission South Central Coast District Office 89 South California Street, Suite 200 Ventura, CA 93001 By email to amber.geraghty@coastal.ca.gov

RE: Appeal of Santa Barbara County's Approval of the Paradiso del Mare Ocean and Inland Estates Project (Coastal Development Permit Nos. 06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 10CDP-00000-00094, 07CUP-00000-00065 and 10CUP-00000-00039)

Dear Chair Kinsey and Honorable Members of the Commission,

This letter, submitted on behalf of the Gaviota Coast Conservancy ("GCC"), the Santa Barbara Chapter of the Surfrider Foundation ("SB Surfrider"), Santa Barbara Audubon Society ("SB Audubon"), and marine mammal expert Peter Howorth, details the grounds for our appeal of Santa Barbara County Board of Supervisors' February 4th, 2014 approval of the Paradiso del Mare Ocean and Inland Estates Project (Coastal Development Permit Nos. 06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 10CDP-00000-00094, 07CUP-00000-00065 and 10CUP-00000-00039) ("Project"). We may submit additional information to staff and/or the Commission to support this appeal request.

Appellants GCC, SB Surfrider, and SB Audubon are public benefit organizations dedicated to the protection of coastal resources and public access in Santa Barbara County. Appellant Peter Howorth is an individual with extensive experience with marine mammals, who has worked as a consultant for numerous government agencies providing environmental planning and expertise, and founded and serves as director of the nonprofit Santa Barbara Marine Mammal Center. Appellants participated throughout the County's environmental review and approval process for the Project, and exhausted all appeals at the County level. The public overwhelmingly opposed the Project at the County level, calling for additional environmental analysis and consideration of less environmental damaging alternatives.

For the reasons discussed below, the Project does not conform with the standards set forth in the County's certified Local Coastal Program ("LCP") and does not conform with the public access policies set forth in the Coastal Act. This Project affects very significant coastal resources, involves issues of public (as opposed to private) concern, and results in a high degree of inconsistency with the LCP and Coastal Act. Additionally, feasible alternatives exist that would avoid many of the policy inconsistencies. For these reasons, we believe that this appeal raises a substantial issue and we request that the Commission consider the Project on its merits.

1. Project Overview

The Project site consists of two non-conforming agriculturally zoned lots on the eastern Gaviota Coast, located immediately east of the antiquated subdivision known as the "Naples Townsite". The applicant's ownership includes the two lots proposed for development, as well as 25 adjacent Naples Townsite lots that the property owner has indicated an intention to develop with an additional 10-12 homes. The Project includes a water supply pipeline that the County's Environmental Impact Report ("EIR") acknowledges will cause a Class I significant and unavoidable impact to an extremely sensitive cultural site, and will cause significant growth inducing impacts to the Gaviota Coast by extending urban services west to near the boundary of the 25 Naples Townsite lots.

The two large estate complexes (8,678 and 9,963 square feet), 1.6 acres of driveway, and new bridge also cause acknowledged Class I significant and unavoidable cumulative impacts to the aesthetics of the Gaviota Coast. The proposed location for the Ocean Estate is: 1) nesting and roosting habitat for white-tailed kite; 2) immediately above to the Naples Seal Rookery; 3) on top of the main existing public access route to the beach and Naples surf-break; 4) the site of three abandoned oil wells, and unknown soil contamination; 5) on prime agricultural soils; and 6) vulnerable to bluff erosion and climate-change induced hazards. (See FEIR Figure 3.9-1 (Site Constraints Map), FEIR Figure 3.13-1 (Map showing existing Tomate Canyon beach access).) The County failed to properly analyze the impacts and policy inconsistencies associated with the Ocean Estate in its current location.

The County also failed to properly analyze the impacts and policy inconsistencies of other Project elements including the pipeline that provides water to the 25 Naples lots, the adequacy and safety of Project roadway access, and the conversion of prime agricultural land to residential use. Described herein, abundant evidence demonstrates that the Project results in unmitigated significant impacts and clearly conflicts with County LCP policy and public access provisions of the Coastal Act.

Moreover, as a direct result of the defective impact disclosure, the County failed to recognize that there are several feasible alternatives to the Project, that would substantially reduce the Project's impacts on coastal resources and bring the Project into closer conformity with the County's LCP and the public access provisions of the Coastal Act. These alternatives include several different house sites at the eastern end of the property, as well as several house site locations west of the Project site on the applicant's "Naples Townsite" lots. The County's CEQA process and alternatives analysis failed to acknowledge a recorded legal covenant executed by the applicant that precludes development of more than 2 houses on the entirety of applicant's land holdings, including the Naples lots. These alternatives are described in more detail below.

2. The Project Fails to Conform with LCP Policies Protecting Biological Resources

a. Naples Harbor Seal Rookery

The Naples Seal Rookery is one of only two publically accessible seal rookeries on the

mainland coast of Santa Barbara County and is part of the Naples State Marine Conservation Area (SMCA). Marine mammal rookeries and haul-outs are listed as ESHAs in Santa Barbara County's LCP, and are essential for breeding, pupping, molting, and resting. (1982 CLUP pp. 116, 119-120; Revised Biological Resources section of the Project EIR, September 2012, p. 3.4-63). The CLUP describes the Naples Seal Rookery as follows: "A pocket beach located approximately .6 kilometers east of Naples Point provides a secluded hauling ground and rookery, utilized during the day and night. Observations indicate as many as 165 harbor seals use these grounds." (CLUP p. 129.)

The LCP articulates the following policy, protecting ESHAs including the Naples Seal Rookery from the adverse impacts of development:

CLUP Policy 2-11: All development, including agriculture, adjacent to areas designated on the land use plan or resource maps as environmentally sensitive habitat areas, shall be regulated to avoid adverse impacts on habitat resources. Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.

The Ocean Estate and railroad bridge, including night lighting and vehicle headlights, will be visible to and disrupt seals as they are approaching the rookery and deciding whether or not to haul out, constituting a significant adverse impact to the habitat resource. The Project would also redirect existing vertical beach access from a point just west of the rookery to a point east of the rookery, increasing the potential for beachgoers heading westward toward the Naples beach and surfbreak to disturb the seals.

Contrary to CLUP Policy 2-11, the Project is not regulated to avoid these impacts. The County's EIR gave very short shrift to impacts on the Naples Seal Rookery; the County's description of the environmental baseline and analysis of impacts associated with construction and occupation of the Ocean Estate was both untimely and inadequate. The County ignored extensive technical information collected and offered by Mr. Howorth and others concerning the existing conditions at the rookery and instead relied on extremely outdated, inaccurate and woefully incomplete baseline information. The County conducted no analysis of whether the Project complied with the above ESHA policy as applied to the rookery, and only belatedly and summarily addressed how the Ocean Estate might affect the rookery. Due to the substantial flaws and omissions in the County's analysis, it does not support a conclusion that the Project, with mitigation, will avoid adverse impacts on the rookery. Even with the added mitigation measures, no provision is made to cease project activities if impacts are occurring to the seal rookery. Numerous past projects in Santa Barbara County next to harbor seal rookeries have always had realistic provisions to protect seals from project disturbances, including the ability of an agency-approved biological monitor to order a stop in Project activities if impacts occur.

The Naples Seal Rookery is located on the beach only 326 feet from the Ocean Estate development envelope. The County evaluated only whether construction equipment and activity, and the estate itself, including night lighting, would be visible from the rookery itself – on the beach, not

from the nearshore waters. As explained by marine mammal expert Peter Howorth, the seals access the rookery by swimming in from nearshore waters. According to Mr. Howorth,

[t]he view from the ocean is also very important to harbor seals, which closely scrutinize the coast before venturing ashore" and "Harbor seals have good vision in air and frequently closely watch people on the beach from nearshore waters. Construction equipment, along with the dust it raises when operation, will present visual impacts that could affect haul-out patterns. (Howorth Letter to County, 12/4/13, pp. 6-7.)

Mr. Howorth criticized the County's analysis which only evaluated visibility from the rookery itself, and noted that from as little as 10 or 20 feet offshore the seals would see the development and activities on the bluff. (Howorth testimony to County Planning Commission, 11/20/13). He further explained that the construction equipment, dust, and lighting would introduce a new visual element that may impact the seals. (*Id.*) With specific respect to lighting, Mr. Howorth explained,

[1] ighting of any kind, even when shielded and kept within various government standards, represents a drastic change to the site. How the harbor seals might react to this change was not analyzed or even mentioned in the EIR, nor how such lights would appear from the beach or offshore. Harbor seals are well adapted for seeing in dim light and would certainly be able to discern the glow of lights above the rookery. (Howorth Letter, 10/15/13, pp. 7-8.)

Care is taken to reduce or eliminate windows facing the highway so that night lighting will not be visible from the road. The value of this measure is highly questionable in regard to wildlife receptors since no mention is made of lighting showing through windows onto the bluffs, where numerous sensitive wildlife receptors are found, nor of light visible from the beach or ocean, where harbor seals are found. The EIR does state that most windows will face the ocean, and simulated views show entire walls virtually covered with glass. (Howorth Letter, 10/15/13, p. 8.)

The County entirely failed to evaluate the visibility of structures within the Ocean Estate development envelope to seals from nearshore waters (which has a great effect on the behavior of seals considering hauling out for pupping, nursing or resting) and from locations up and down coast, and undertook no analysis of whether this visibility would adversely impact seal behavior. The Project also includes no protective measures to avoid impacts to the seals associated with the visibility of the Ocean Estate. With respect to the EIR's treatment of these issues, Mr. Howorth stated that it "falls short of any kind of realistic analysis." (Howorth testimony to County Planning Commission, 11/20/13).

Similarly, the County entirely failed to evaluate the audibility of construction noise from any points other than the haulout itself, and undertook no analysis of whether construction would cause adverse impacts to the seals. Approximations of noise levels at the haulout itself are only that – approximations – and moreover use the dBA scale, which reflects the range of human hearing, not that

of seals. As Mr. Howorth explained, "[t]he use of A-weighting in assessing potential impacts to marine mammals is highly questionable, however, because A-weighting does not take into account the hearing frequency range and sensitivities of marine mammals, which are quite different from those of humans." (Howorth Letter, 10/15/13, p. 6.) The County made no assessment of the potential impact of ground-borne vibrations on seals hauled out at the rookery, despite the fact that "pinnipeds are known to be sensitive to ground-borne vibrations". (*Id.*)

In addition, statements made in the Response to Comment on the recirculated biological resources section of the EIR disclose that the impact analysis relies primarily on the difference in elevation between the Ocean Estate development envelope and the haulout itself for its conclusion that noise and vibration "are not expected to affect harbor seal behavior." (See Responses D2-15 and 17). Both in the responses to comment and at the Planning Commission, County Staff and the applicant explained that construction noise is similar to train noise, and accordingly that it is unlikely to affect the seals. According to numerous observations by the Carpinteria Seal Watch and Howorth, seals at the Carpinteria rookery, which also lies under a coastal bluff, are still frightened by train sounds. Also, as at Carpinteria, at Naples the seals have been exposed to train noise for decades, whereas construction noise at that location would be a change from the existing conditions. Considering the long duration of the construction activities, Project noise would represent a cumulative impact when combined with train noise. It would also represent a significant Project impact by itself. Moreover, train noise is transient whereas construction noise is constant in nature. Transient noises are mitigated differently than continuous noises. As Mr. Howorth explained:

there's a difference between . . . transient sounds. They occur over a very limited timespan. They have very limited impacts. Trains have been running from Santa Barbara to Los Angeles since 1887 and to San Francisco since 1901. It's a transient sound. Construction sound goes on from 7:00 in the morning to 4:00 in the afternoon. It's not transient. (Howorth testimony to PC, 12/4/13.)

The dominant construction noise is low frequency (under 1000 hertz [Hz]). Low frequency noise does *not* attenuate rapidly with distance, yet the EIR states that construction noise levels of 95 dB will somehow attenuate to 65 dB at Bacara Resort, 1440 feet away from the closest construction activity. The EIR states alternatively that noise diminishes by 3 dB or 6 dB with every doubling of distance, but provides no indication of what this distance is (EIR 3.11-15, 17, and 22; also 3.11-10), rendering such statements completely meaningless. Howorth pointed out in his response comments that even sounds of 1000 Hz (higher than the construction sounds) will attenuate only 4 dB at 1000 meters (3281 feet) (see Richardson et al., 1995 Academic Press division of Harcourt Brace, San Diego, p. 77 ("At 1 kHz [1000 Hz, a higher frequency than construction equipment sounds]... a typical value for in-air attenuation is ~4 dB/km [4 dB attenuation at 1000 meters or 3281 feet]"), thus the EIR statement that lower frequency construction noise will attenuate from 95 to 65 dB in only 1440 feet is literally and completely impossible. Moreover, the Ocean Estate site is only 326 feet from the Naples seal rookery. Howorth pointed out that harbor seals' low-frequency hearing threshold is about 70 dB

in air and that their hearing frequency range is from 100 Hz to 180,000 kHz, indicating that they certainly could hear the construction noises.

At the same hearing, one of the Applicant's consultants mentioned that sound levels at the Ocean Estate would be 45 dB and only 35 dB at the rookery, leading County commissioners to believe that the 45 dB level was somehow tied to construction noise. No effort was ever made by the Applicant to measure natural ambient noise at the beach under various conditions, which could easily exceed 45 dB, as proven by noise studies at the nearby Carpinteria seal rookery. In the EIR (Page 3.11-13), the 45 dB level is tied to ambient noise inside the estate and has nothing whatever to do with construction noise. The EIR does mention that ambient levels *outside* the dwelling ranged from 53.1 to 68 dB just from traffic on Highway 101 (Page 3.11-11).

According to the EIR, construction noise ranges from 75 to 95 dBA for each piece of construction equipment (Pages 3.11-15, 17, and 22). The EIR claims that the total noise level of construction activities will be 95 dBA, yet fails to analyze sound levels generated by multiple types of equipment operation at once. Also, back-up alarms, required on heavy equipment, generate very loud, penetrating sound that can be heard at great distances, yet no mention is made of noise from back-up alarms.

Seals are known to be very sensitive to vibrations, yet no analysis was made on the impacts of vibrations from heavy equipment coupling to the substrate and hence to the nearby seal rookery, much of which lies over or on the same rock formation. Vibration analyses have been made for past projects at Carpinteria; there is no reason why such analyses should not be made for this Project.

In an attempt to explain that that construction during daytime hours and related effects of noise, vibration and visual disturbance will be less than significant on the seals, the EIR/County analysis contended the haulout is used primarily at night. In fact, the evidence of the haulout being used primarily at night was based on a single 40-year old study that does not reflect current conditions, which includes daytime haulout use by seals. Numerous harbor seal censuses conducted over many years by the California Department of Fish and Game (now California Department of Fish and Wildlife) and which include the Naples rookery, were never consulted. Mr. Howorth has rescued seals from the Naples rookery many times over the past 38 years. He has observed substantial numbers of seals hauled out during the day over this period. Indeed, the observation that the seals may have shifted to primarily night-time haulout patterns in the mid 1970's, when the County-cited study was conducted, actually demonstrates that oil and gas development occurring at the time may have had an adverse impact on the seals which has since been largely reversed with the cessation of on-shore oil and gas development and activities on-site in the 1990's.

Overall, the County entirely failed to consider the audibility of construction noise and vibration from locations other than at the haulout itself, failed to consider the frequencies detected by harbor seals, and undertook no actual analysis of whether introducing construction noise and vibration at this location would cause adverse impacts to the seals. Mitigation Measure/Condition Noise 0-2 and Noise

0-4 are standard construction noise mitigation measures to reduce impacts to humans, and the Project includes no mitigation measures at all that address vibration.

The Project would also alter public access patterns on the property including on the beach near and through the rookery. From at least the early 1960's until March 2013, the public has accessed the beach across the Project site. The principle route for accessing the beach is the trail that crosses the Ocean Estate development envelope and drops down to the beach 100-200 feet west of the seal rookery at Tomate Canyon. There is also an historical beach access trail at the next drainage west referred to as "Tomate West" which was the location approved by the County and Coastal Commission associated with the Arco Dos Pueblos Golf Links Project, is the vertical beach access location recommended in the County's draft Gaviota Coast Plan and is sufficiently west to avoid impacts to the seal rookery. Unfortunately, all of the "floating" vertical easement locations offered by the Applicant are located east of the seal rookery, requiring that the public walk through or past the rookery to access the surfing destinations west of the rookery. Mitigation measure Bio-12/Condition 20 does not include meaningful enforcement sufficient to halt existing use of the beach in the vicinity of the rookery, and the public is likely to walk upcoast from Haskell's beach and/or if and when constructed, utilize the Project beach access points even if the beach and/or access way is closed. The \$20,000 in seed money to start a volunteer seal watch program is woefully insufficient to actually ensure that such a program is established, and moreover, the remote location of the Project site indicates that any such program may be much less effective than it has been in Carpinteria. The County also failed to consider impacts to the seal rookery from residents and their animals that could access the beach without restriction.

Moreover, the beach closure is only in effect from February through May, although Mr. Howorth commented that he has routinely observed seals pupping at Naples as early as December or January, including several pups born this January. In recognition of this fact, the City of Carpinteria (also in Santa Barbara County) passed an ordinance that closes the beach at the Carpinteria seal rookery from December 1 through May 30 every year. This closure has been in effect for many years. Moreover, over 20 years' of recorded observations by the Carpinteria Seal watch, an ad hoc citizens' group, confirms that harbor seals along the mainland coast of southern Santa Barbara County (south and east of Pt. Conception), indeed have pups during this period. Marine mammal stranding records from 1976 to the present also bear this out. The County completely failed to examine a wealth of relevant records from the Carpinteria Seal Watch and from the Santa Barbara Marine Mammal Center. As Mr. Howorth has explained, disturbing seals with pups often causes mother seals to abandon pups, and disturbances on the beach can disturb near-term pregnant seals, which can cause them to miscarry or give birth prematurely. None of these impacts were considered by the County, and the proposed mitigation measures/conditions do not address, let alone avoid these impacts.

Additionally, the County undertook no analysis of the impacts of facilitating development of up to 10 homes on the applicant's Naples lots. As Mr. Howorth notes, "adding homes on up to ten lots on

¹ The applicant's offered vertical access locations not only adversely impact the seals, they are plainly inconsistent with LCP and Coastal Act policies, as discussed below.

the Naples Townsite Project Site would most certainly add considerably to biological impacts on the harbor seal rookery, among other wildlife resources. In other words, the [foreseeable future development at the] Naples Townsite is not just a cumulative aesthetic impact; it is also a cumulative biological impact." (Howorth Letter, 10/15/12, pp. 10-11.)

Similar impacts, including offshore visual impacts, project noise and vibrations, construction activities, and disturbances from people, have been extensively analyzed for numerous past coastal projects at the nearby Carpinteria seal rookery. Numerous mitigation measures were imposed on such projects for the protection of the seals. These measures included numerous "triggers" in which project activities could be immediately stopped at the sole discretion of the biological monitor if an impact appeared likely to occur or did occur to the seals. There are no such protections offered to the Naples rookery.

As mentioned, the Naples rookery is only one of two publically accessible rookeries along the mainland coast of Santa Barbara County. Moreover, throughout all of Southern California, only one other rookery—in La Jolla—is accessible to the public. Finally, the Naples rookery is within a State Marine Conservation Area. The Naples rookery is a precious local resource that should not be jeopardized by inadequate analyses and mitigation measures, especially considering the precedents set for seal protection at a nearby rookery.

In summary, the Project is likely to significantly and adversely affect the rookery, and the Project lacks regulatory measures adequate to avoid these impacts. Accordingly, the Project fails to conform with CLUP Policy 2-11.

b. White-tailed Kite

White-tailed kites use the Project site for foraging, perching, and nesting for decades. Most nesting attempts in various trees on the site have been unsuccessful, with only 2 instances of successful nesting on the site (2002 and 2013, both on the western half of the Ocean Estate, see FEIR Figure 3.4-5 (White-Tailed Kite Nest Locations)). As initially proposed, the Project would have removed an identified perch tree within the Ocean Estate development envelope, however in March 2013 kites were observed in the vicinity, and ultimately established a successful nest in that tree, which yielded an unprecedented 6 successful fledglings. Rather than avoid development in the nesting area, the County required a 75-100 foot buffer that is acknowledged to be inadequate to protect the nest tree for future use.

White-tailed Kite habitat is defined as ESHA in the County's LCP (CLUP p. 117). Accordingly, policy 2-11, quoted above also applies to White-tailed kite habitat. Additionally, the County's LCP sets forth several policies that specifically protect kite nesting sites:

CLUP Policy 9-26 provides that "there shall be no development... within the area used for roosting and nesting" by white-tailed kites.

CLUP 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 squarely within the area used for white-tailed kite nesting in clear violation of this CLUP Policy 9-26. In addition, the proposed 75-100 ft. buffer between the tree that supported an extraordinary 6-fledgling kite nest and the Ocean Estate development is not sufficient to achieve consistency with these policies, and is not sufficient to reduce impacts below significance. First, the letter report prepared for the County by biologist John Storrer, dated 7/22/13, clarifies that "the area used for roosting and nesting" constitutes more than the tree itself, extending to the area defended from other kites or raptor species or even foraging habitat. (See Storrer Letter Report, 7/22/13, p. 6.) This conclusion is also reached by kite expert Mark Holmgren and by the Santa Barbara Audubon Society in their letter to the Planning Commission dated 10/28/13). (See Audubon/Holmgren letter pp. 12-13.) Accordingly, the proposed Ocean Estate is within the area used for nesting and accordingly conflicts with CLUP Policy 9-28.

Second, the Audubon/Holmgren letter includes extensive comments regarding the inadequacy of the proposed buffer. Furthermore, the below comments made by the County's biologist support the conclusion that development of the Coastal Estate will discourage kites from using the nest tree in the future.

It's unlikely that kites would return to the "new" (2013) nest tree given the current development proposal . . . Considering the combined effects of lighting, dogs, vehicles and general human activity between all those features I don't see why kites would choose to nest there. They would be much more likely to select a more distant location, providing they can find a suitable nest tree within a reasonable distance from good foraging habitat. (Storrer Letter Report, p. 4).

I would always recommend a larger setback. On this specific site, the development setback is less than 100 feet for the Ocean Estate development envelope, which in any serious discussion would be indefensible, in my opinion. (Storrer Letter Report, p. 7.)

Rather than resolve these inconsistencies with the LCP's buffer requirement, the County's own expert indicated that allowing the development to proceed in the approved location would effectively "sacrifice" the Ocean Estate as habitat for white tailed kites. (Storrer Letter Report, p. 5 ("Since it appears that a number of environmental, engineering, and economic considerations point to the current location of the Ocean Estate development envelope, I suggest "sacrificing" that area as a resource for kites and looking to another part of the property that meets kite habitat requirements for preservation and improvement (i.e. management). I don't think that the proposed development envelope can be adjusted (reduced, reconfigured) to ensure compatible use by kites and people."). However, the LCP does not allow the County to sacrifice habitat for environmentally sensitive resources. Rather, the County must reconcile the inconsistencies by modifying the project.

The County's failure to resolve this inconsistency with the LCP is exacerbated by the fact that the observed nest is no ordinary nest. To the contrary, earlier this year, the nest successfully supported six fledglings – something unprecedented in reported studies and qualified observations of the species. While the Dudek reports and RDEIR rely on the assumption that kites do not reuse nest trees to justify a finding of no significant impact, "[a] successful nest area is very likely to be one used again." (Holmgren, p. 11.) Accordingly, as to the tree at issue, the assumption that kites will not reuse the nest tree is false. Additionally, Mark Holmgren explained the implications of this unprecedented observation in his October 28, 2013 letter on the RDEIR:

The Dudek team witnessed something that's never been documented before for this species. And they did it in a year that was exceedingly dry and in which no other pair of kites in Goleta raised more than three young. If Dudek is correct, then this is an extraordinary site and we would want to investigate its attributes before we jeopardize continued Kite use of the site by placing homes on it. Perhaps this area holds a template for restoration that we need to model in other places? What prey density exists here that is able to support such prolific breeding? How can we adequately protect or expand those habitats? Or, have the kites shifted their prey preference to some other organisms?

The 2013 Kite report does not provide sufficient detail to weigh these four questions and select a defensible explanation. Until clarifications emerge, the 2013 Dudek Kite Nesting Study should be considered flawed and should not be used as the basis for decisions pertaining to set-backs or relocations of the home or driveway.

(Audubon/Holmgren Letter, p. 10.) Without any explanation why the kite nest in the Ocean Estate nest tree was more successful than any previously documented kite nest, and during what would otherwise be considered an exceptionally bad year for kite breeding success, it would be reckless to "sacrifice" by developing in such close proximity and relying on the expectation that these kites will simply find another comparable habitat assemblage.

The record demonstrates that the 75-100 ft. buffer was devised because it is the largest possible buffer that would still enable development of the Ocean Estate in its current location, not because it is the distance adequate to protect the kite nest tree. A much larger buffer would be required before the County could reasonably conclude that impacts to kites are mitigated below significance, and that this Project complies with CLUP Policies 9-26 and 9-28 by avoiding development in the nesting and roosting area entirely and minimizing impacts to the surrounding habitat area that supported this extraordinarily successful nest site.

3. The Project Fails to Conform with the Public Access Policies in the LCP and Coastal Act

The Project site includes the most heavily used vertical beach access point between Haskell's beach in Goleta and Refugio State Beach. Clearly defined trails cross the landscape, connecting the

beach access routes to the various areas used for parking over the years, both on and off the property. The Naples surfbreaks including Naples Reef and Naples Beach were first documented in the "Surfing Guide to Southern California" in the early 1960's, and have lured generations of surfers to the property. The property is also used by hikers, birdwatchers, and BMX riders (whose tracks are well defined and visible in aerial photographs, including a "course" within the Ocean Estate development envelope.) As noted in the Commission Staff's comments on the draft EIR, "Coastal Commission staff has conducted a preliminary Prescriptive Study on the property and has found evidence of significant public use in various bluff top trails, overlooks, beach access routes, and shoreline area and public parking hear Highway 101." (Coastal Commission DEIR comment letter, 10/25/12, p. 4.)

Both the Coastal Act and the County's LCP include various policies protecting existing and historic public use of shoreline areas:

Coastal Act Section 30210 Access; recreational opportunities; posting
In carrying out the requirement of Section 4 of Article X of the California Constitution,
maximum access, which shall be conspicuously posted, and recreational 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.

Coastal Act Section 30211 Development not to interfere with access Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212 New development projects

- (a) 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, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.
- CLUP Policy 7-1: The County shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline. At a minimum, County actions shall include:
- a) Initiating legal action to acquire easements to beaches and access corridors for which prescriptive rights exist consistent with the availability of staff and funds.
- b) Accepting offers of dedication which will increase opportunities for public access and recreation consistent with the County's ability to assume liability and maintenance costs.
- c) Actively seeking other public or private agencies to accept offers of dedications, having them assume liability and maintenance responsibilities, and allowing such agencies to initiate legal action to pursue beach access.

CLUP Policy 7-2: For all development between the first public road and the ocean granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless:

a) Another more suitable public access corridor is available or proposed by the land use plan within a reasonable distance of the site measured along the shoreline, or

b) Access at the site would result in unmitigable adverse impacts on areas designated as "Habitat Areas" by the land use plan, or

c) Findings are made, consistent with Section 30212 of the Act, that access is inconsistent with public safety, military security needs, or that agriculture would be adversely affected, or d) The parcel is too narrow to allow for an adequate vertical access corridor without adversely affecting the privacy of the property owner. In no case, however, shall development interfere with the public's right of access to the sea where acquired through use unless an equivalent access to the same beach area is guaranteed.

The County may also require the applicant to improve the access corridor and provide bike racks, signs, parking, etc.

CLUP Policy 7-3: For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall be dedicated. In coastal areas where the bluffs are less than five feet, the area to be dedicated shall be determined by the County, based on findings reflecting historic use, existing and future public recreational needs, and coastal resource protection. At a minimum, the dedicated easement shall be adequate to allow for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure. In addition, all fences, no trespassing signs, and other obstructions that may limit public lateral access shall be removed as a condition of development approval.

The Project would terminate informal access across the site and to the beach and Naples-area surf breaks enjoyed by the public for generations and impliedly dedicated to the public for recreational use. The loss of this long-standing public access is a significant impact, regardless of whether the access is "unauthorized". CLUP Policy 7-1 specifically requires that the County "take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline", including "[i]nitiating legal action to acquire easements to beaches and access corridors for which prescriptive rights exist consistent with the availability of staff and funds." Contrary to this policy, the County has failed to investigate, much less protect and defend the public's right to access the beach and ocean. Rather than initiate legal action to acquire easements that would memorialize the public's right to access the beach as they have for generations, the County turned a blind eye to the

² The County's Thresholds of Significance provide an impact if a project would: "Conflict with established recreational uses of the area, including biking, hiking, and equestrian trails" (FEIR p. 3.13-17.)

overwhelming evidence that prescriptive rights exist across the property and through the Ocean Estate development envelope. The County's articulated position that prescriptive rights do not "exist" until they are adjudicated in court, would impermissibly nullify subsection (a) of CLUP Policy 7-1, because if prescriptive rights only exist once they are adjudicated, there would be no point in the County initiating legal action to secure them. The law of implied dedication makes clear that the easement is formed when the elements occur on the site, and the court merely serves to formally recognize its existence.

The offer to dedicate easements in the future does not achieve compliance with Coastal Act Section 30212 or CLUP Policy 7-2 for several reasons. The locations of the "floating" vertical access easements present significant logistical challenges, requiring massive and impactful bluffside stair structures similar to the one rejected by the County as part of the Santa Barbara Ranch Project due largely to its significant adverse visual impacts. Effectuating public beach access at any of the proposed locations is conservatively estimated in excess of \$750,000, in addition to the cost of environmental review. (Penfield & Smith Memo, 6/12/12.) The only location that arguably would not require a massive engineered staircase (Drainage #5) is located right at the Naples Seal Rookery. Additionally, even if beach access is established at one of the "floating" easement locations, access to the Naples surfbreaks is not available under all tidal conditions. Individuals accessing the beach and hiking west up the beach at low tide, could find themselves stranded when the tide comes in, and without any means of exiting safely. Moreover all of the proposed vertical beach access locations are east of the Naples Seal Rookery and would be closed from February – May. Accordingly, even if established, none of the beach access routes offered by the applicant provide adequate access, and none even begin to compensate for the loss of existing access.

The 2009 DEIR prepared by AMEC Earth and Environmental, Inc. concluded that the Project would result in significant and unmitigable Class I impacts to public access and recreation from elimination of existing unauthorized public coastal access. (2009 DEIR, p. 3.13-20.) The 2009 DEIR found that the offers to dedicate lateral and vertical easements did not mitigate this impact below significance, reasoning as follows:

The cost of designing and constructing the stairway could exceed one million dollars and the source of these funds is uncertain. The County and/or another appropriate agency would likely need significant time and resources to raise these funds. Additional time would be required to permit, design and construct the stairway. As a result, vertical access to the beach may not occur for five, ten or more years. In the interim, the project would result in the long-term closure of the existing unauthorized public access to the Naples surf break and Burmah Beach. In addition, in contrast to the existing unauthorized coastal access points on the western portion of the project site and within the Naples Townsite, the proposed stairway would not provide surfers and other recreationists direct or consistent access to the Naples surf break. The proposed stairway [at Eagle Canyon] would join the beach more than 0.80 miles from the Naples surf break. The intervening beach and rocky points are often impassable during high

tides. Based on these circumstances, the project would result in an unavoidable and significant impact to public recreation and coastal access (Class I).

(2009 DEIR p. 3.13-29.)

Additionally, the 2009 DEIR correctly noted that "The closure of the existing unauthorized coastal access at the project site could create a range of potential secondary impacts." Specifically,

Past experience indicates that surfers and other recreationists would try to continue accessing the Naples surf break and Burmah Beach. Consequently, other existing unauthorized access trails through Eagle Canyon and other drainages on the project site are likely to receive increased use. Increased public access through Eagle Canyon could damage habitat of the California red-legged frog and other sensitive species. Use of other steep access trails could increase the risk of injury to recreationists climbing down steep canyons that occur along the bluff face. In turn, this could create demands for installing more fencing and security.

(2009 DEIR, p. 3.13-30.) The 2013 EIR did not identify this issue, or attempt to analyze or mitigate secondary impacts associated with the closure of beach access. This alone constitutes a serious flaw in the EIR.

In stark contrast to the 2009 DEIR, the 2013 EIR concludes that the Project's impacts to public coastal access is Class III, despite the fact that the 2009 DEIR evaluated a location for the Ocean Estate east of its currently proposed location where it would not physically block the existing public beach access trail to Naples surf break. The new, more impactful location of the Ocean Estate is the only change to the Project since 2009 that meaningfully affects the analysis of this impact. The 2013 EIR attempts to explain the differing conclusions with respect to this impact, but it is clear that none of them would meaningfully affect the conclusions reached in the 2009 DEIR (see EIR p. 3.13-19 – 3.13-20.) For example, the 2013 EIR identifies as a "distinguishing factor" that the project now includes all items in the 2009 DEIR Mitigation Measure REC-2a including a conditional easement dedication for a 20 vehicle parking lot, extension of the lateral Coastal Trail for an additional 150 feet, and access from the parking area to the lateral Coastal Trail over the UPRR tracks. (EIR p. 3.13-19.) However the 2009 DEIR expressly found that even with these mitigation measures, significant impacts from the loss of existing coastal access would remain. (2009 DEIR p. 3.13-29.)

In attempting to distinguish the 2009 DEIR's conclusion of a Class I impact, the 2013 EIR explains that the 2009 DEIR did not consider or address a number of issues. (See EIR pp. 3.13-19 0 3.13-20.) However, upon reading the 2009 DEIR it is clear that all these issues were considered. One such issue included in the 2013 EIR and emphasized by the applicant before the Planning Commission is that the existing unauthorized access could be taken away at any time, without the proposed project. Of course, the CEQA analysis must be based on conditions existing at the time the EIR was prepared (see CEQA Guidelines § 15126.2 (a), (Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 322) which in this case included the condition where

there was then-existing extensive unauthorized public access.³ A second such issue is that the County's CLUP Policy 7-19 provides that access to the Naples Reef should continue to be by way of boats. However, both the County and the Coastal Commission approved beach access as a condition of the golf course project with this CLUP policy in existence, at a location (Tomate West) which is even closer to Naples Reef than the potential vertical access locations offered by the applicant. In short, the 2013 EIR's conclusion of a Class III impact is directly and irreconcilably at odds with the 2009 DEIR's conclusion of a Class I impact.

Moreover, the 2009 EIR identifies the access point west of the Project site on the applicant's Naples Townsite lots as a possible alternative that, unlike all of the possible locations identified for vertical access, would provide surfers and recreationalists direct and consistent access to the Naples surf break. This access point, sometimes called "Tomate West" is identified in the draft Gaviota Coast Plan as the proposed beach access location for Naples/Paradiso del Mare (see draft GCP Figure 4.5), and was conditionally dedicated to the County for public access as part of the Golf Course Project (see Irrevocable Offer to Dedicate Public Access Easements, 12/11/98.) Discussed further in section 1.d.ii, below, the applicant has refused to consider an access point west of the rookery that would allow access to Naples surfbreak year round. Without access at Tomate West, the Project clearly results in Class 1 significant impacts to biological and recreational resources and fails to conform with the applicable recreational access policies.

4. The Project Fails to Conform with LCP Access Policy

Vehicles accessing the Project site would utilize the existing entry/exit driveway directly off Highway 101, and would use an existing at grade crossing to enter and exit the northbound lane or an existing shoulder and flared driveway to enter and exit the southbound lane. The County's LCP requires that the County make a finding that adequate road service exists for the property prior to approving a CDP. Specifically, the policy provides:

CLUP Policy 2-6: Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be

³ The west end of the Paradiso parcels was not routinely patrolled and the public's use of the site, including the trail to the beach was extensive up until approximately March 2013, when the applicant repaired the fence and posted guards on ATVs on the main access trail. See Exhibits 1 & 2, Google Earth images from 11/2006 and 8/2012 that show clearly a number of prominent footpaths on the site, including a trail originating at the parking area by 101 and crossing over the inland estate parcel to the railroad tracks then connecting to a number of trails across the ocean estate lands.

grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.

Although the County made this finding, several letters from Caltrans are highly critical of the County's analysis and concludes that in fact roadway access is not adequate. For example, Caltrans characterized the shoulder as "not a structural section of pavement and is not designed for regular usage as proposed", that "the driveway flare is of unknown quality", and that "the use of the shoulder for motor vehicle acceleration and deceleration has potential to create safety conflicts with bicycles using the facility". (Caltrans DEIR Letter, 10/24/12). Contributing to the safety concerns, Caltrans also notes that this "portion of US 101 is designated as part of the Pacific Coast Bicycle Route and is a regular route for bicyclists." (*Id.*)

Further, with respect to the analysis in the EIR, Caltrans explains:

Caltrans analysis has determined that the introduction of a single northbound left-turning vehicle will degrade operations to an unacceptable level of service (LOS). Furthermore, the Draft EIR indicates an existing LOS of E for northbound left turns. However, this information was omitted from the FEIR and constitutes an inconsistency. The proposed development will intensify use and further degrade LOS. Additional trips at LOS of E may constitute a significant impact. The FEIR leaves this unmitigated.

(Caltrans FEIR Letter, 3/18/13).

Rather than address Caltrans concerns and confront the requirements in CLUP Policy 2-6 that roadways be adequate for the proposed use, the County instead approved the Project without addressing roadway access adequacy.

5. The Project Fails to Conform with LCP Agricultural Protection Policy

The Project site is zoned for agriculture and includes Prime Soils and Farmlands of Statewide Importance. (FEIR Figure 3.2-1.) The entire Ocean Estate development envelope and a portion of the Inland Estate development envelope, and a substantial portion of the Project driveway will be constructed atop prime soils. (*Id.*)

The County's LCP protects against the conversion of agricultural land to non-agricultural use, and functions to protect the rural areas against the encroachment of non-agricultural uses:

CLUP Policy 8-2: If a parcel is designated for agricultural use and is located in a rural area not contiguous with the urban/rural boundary, conversion to non-agricultural use shall not be permitted unless such conversion of the entire parcel would allow for another priority use under the Coastal Act, e.g., coastal dependent industry, recreation and access, or protection of an environmentally sensitive habitat. Such conversion shall not be in conflict with contiguous

agricultural operations in the area, and shall be consistent with Section 30241 and 30242 of the Coastal Act.

Coastal Act section 30241 (incorporated into the County's LCP by CLUP Policy 1-1): The maximum amount of prime agricultural land [as defined by Coastal Act section 30113 and Gov. Code section 51201] shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses . . .

Coastal Act section 30242 (incorporated into the County's LCP by CLUP Policy 1-1): All other lands suitable for agricultural use shall not be converted to non-agricultural use unless: (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250⁴. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

The Project site is rural, and is not contiguous with the urban/rural boundary. The Project extends urban services into a rural agricultural area, allowing for residential development not only of the two Project lots, but also of the adjacent 25 Naples Townsite lots, which are also designated for agriculture. Overall the Project will convert at least 1 acre of prime soils to non-agricultural use. Moreover, there is no agricultural use proposed as the dwarf citrus orchards are intended for screening and, absurdly, the fruit of over 150 citrus trees is intended for personal consumption of the residents only. For all intents and purposes, the Project forecloses future use of the site for agriculture. Accordingly, the Project conflicts with the above agricultural resource protection policies.

6. The Project Fails to Conform with LCP Visual Resource Protection Policy

The Project site is highly visible from vehicles and bikes on Highway 101, from viewing locations on Amtrak passenger trains on the Union Pacific Railroad, as well as from other public viewing locations. Broad unobstructed views of the Pacific Ocean and Channel Islands are currently available across the Project site. The County's LCP includes several policies protecting these views:

Coastal Act section 30251 (incorporated into the County's LCP by CLUP Policy 1-1) The scenic and visual qualities of coastal areas shall be considered and protected as a

⁴ 30250: (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. . . . (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

CLUP Policy 4-3: In areas designated as rural on the land use plan maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment, except where technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms; shall be designed to follow the natural contours of the landscape; and shall be sited so as not to intrude into the skyline as seen from public viewing places.

The Project, and in particular the Inland Estate and new bridge crossing the railroad, are not sited or designed to protect public views of the ocean and scenic coastal areas.

To reduce visual impacts associated with the Inland Estate, the Project relies on screening with a dwarf citrus orchard. The orchard will take time to mature and obscure the home, and could easily be destroyed by various factors including the severe drought currently affecting Santa Barbara County's water supply or the decimation of citrus trees by the Asian psyllid transmitting the HLB bacteria, considered by most to be inevitable. Such droughts are likely to become more severe with the onslaught of Global Climate Change, and it is foreseeable that irrigation of citrus orchards intended solely for visual screening will be impermissible in the near future. In addition, the above visual policies require that the structures be sited and designed (as opposed to screened) to protect public views and be compatible with the character of its surroundings. There are alternative sites on the east end of the property that would be less visible. Also, the estate compounds are two to three times the average size of existing Gaviota Coast residences, and include building heights of up to 22 feet. To achieve compliance with the above policies, the structures should relocated and redesigned with reduced size and height.

Additionally, the new bridge over the railroad, including embankments supporting the raised road bed will be highly visible, and will alter natural landforms in a manner inconsistent with CLUP Policy 4-3. Discussed below, there are feasible alternatives that would avoid the need for the new bridge, and also eliminate the need for the proposed 1.6 acres of driveway.

7. The Project Fails to Conform to LCP Hazards Policy

The Project site is the location of extensive past oil and gas development, and three abandoned oil wells are immediately adjacent to the Ocean Estate development envelope. Discussed below, there are hazards associated with these abandoned oil wells, that impact the safety of the Ocean Estate. The

County's LCP prohibits development on areas of a site which are not suited for development because of known hazards. Specifically:

CLUP Policy 3-14: All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space. (emphasis added)

The letters and testimony of Hydrogeologist and environmental geochemist Dr. Mark Kram demonstrate that the Ocean Estate development envelope is not suited for development because of known hazards including soil contamination from the abandoned oil wells surrounding the Ocean Estate. Dr. Kram pointed out that the Project documents "failed to thoroughly characterize the exten of contamination, have not evaluated whether contamination has reached the groundwater or whether it is currently discharging to the ocean and the seal haul-out area, and failed to evaluated whether vapor intrusion (VI) risks exist." (Kram Letter, 1/30/14, p.1). In Dr. Kram's expert opinion that the proposal to build adjacent to three abandoned oil wells "represents a potential explosion hazard." (*Id.*) Further, Dr. Kram states that the proposed 30-foot setback from the oil wells is insufficient, and recommends a 100-foot setback. (Kram Letter, 7/26/13, p. 3.)

The hazards described by Dr. Kram demonstrate that the Ocean Estate development envelope is not suited for development. CLUP Policy 3-14 requires that this area remain open space.

8. The Project Fails to Conform to CLUP Policy 2-13

The County's LCP recognizes and seeks to avoid the inherent conflict between the urban density lots within the Naples Townsite, and the agricultural zoning and land use designation of those lots and most of the Gaviota Coast. Specifically, CLUP Policy 2-13 provides:

Policy 2-13: The existing townsite of Naples is within a designated rural area and is remote from urban services. The County shall discourage residential development of existing lots. The County shall encourage and assist the property owner(s) in transferring development rights from the Naples townsite to an appropriate site within a designated urban area which is suitable for residential development. If the County determines that transferring development rights is not feasible, the land use designation of AG-II-100 should be re-evaluated.

The Project involves the extension of urban services to the applicant's 25 Naples lots, encouraging as opposed to discouraging residential development in a manner contrary to CLUP Policy 2-13. The County has not evaluated transferring development rights on the 25 Naples lots as a part of this Project. The County's TDR program for the Naples lots at the nearby Santa Barbara Ranch was itself wholly ineffective as adopted, but the policy enabled the applicant to transfer development rights

within the applicant's holdings – in that case onto other portions of the property that could support increased levels of development. Assuming, *arguendo*, that the applicant possesses any development rights to Naples lots, the applicant should be required to integrate a TDR alternative which could involve, for example, increasing densities on the inland estate lands in exchange for reducing or eliminating development on the Naples lots, as contemplated by CLUP Policy 2-13. The County's miserly CEQA review, driven by the applicant's insistence on piecemeal environmental review of their development, precludes consideration of comprehensive solutions that could integrate TDR, clustering of development at higher densities, and better protection of the sensitive resources on this site as is generally contemplated by CLUP Policy 2-13.

9. There Are Feasible Project Alternatives that Conform with the County's LCP and Public Access Policies in the Coastal Act

Project alternatives, including the "Coastal Commission" and "East-Side" alternatives evaluated in the EIR, would substantially reduce impacts to the seal rookery, impacts to white-tailed kite, and impacts to public access. In addition, clustering the two homes at the eastern end would substantially reduce the extent of Project infrastructure including reducing the length of project driveways, and eliminating the new visual impact associated with constructing a new bridge over the railroad at the west end of the property because the existing bridge could be used. The east end alternatives would also reduce the growth inducing impact associated with extending the waterline to the western boundary of the site making water available to serve the applicant's 25 Naples Townsite lots.

Additionally, an off-site alternative that appears to be feasible and capable of avoiding or reducing numerous significant Project impacts is relocation of the Ocean Estate to the Applicant's "Naples Townsite" lots immediately west of the Project lots, north of the railroad right of way. These lots are undeveloped, and offer alternative locations for the Ocean Estate that would avoid impacts to the seal rookery and white-tailed kite nest. These lots also include "Tomate West", the preferred location for vertical coastal access to the Naples surfbreak and Burmah beach (see section 1.c.ii, above). Additionally, these lots are linked to the Project because the 10-inch potable waterline would provide sufficient water capacity to enable development of these Naples lots, which is recognized as a growth inducing impact of the Project. (See FEIR pp. 5.0-3 – 5.0-4),

The FEIR did not analyze this alternative in detail, summarily rejecting the use of the applicant's Naples Lots because:

Irrespective of development on alternative parcels, these two existing legal parcels would continue to be subject to development requests consistent with the allowable use of construction of a single-family home on each parcel. This could create a circumstance where the alternative would foster increased development. Given these factors, analysis of off-site alternatives was considered both infeasible and unproductive.

(FEIR p. 6.0-6.)

At the March 20, 2013 Planning Commission hearing, we brought a document to the Commission's attention that was attached to a public comment letter and included in the FEIR. That document, a covenant restricting development pursuant to an agreement between the owners of the Project site and owners of the adjacent parcel to the east that provided a utility easement across that property, also restricts development on the two Project lots as well as the applicant's Naples Townsite lots to two homes. Specifically, the relevant provision of the covenant provides:

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.

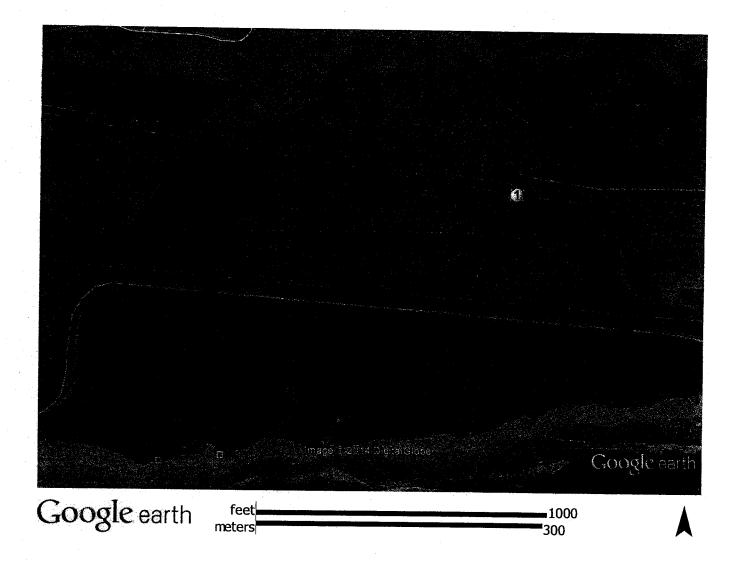
(FEIR p. 11.0-308.) The "Dominant Property" is defined by the agreement in Exhibit A (Legal Description for Dominant Property), which lists the following parcels (most described by APN number), which consist of the two Project lots and the Applicant's 25 "Naples Townsite" lots.

79-200-04, 79-200-08, 79-180-48, 79-180-50, 79-160-57, 79-180-59, 79-180-61, 79-180-54, 79-180-56, 79-180-66, 79-180-68, 79-180-49, 79-180-58, 79-180-60, 79-180-55, 79-180-69, 79-180-62, 79-180-64, 79-180-51, 79-180-65, 79-180-53, 79-180-70, 79-180-63, 79-180-52, 79-180-10, Parsons Pipeline Easement, Portions of Santa Lucia Avenue, Pompeii Avenue, 4th Avenue and 5th Avenue within the Townsite of Naples

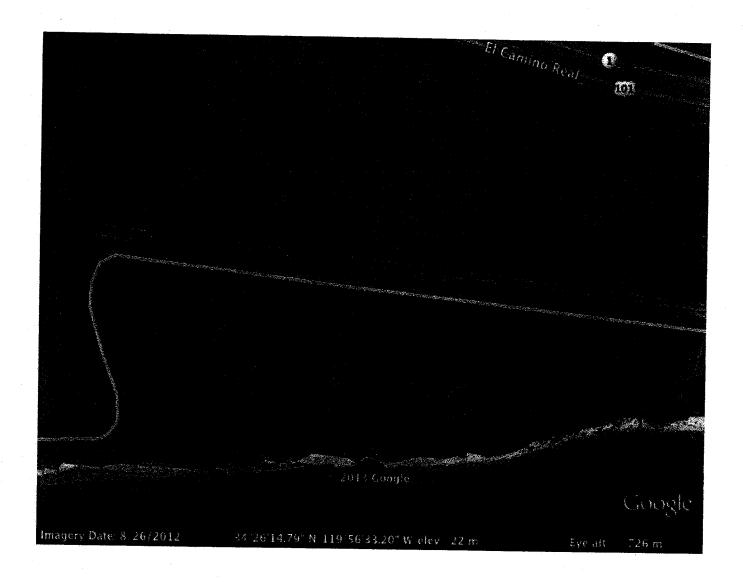
(FEIR p. 11.0-315 – 11.0-323.)

This "Covenant to Restrict Development" contradicts the EIR's capricious rejection of feasible off-site alternatives that can avoid and reduce significant Project impacts (above, see FEIR p. 6.0-6.) Because the applicant agreed to a legal restriction allowing only two homes on its entire holding in exchange for the right to a utility easement, there is no basis for concluding that an off-site alternative which develops two homes on the applicant's entire holding is infeasible.

The applicant has also contended that "It is a private agreement entered into for the benefit of the two parties, enforceable only by those parties, and there was no intent to limit future development on the Naples lots." (Applicant's 11/15/13 letter to the Planning Commission, pp. 4-5.) However,



Seals Trail 11-28-2006



Seals Trail 8-26-2012

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FEB 27 2014

GTATE OF CALIFORNIA -THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

COUTH CENTRAL COAST DISTRICT OFFICE 89 SOUTH CALIFORNIA STRET, SUITE 200 VENTURA, CA \$3001-4608 VOICE (805) 585-1801 FAX (805) 641-1732 California
Coastal Commission



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Karin Keeper

Mullim Address: 985 Vereda Del Cierro

City Gol = to , CA

Zip Code; 93117

Phone (865) 685-1995

SECTION II. Decision Being Appealed

1. Name of local/port government:

South Borbard County Board of Supervisors

2. Brief description of development being appealed:

Paradiso Del Mar

3.	Development's location (street address, assessor's parcel no., cross street, etc.)
	09CPP-00000-00045
4.	Description of decision being appealed (check one.):
Ø	Approval; no special conditions
	Approval with special conditions:
	Denial .

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:		
APPEAL NO:		-
DATE FILED:		•
DISTRICT:		

EXHIBIT 9

A-4-STB-14-0010

2/27/14 Kuyper Appeal

PPEAL FROM COASTAL PERMIT DECISION OF LA	OCAY, GOYEDDAN engage
Decision being appealed was made by (check one):	- CAL GOVERNINGENT (Page 2)
Fishning Director/Zoning Administrator	
City Council/Board of Supervisors	
Planning Commission Other	
Date of local government's decision: _F=b <	7, 2014
Local government's file number (if any): Con least	7, 2014 own
TION III. Identification of Other Interested Persons	
e the names and addresses of the following parties. (Use ad	ditional name on manage
Name and mailing address of permit applicant:	proper as necessary.)
1300 Quail Street, Suite 100 Newport Beach the 92460	
lames and mailing addresses as available of fliose who testive city/county/port hearing(s). Include other parties which your entire of this appeal.	fied (either verbally or in writing) at ou know to be interested and should
Mark Chatillo longer for the Envioled (805) 682-0585	Loastel Consumucy (GC
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(2) Jant Koed, secretary for ECC.

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- (3) Peter Howorth, Mammal Front
- (4) Phil Mc Kennd, president, Euch

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AFFEAL FROM COASTAL PERMIT DEGISION OF LOCAL GOVERNMEN

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government cosses permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal: Include a summary description of Local Coastal Program, Land Use Flan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a now hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may suimmit additional information to the staff and/or Commission to support the appeal request.

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APPEAL FROM COASTABLER EGESTON OF LOCAL GOVERNMENT (Page 4)

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SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Date . Feb. 27 /14

Note: If signed by agent properties is missialso sign below.

Section VI.

I/We hereby authorize to act as my/our representative and to bind me/as in all matters concerning this appeal.

Signature of Appelleni(s)

Date: the sate that the first hand the same that t

02/125/2014 12:04 8056411732

My name is Karin Kuyper and have been a 30 year resident of Goleta and would like to take a solution Wakar Property.

The property is zoned for agriculture and should not even be considered for residential use it would amount to leap-frog development. The constant is a seed by plaid animals for coastal travel and it would be partially blocked.

Riparian countries success to the frame states for wild Antelopes.

All told, the project would create two Class I impacts in terms of aesthetics and with respect to cultural resources as the area is loaded with Chumash archaeological sites, as well as a list of Class II impacts such as habital loss for the white-tailed kite, degradation of riparian corridors, and exposure to potentially hazardous materials stemming from the land's historical use as an oil-drilling site.

Are there different rules for the Rockefellers and Trumps in this world? Can they change against into residential land with their deep pockets? While Joe the Plumber cannot?

The same and the same and the contract of the

My name is Kario Kayoer and a very edin Goleta since 1976.

Since the late 80s and early 90s well ad similar situation like right now, a severe severe year Group to People that warled to build a home during the much of severe sware, shortage were deried a water book-up. Historically at a moratorium has been placed on water book-up said water usage has been rationed. Why are we allowing construction of homes that will consume 58 acre feet of water and water and the life.

Recently on TV my hesteric and watched a program where Governor Brown declared a Siege I watchenergency! This includes finishing of tones less than usual, taking shorter showers, and more efficient landscape ungation. He also said that the State Water Agency could provide hade water to his consumers. The GWD should make these facts known to the Coastal Commission and request that this construction project not be allowed.

En regard to the proposed overteen hooloop with the Golden Warra Dieterst the proposed potable water pipe size is obviously interview for a much larger deletopment the public water proposed. April 5/25 of 8 to 10 mass and Blaze 1000 consols to supply a wall-to-well hospital designation to the proposed of the proposed and the proposed of the proposed and the proposed of the additional format eight supplying water which has been recycled is every majories for agricultural use.

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County of Santa Barbara Planning and Development

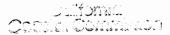
Glenn S. Russell, Ph.D., Director Dianne Black, Assistant Director



NOTICE OF FINAL ACTION

FEB 1 3 2014

February 11, 2014



On February 4, 2014 Santa Barbara County took final action on the appealable development described below:

- X Appealable Coastal Development Permits 06CDH-00000-00038 and 06CDH-00000-00039
- X Appealable Coastal Development Permits 09CDP-00000-00045 and 10CDP-00000-00094 following discretionary cases 07CUP-00000-00065 and 10CUP-00000-00039

Project Applicant: ... April Winecki, Dudek 621 Chapala Street Santa Barbara, CA 93101 (805) 963-0651



Property Owner:

Brooks Street Chris Yelich and Howard Zelefsky 1300 Quail Ave., Suite 100 Newport Beach, CA 92660 (949) 833-0222

Project Description: Request of Brooks Street to consider the following:

- 06CDH-00000-00038, [application filed on July 27; 2006; REVISED September 19, 2011] for a Coastal Development Permit in compliance with Section 35-169 of the Article II Coastal Zoning Ordinance, on property zoned AG-II-100 (APN: 079-200-004, known as the ocean lot) to allow construction of a 5,806 square foot residence with an attached 1,421 square foot garage/mechanical space, a detached 800 square foot guesthouse, 651 square foot guesthouse garage and pool;
- 06CDH-00000-00039, application filed on July 28, 2006; REVISED September 19, 2011] for a Coastal Development Permit in compliance with Section 35-169 of the Article II Coastal Zoning Ordinance, on property zoned AG-II-100 (APN: 079-200-008, known as the inland lot) to allow construction of a residence 7,326 (gross) square feet in size with an attached 1,837 square foot basement and garage/mechanical space, a detached 800 square foot guesthouse and pool;
- 07CUP-00000-00065, [application filed on August 9, 2007] for a Minor Conditional Use Permit in compliance with Section 35-172 of the Article II Coastal Zoning Ordinance, on property zoned AG-II-100; to allow construction of two water lines, an 8-10 inch potable line and a 4 inch reclaimed line, that would extend west from an existing Goleta Water District water line located near the Bacara Resort, to APN 079-200-004 (the Ocean Estate) and APN 079-200-008 (the Inland Estate). The water line would cross the adjacent parcel, APN 079-200-005, situated between the Bacara Resort and the project site, through a proposed utility corridor that would be 20 feet in width. The water line would be privately owned and sized to only accommodate the proposed residential and agricultural development on the Ocean and Inland Estates. The extended water line to serve the Ocean and Inland Estates would measure approximately 7,500 feet in length;

EXHIBIT 10

Final Local Action Notice

- d) 09CDP-00000-00045, [application filed on July 21, 2009]—for a Coastal Development Permit in compliance with to 35-169 of the Article II Coastal Zoning Ordinance, on property zoned AG-II-100; allow construction of two water lines, an 8-10 inch potable line and a 4 inch reclaimed line, that would extend west from an existing Goleta Water District water line located near the Bacara Resort, to APN 079-200-004 (the Ocean Estate) and APN 079-200-008 (the Inland Estate). The water line would cross the adjacent parcel, APN 079-200-005, situated between the Bacara Resort and the project site, through a proposed utility corridor that would be 20 feet in width. The water line would be privately owned and sized to accommodate the proposed residential and agricultural development on the Ocean and Inland Estates. The extended water line to serve the Ocean and Inland Estates would measure approximately 7,500 feet in length;
- e) 10CUP-00000-00039, [application filed on November 12, 2010] for a Major Conditional Use Permit in compliance with Section 35-172 of the Article II Coastal Zoning Ordinance, on property zoned AG-II-100; to allow construction of a portion of the Coastal Trail across APN 079-200-004 (the Ocean Estate). The constructed portion of the Coastal Trail would measure approximately 1,600 feet in length;
- f) 10CDP-00000-00094, [application filed on November 12, 2010] for a Coastal Development Permit in compliance with to 35-169 of the Article II Coastal Zoning Ordinance, on property zoned AG-II-100; allow construction of a portion of the Coastal Trail across APN 079-200-004 (the Ocean Estate). The constructed portion of the Coastal Trail would measure approximately 1,600 feet in length;

and to certify the Environmental Impact Report (09EIR-00000-00003, Revised February 2013, Biological Resources Section Revised August 2013) pursuant to the State Guidelines for Implementation of the California Environmental Quality Act As a result of this project, significant unavoidable effects on the environment are anticipated in the following categories: Aesthetics (cumulative) and Cultural Resources (direct and cumulative). A complete project description is provided below:

The proposed Ocean Estate residence would be 5,806 (gross) square feet in size, with an attached 1,421 square foot garage/mechanical space, a detached 800 square foot guesthouse with attached 651 square foot garage, and a pool. Future structural development and earth disturbance associated with the proposed Ocean Estate would be limited to a 1.9-acre development envelope. The proposed Ocean Estate would also include designation of a 1.7-acre envelope which would allow agricultural activities such as orchards, row crops, and horse/livestock keeping. Except for fencing and utilities, no buildings, structures, or hardscape is permitted within the agricultural envelope. The maximum height of the proposed residence and garage is 20 feet and the maximum height of the proposed guest house and attached garage is 21 feet. The proposed Inland Estate residence would be 7,326 (gross) square feet in size with an attached 1,837 square foot basement and garage/mechanical space, a detached 800 square foot guesthouse and a pool. Future structural development and earth disturbance associated with the proposed Inland Estate would be limited to a 2.5-acre development envelope. The proposed Inland Estate would also include designation of a 16.3- acre envelope which would allow agricultural activities such as orchards, row crops, and horse/livestock keeping. Except for fencing and utilities, no buildings, structures or hardscape is permitted within the agricultural envelope. The maximum height of all

proposed Inland Estate development is 22 feet, and is designed to be a minimum of 11 feet, 10 inches below the road grade of Highway 101 to maintain public horizon and blue water views over the development. Total project grading would include approximately 16,890 cubic yards (cy) of cut and approximately 13,280 cy of fill. One blue gum eucalyptus tree would be removed. Landscaping includes native and drought tolerant species including six 36-inch-box oaks and 4.7-acres of dwarf and/or semi-dwarf orchard trees. Only organic and biodegradable fertilizers and pesticides/herbicides shall be used on-site. The Ocean and Inland Estates would be served by a new shared access driveway. The driveway would enter the site via the existing site entrance off of US Highway 101 at the east side of the property and extend west through the property to the Inland Estate. The driveway would then extend from the Inland Estate, over the UPRR (Union Pacific Railroad) tracks via a new bridge, to the Ocean Estate. The driveway would be 1.6 acres in total area. The bridge would be 215 feet long and 17.25 feet wide and would be supported on either side by bridge embankments. Grading for the bridge embankments on the ocean lot would include approximately 110 cy of cut and 9,100 cy of fill, and for the Inland lot approximately 75 cy of cut and 3,160 cy of fill. Bridge abutments would be supported on a 3:1 slope on the inland lot and a 2:1 slope on the ocean lot. The bridge will be constructed of weathered steel with wood rail cap and wood decking over a poured concrete deck. The applicant has received design approval and approval of a private easement for the bridge from UPRR. Water would be obtained from the Goleta Water District. The proposed project would include construction of two private water lines, an 8 to 10 inch potable water line and a 4 inch reclaimed water line, extending from the existing Goleta Water District line to serve the Ocean and Inland Estates. Currently, the Goleta Water District service line terminates off-site near the Bacara Resort. The A private water line would be extended through an existing 20 foot easement across the adjacent Gaviota Holdings property (APN 079-200-005) to the project site. The water line would be privately owned and would serve the proposed residential and agricultural development on the ocean and inland lots. The complete water line to serve the Ocean and Inland Estates would be approximately 7,500 feet in length. Sanitary service would be provided through private septic systems as approved by Environmental Health Services. Fire service would be provided by Santa Barbara County Fire.

The project includes a number of offers to dedicate (OTD) easements for both vertical and lateral public access and recreation facilities, contingent on approval of the proposed project as depicted on the Proposed Project and Open Space or Conservation Easement site plan. The proposed OTD includes: 1) A segment of the California Coastal Trail along the length of the ocean lot including a loop trail and lookout points; 2) Portions of the Coastal Trail are defined as "Floating Trail" to allow for the best initial trail alignment. Approximately 1,600 linear feet of the total length of the California Coastal Trail (from Eagle Canyon to the UPRR crossing) on-site would be constructed by the property owner; 3) Vertical access to the beach from the California Coastal Trail at one of seven potential vertical beach access trail locations; 4) An access road from the existing site entry from Highway 101 to a parking lot for up to 20 vehicles (at one of two potential locations); 5) Pedestrian access from a parking lot and over the Union Pacific Railroad tracks from the inland lot to the Coastal Trail (at one of two potential alignments); and,6) Access along the length of the property on the beach from the base of the bluffs to the mean high tide line. The

1,600 lineal feet of California Coastal Trail constructed by the applicant will be located within a 20 foot easement and will be a multi-use trail consisting of a 6 foot wide decomposed granite path with two foot shoulders and low native vegetation plantings. Construction of this portion of the Coastal Trail will be completed concurrently with the installation of utility lines and will be fully completed prior to building permit issuance for the first residence constructed. With the exception of 1,600 feet of Coastal Trail, which is proposed to be constructed by the applicant, the exact location of future trails, parking, vertical beach access and access over the UPRR tracks (including UPRR and PUC [Public Utilities Commission] easement and design approval) will be determined at a future date by the County of Santa Barbara. The applicant (Brooks Street) will partner with the County of Santa Barbara to negotiate the approval of the public easement with UPRR and the PUC across the UPRR tracks.

The project includes a proposed approximately 117 acre Open Space or Conservation Easement extending over both the ocean and inland lots from Eagle Canyon to Drainage #5 on the west as depicted on the Open Space Conservation Easement site plan (included as Attachment-H to the November 12, 2013 Staff Memorandum to the Planning Commission). Aside from construction allowed under the Open Space or Conservation Easement Management Condition, no development would occur within The Easement, in perpetuity. The proposed project includes habitat restoration as identified in the Conceptual Upland and Riparian Mitigation and Monitoring Plan (Dudek, January 2012). This restoration would occur within a 23.56 acre portion of The Easement.

The proposed project includes the deposit of \$20,000 of seed money for the formation of a Gaviota Seals Watch volunteer group. The project applicant (Brooks Street) shall deposit the funds with the County of Santa Barbara. Release of the funds shall not occur unless and until the first Coastal Development Permit for the proposed project is issued and the Project approval is "final" and no longer subject to administrative or judicial challenge. The Project approval shall be deemed "final" when all administrative appeal periods have expired without an appeal having been filed; or when all statutes of limitation for judicial challenge to the Project approval have expired without litigation being filed; or, if litigation is filed, when a successful defense in such litigation has resulted in a final judgment upholding the Project approval.

The proposed project includes contribution of \$500,000 of seed money for the benefit of the Santa Barbara County Trails Council, or similar qualified nonprofit organization or public agency acceptable to the Planning Director, should the Santa Barbara County Trails Council no longer be available to accept and/or utilize the endowment, for the specific purpose of funding implementation (design, permitting, construction and/or maintenance) of the proposed Paradiso del Mare public access easements on parcels 079-200-004 and 079-200-008. Payment of the public access implementation endowment funds shall occur only when the project approval is no longer subject to administrative or judicial challenge, when all administrative appeal periods have expired without an appeal having been filed; or when all statutes of limitation for judicial challenge to the Project approval have expired without litigation 2 being filed; or, if litigation is filed, when a successful defense in such litigation has resulted in a final judgment upholding the

Project approval. Concurrent with issuance of the first building permit for the Paradiso del Mare project, the applicant shall deposit the \$500,000 public access implementation endowment funds into an interest bearing escrow account, or similar account, to be established and managed by the Santa Barbara County Trails Council, or similar qualified nonprofit organization or public agency acceptable to the Planning Director should the Santa Barbara County Trails Council no longer be available to accept and/or utilize the endowment. Release of funds and any accrued interest from the public access implementation endowment account shall not occur until County Planning and Development has reviewed and approved the proposed use of the funds as being consistent with the intent and purpose of this condition.

Location: The project involve AP No's. 079-200-004, 079-200-005, and 079-200-008, located south of Highway 101 approximately one mile west of the City of Goleta in the Gaviota area, Third Supervisorial District, Santa Barbara County, California.

The receipt of this letter and the attached materials start the 10 working day appeal period during which the County's decision may be appealed to the Coastal Commission. Appeals must be in writing to the appropriate Coastal Commission district office.

Please contact Nicole Lieu, the case planner at (805) 884-8068 if you have any questions regarding the County's action or this notice.

Nicole Lieu, Project Planner

Date

Attachments:

Final Action Letter dated February 11, 2014

cc: Brooks Street, Chris Yelich and Howard Zelefsky, 1300 Quail Ave., Suite 100, Newport Beach, CA 92660

Dudek, April Winecki, 621 Chapala Street, Santa Barbara, CA 93101
Penfield and Smith, Mike Osborn, 111 E. Victoria Street, Santa Barbara, CA 93101
Ana Citrin, Law Office of Marc Chytilo, P.O. Box 92233, Santa Barbara, CA 93190
Ellison Folk, Shute Mihaly & Weinberger, 396 Hayes Street, San Francisco, CA 94102
Mark Wilkinson, Executive Director, Santa Barbara County Trails Council, 650 Ash
Avenue #B, Carpinteria, CA 93013

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County of Santa Barbara Planning and Development

Glenn S. Russell, Ph.D., Director Dianne Black, Assistant Director

February 11, 2014

Ana Citrin Law Office of Marc Chytilo P.O. Box 92233 Santa Barbara, CA 93190

BOARD OF SUPERVISORS HEARING OF FEBRUARY 4, 2014

RE: Appeals of the County Planning Commission's Approval of the Paradiso del Mare Ocean and Inland Estates Project; 13APL-00000-00027, 13APL-00000-00028

Hearing to consider the appeals of the Planning Commission's December 4, 2013 approval of the Paradiso del Mare Ocean and Inland Estates Project. The project involves AP No's. 079-200-004, 079-200-005, and 079-200-008, located south of Highway 101 approximately one mile west of the City of Goleta in the Gaviota area, Third Supervisorial District.

Dear Ms. Citrin:

At the Board of Supervisors' hearing of February 4, 2014, the Board of Supervisors took the following actions:

- I) Accepted, and carried by a vote of 5 to 0, documents into the record pursuant to Board of Supervisors Resolution 91-333, as follows:
 - 1. Letter and memorandum from the Santa Barbara County Trails Council dated January 31, 2014 and received on Friday, January 31, 2014 at 2:02 PM;
 - 2. Letter from the County Riding and Hiking Trails Advisory Committee dated February 1, 2014 and received Monday, February 3, 2014 at 11:04 AM;
 - 3. Letter from Dudek dated January 31, 2014 and received Friday January 31, 2014 at 5:54 PM;
 - 4. Memorandum dated January 31, 2014 from Santa Barbara County Planning and Development and received on January 31, 2014 at 3:17 PM, and;
 - 5. Memorandum dated February 3, 2014 from Santa Barbara County Public Health and received on February 3, 2014 at 4:07 pm.

Board of Supervisors' Hearing of February 4, 2014 Appeals of the County Planning Commission's Approval of the Paradiso del Mare Ocean and Inland Estates Project; Case Nos. 13APL-00000-00027, 13APL-00000-00028 Page 2

- II) Supervisor Farr moved, seconded by Supervisor Adam, and carried by a vote of 5 to 0 to:
 - 1. Deny the appeal, Case No. 13APL-00000-00028, and; acknowledge the withdrawal of Case No. 13APL-00000-00027 as reflected in the letter and memorandum from the Santa Barbara Trails Council dated January 31, 2014, incorporated as Attachment-A to the Planning and Development memorandum dated January 31, 2014;
 - 2. Make the required findings for approval of the project specified in Attachment-1 of the Board Letter, dated February 4, 2014, including CEQA findings;
 - 3. Certify the Environmental Impact Report, 09EIR-00000-00003 (included as Attachment-3 to the January 21, 2014 Board Letter) as modified by the August 2013 Updated Biological Resources Section (3.4) of the EIR (included as Attachment-4 to the January 21, 2014 Board Letter), EIR Revision Letter RV1 dated March 19, 2013 (included as Attachment-5 to the January 21, 2014 Board Letter), and EIR Revision Letter RV2, (included as Attachment-6 to the January 21, 2014 Board Letter) and adopt the mitigation monitoring program contained in the conditions of approval; and,
 - 4. Approve de novo the project, Case Numbers 06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 07CUP-00000-00065, 10CUP-00000-00039, and 10CDP-00000-00094 subject to the conditions of approval included as Attachment-2 to the Board Letter, dated February 4, 2014, as modified by the Planning and Development memorandum dated January 31, 2014.

Final action by the County on this project may be appealed to the Coastal Commission by the applicant, an aggrieved person, as defined above, or any two members of the Coastal Commission within the 10 working days following the date the County's Notice of Final Action is received by the Coastal Commission.

Sincerely,

DIANNE M. BLACK
ASSISTANT DIRECTOR

cc: Case File: 06CDH-00000-00038, 06CDH-00000-00039, 07CUP-00000-00065, 09CDP-00000-00045, 10CUP-00000-00039, 10CDP-00000-00094, 13APL-00000-00027, 13APL-00000-00028

Clerk of the Board

California Coastal Commission, 89 S. California Street, Suite 200, Ventura, CA 93001

Owner: Brooks Street, Chris Yelich and Howard Zelefsky, 1300 Quail Ave. Suite 100, Newport Beach, CA 92660

Engineer: Penfield & Smith, Mike Osborn, 111 E. Victoria Street, Santa Barbara, CA 93101

Applicant: April Winecki, Dudek, 621 Chapala Street, Santa Barbara, CA 93101

Appellant: Ellison Folk, Shute Mihaly & Weinberger, 396 Hayes Street, San Francisco, CA 94102

Appellant: Mark Wilkinson, Executive Director, Santa Barbara County Trails Council, 650 Ash Avenue #B, Carpinteria, CA 93013

County Chief Appraiser

County Surveyor

Fire Department

Flood Control

Board of Supervisors' Hearing of February 4, 2014 Appeals of the County Planning Commission's Approval of the Paradiso del Mare Ocean and Inland Estates Project; Case Nos. 13APL-00000-00027, 13APL-00000-00028 Page 3

Community Services Department
Public Works
Environmental Health Services
APCD
Rachel Van Mullem, Chief Deputy County Counsel
Jenna Richardson, Deputy County Counsel
Nicole Lieu, Planner

Attachments:

Findings

Conditions of Approval

Board of Supervisors' Minute Order dated February 4, 2014

DB:dmv

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ATTACHMENT 1: FINDINGS

- 1.0 CEQA FINDINGS: FINDINGS PURSUANT TO PUBLIC RESOURCES CODE SECTION 21081 AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15090 AND 15091:
 - 1.1 CONSIDERATION OF THE ENVIRONMENTAL IMPACT REPORT: The Final Environmental Impact Report, 09EIR-00000-00003 (Revised February 2013) as modified by EIR Revision Letter RV1 dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013 and the updated August 2013 Biological Resources section (3.4) of the EIR was presented to the Board of Supervisors and all voting members of the Board of Supervisors reviewed and considered the information contained in the Final EIR, 09EIR-00000-00003, its Appendices contained within Final EIR Volume I, February 2013 (Final EIR Appendices F3.1 through F3.3, F3.8 and F3.13, Draft Revised EIR Appendices 1.0 and 3.2 through 3.14) EIR Revision Letter RV1, EIR Revision Letter RV2, and the updated August 2013 Biological Resources section (3.4) of the EIR prior to approving the project. In addition, all voting members of the Board of Supervisors have reviewed and considered testimony and additional information presented at or prior to public hearing on March 20, 2013, November 20, 2013 and February 4, 2014. The Final EIR reflects the independent judgment and analysis of the Board of Supervisors and is adequate for this proposal.
 - 1.2 FULL DISCLOSURE: The Board of Supervisors finds and certifies that the Final EIR, 09EIR-00000-00003 (Revised February 2013) as modified by EIR Revision Letter RV1 dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013 and the updated August 2013 Biological Resources section (3.4) of the EIR constitutes a complete, accurate, adequate and good faith effort at full disclosure under CEQA. The Board of Supervisors further finds and certifies that the Final EIR has been completed in compliance with CEQA.
 - 1.3 LOCATION OF RECORD OF PROCEEDINGS: The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Clerk of the Board located at 105 E. Anapamu Street, Room 407, Santa Barbara CA, 93101.
 - 1.4 FINDINGS THAT CERTAIN UNAVOIDABLE IMPACTS ARE MITIGATED TO THE MAXIMUM EXTENT FEASIBLE: The Final EIR, 09EIR-00000-00003 (Revised February 2013) as modified by EIR Revision Letter RV1 dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013 and the updated August 2013 Biological Resources section (3.4) of the EIR for the Paradiso del Mare Ocean and Inland Estates project identified environmental impacts which cannot be fully mitigated and are therefore considered unavoidable (Class I). Those impact areas are: Cultural Resources (direct and cumulative) and Aesthetics (cumulative). To the extent the impacts remain significant and unavoidable, such impacts are acceptable when weighed against the overriding social, economic, legal, technological, and other considerations set forth in the Statement of Overriding Considerations included herein. For each of these Class I impacts identified by the Final EIR, 09EIR-00000-00003, feasible changes or alterations have been required in, or incorporated into, the project which avoid or mitigate the impact to the maximum extent feasible, as discussed below:

Cultural Resources

The EIR concludes that the project would result in significant and unavoidable direct and cumulative impacts to cultural resources as a result of placing the proposed off-site utility corridor across a significant prehistoric archaeological site (CA-SBA-76). The proposed project would require placement of a fill cap over a portion of the site in order to bring water service lines to the property. CA-SBA-76 is considered particularly important due to its size, the density of cultural remains, the site's potential to provide substantial archaeological data, and well-known and significant Native American concerns regarding impacts to the site. A statement of overriding considerations citing the economic, legal and social public benefits of the project has been adopted for this impact (refer to Section 1.7, below). In addition, the Board of Supervisors finds that the mitigation measures applied to the proposed project mitigate impacts to the maximum extent feasible.

Specifically, MM CR-3a (condition no. 32) requires that a Phase I presence-absence testing program be implemented at eastern and western margins of CA-SBA-76 along the 20 foot wide utility easement corridor beginning begin 200 feet outside of the currently mapped site boundaries and proceeding toward the site until cultural materials are identified. The measure further requires that, upon discovery of cultural materials, presence/absence testing shall cease and a 100 foot buffer established outward from the point of discovery. Lastly, the measure requires Native American monitoring during work activities and placement of a notation on the final plans designating the 100 foot buffer as unbuildable area. This measure would lessen environmental effects to thhe maximum extent feasible because it would ensure that important archaeological information from the site would remain undisturbed and protected for future study or long-term preservation. Additionally, definition of the outer boundaries of the site within the utility corridor, and establishment of a 100 foot buffer would allow avoidance of the site to the maximum extent feasible.

MM CR-3b (condition no. 33) requires additional consultations with the Santa Ynez Tribal Elders Council and other interested Native American representatives to ensure that their concerns are taken into account during the course of the project. This measure would substantially lessen environmental effects because it would ensure that Native Americans, who have expressed considerable interest in the site, would be consulted prior to initiation of the project.

MM CR-3c (condition no. 34) requires that an ethnohistorian prepare an ethnohistory and descendant genealogy of the archaeological site area. This measure would lessen environmental effects to the maximum extent feasible because it would collect and document information pertaining to the ethnohistory of the site and would help to address Native American concerns pertaining to impacts to the site. MM CR-3d (condition no. 35), requires that, following completion of required fieldwork and consultations, geotextile matting and clean, culturally sterile, chemically neutral fill shall be deposited across the specified portion of this site where the utility corridor will cross. These activities would also be monitored by a Native American representative. This measure would lessen environmental effects because it would place the utility line in a fill cap rather than a trench through the site in a manner that would protect the site from degradation as a result of the use of inappropriate fill material and would separate the site from the fill using geotextile matting. Finally, MM CR-3e (condition no. 36) requires revegetation of the fill soil overlying the utilities easement with an appropriate mix of native species.

Mitigation to completely avoid the need to place a fill cap over CA-SBA-76 would not be feasible. In an attempt to avoid the need to place a fill cap over a portion of CA-SBA-76, the project applicant explored a number of potential alternative locations including realignment of the utility corridor on private property north of HWY 101, realignment within the HWY 101 Caltrans right-of-way, and realignment within the Union Pacific Railroad (UPRR) right-of-way. In addition, the applicant consulted with two different owners of the property to the east (where the utility corridor and impact to CA-SBA-76 would occur) in order to attempt to negotiate realignment of the utilities easement on that property. Ultimately, these attempts resulted in denial of the requests by Caltrans and UPRR and refusal by the northern and eastern property owners for utility corridor realignment.

Caltrans policy does not permit non-California Public Utilities Commission controlled, privately owned utilities within their ROW due to potential liability, except in limited situations where utilities are being extended across a highway to a property under a common ownership on both sides of the highway. The applicant tried for several years to establish common ownership on both sides of the highway and was unsuccessful. The applicant attempted to secure encroachment permits for installing both parallel (within the UPRR right-of-way) and perpendicular (crossing the UPRR right-of-way) utility corridors to serve the proposed project. However, UPRR denied several conceptual plans submitted by the applicant to secure a conceptual approval for the encroachment permits. The limitations presented by Caltrans and UPRR restrictions present legal barriers to realigning the utility corridor.

The applicant tried to secure a utility easement from the land located north of the project site (Parsons), across the Gaviota Holdings (now referred to as 8501 Hollister.) property directly adjacent to and east of the site, and/or across lands located north. The applicant also attempted to purchase property from Parsons. These attempts were unsuccessful as the neighboring property owners elected not to allow the relocation of the utility line or to sell their property to the applicant. These refusals have been documented by correspondence from each of the property owners. The inability to receive agreement from property owners from the north and east to realign the utility corridor presents a legal barrier making realignment on these properties infeasible. No other measures are known which would further reduce the impact. Therefore cultural resource impacts would be mitigated to the maximum extent feasible and this finding can be made.

Aesthetics

The EIR concludes that the proposed project together with the adjacent Naples Townsite development and other development in the surrounding area would result in a significant and unavoidable cumulative aesthetic and visual impact (Class I). This impact would occur as a result of the transition of the Gaviota Coast from a predominantly rural area into one that is increasingly characterized by residential estates. Although project-specific aesthetic impacts would be reduced to Class II through mitigation, the proposed project's contribution to the cumulative aesthetic impact was determined to be significant and unavoidable. The project's contribution was determined to be significant and unavoidable

¹ Paradiso del Mare Service Extension and Coastal Access Offers to Dedicate Alternatives Analysis, November 5, 2010.

as a result of the fact that the proposed estates will be visible in the otherwise rural coastal plain of the Eastern Gaviota Coast. A statement of overriding considerations citing the economic, legal and social public benefits of the project has been prepared for this impact (refer to Section 1.7, below).

In addition, mitigation measures have been applied to the proposed project which would lessen this significant environmental effect to the maximum extent feasible. MM-AES-1a (condition 3) requires that all cut slopes excavated to reconstruct the existing access roadway be landscaped in a manner that will reduce the visibility and prominence of any exposed slopes and soils, and requires grading that will mimic native habitat forms on and around such slopes and limits. MM-AES-1a further requires that grading follow and extend the underlying natural topography of the site and limits average fill depth to 18 inches. This will reduce the project's contribution to the overall cumulative impact by ensuring that grading for the proposed project does not result in landforms or exposed dirt that would appear unnatural to the site. MMAES-1b (condition 4) requires submittal of a landscape plan and requires that landscaping be maintained for the life of the project. MM-AES-1c (condition 5) requires that the dwarf citrus or chard proposed as a part of the project be maintained at a height below the grade of US Highway 101 to protect bluewater views and requires that the trees be maintained throughout the life of the project. This measure will protect blue-water views and will ensure that the trees (which provide screening of the proposed estates) are maintained for the long-term. As the Gaviota Coast has historically supported agricultural areas, including row-crops and orchards, the proposed trees would be consistent with the surrounding area and their long-term maintenance will camouflage and reduce the project's contribution to the overall cumulative impact.

MM-AES-3a (condition 6) requires review of the project and any future proposed development by the Central Board of Architectural Review (BAR); MM-AES-3b (condition 7) requires that all proposed and future structural development on the project site occur within the proposed development envelopes; and, MM-AES 3c (condition 8) requires that proposed and future structures be limited to 22 feet in height and that they be designed to protect blue-water views. These measures will ensure that both the proposed project and any future development is reviewed for appropriate design and materials by the CBAR, that structures will be located within development envelopes clustered toward the western edge of the site and that blue-water views over structures of single-story/minimal height are maintained for the long term. These measures will reduce the project's contribution to the overall cumulative impact because they address both current and future development, provide long-term protection of blue-water views, and ensure that structures will be clustered toward the western edge of the site. Clustering toward the western portion of the site addresses the overall cumulative impacts because the Naples property is located to the west and location of the proposed structures toward this portion of the site will cluster the estates with any potential future development on the Naples lots.

MM-AES-3d (condition 9) requires that natural building materials (e.g. wood, stone) and colors compatible with surrounding terrain (earth-tones and non-reflective paint) be used on exterior surfaces of all structures. This measure will help to ensure that the proposed structures blend into the site as much as possible to reduce their visibility, thereby reducing the project's contribution to the overall cumulative impact. MM-AES-4 (condition 10) requires that lighting be of low intensity/low glare design, minimum height, and hooded to direct light downward onto the subject lot. This measure will

reduce the visibility of the proposed project during nighttime, thereby helping to preserve the rural nature of the site, characterized by dark night skies.

No other measures are known which would further reduce the project's significant and unavoidable contribution to cumulative aesthetic impacts on the Gaviota Coast. Therefore, aesthetic impacts would be mitigated to the maximum extent feasible and this finding can be made.

1.5 FINDINGS THAT CERTAIN IMPACTS ARE MITIGATED TO INSIGNIFICANCE BY CONDITIONS OF APPROVAL: The Final EIR, 09EIR-00000-00003 (Revised February 2013) modified by EIR Revision Letter RV1 dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013 and the updated August 2013 Biological Resources section (3.4) of the EIR identifies several subject areas for which the project is considered to cause or contribute to significant, but mitigable environmental impacts (Class II). For each of these Class II impacts identified by the Final EIR, 09EIR-00000-00003, feasible changes or alterations have been required in, or incorporated into, the project which avoid or lessen the significant environmental effect to insignificance, as discussed below:

Aesthetics

Significant but mitigable impacts identified in the Aesthetic Resource analysis of the EIR include: impacts to scenic vistas from Highway 101 and the Union Pacific Railroad (UPRR); impacts associated with development adjacent to scenic resources; impacts associated with addition of new elements into the undeveloped landscape; and nighttime lighting. Mitigations identified in the EIR would: restrict site grading such that surficial recontouring of the site would not noticeably affect the topography of the site (MM-AES-1a, condition 3); require preparation and submittal of landscape plans that address maintenance of the developed areas, orchards and open spaces on the lots (MM-AES-1b, condition 4); require use of dwarf and semi-dwarf citrus only in the designated orchard areas to maintain blue ocean views for the public (MM-AES-1c, condition 5); require review of development by the Central Board of Architectural Review (CBAR) (MM-AES-3a, condition 6); restrict development to within designated envelopes (MM-AES-3b, condition 7); limit new structures to a maximum height of 22 feet above natural or finished grade, whichever results in a lower building height (MM-AES-3c, condition 8); require use of natural building materials and colors (MM-AES-3d, condition 9); and restrict lighting design to ensure that any exterior lighting is of low intensity and low glare design (MM-AES-4, condition 10). Identified mitigations would reduce impacts to less than significant levels by ensuring that blue water views of the ocean would be preserved; that future development on-site would be single-story and clustered with existing development in development envelopes; that the proposed orchards would not block blue water views but would provide long-term screening of proposed structures; and by ensuring appropriate design through CBAR review and approval including site appropriate lighting and materials. Therefore, with the exception of cumulative Class I Aesthetic impacts discussed in Section 1.4, above, mitigations applied to the project would reduce Aesthetic impacts to less than significant.

Biological Resources

The EIR identifies the following sensitive biological resources as present, or potentially present, on the project site: wetlands, riparian corridors, Southern Tarplant, special status

wildlife species including California red-legged frogs, southwestern pond turtles and tidewater gobies, monarch butterfly autumnal and overwintering habitat, perching trees, foraging area, and potential nest sites for white-tailed kites, and a harbor seal haul out adjacent to Naples reef. Various elements of the project could potentially impact these resources both during construction and following residency on the site.

Mitigation to reduce impacts to a less than significant level include: avoidance or restoration of Southern Tarplant following field surveys (MM-BIO-2, condition 11); avoidance of wetlands through project design (MM-BIO-5, condition 12); habitat restoration for direct loss of arroyo willow thicket located within riparian corridors (MM-BIO-2, condition 11); preconstruction surveys for California red-legged frogs, tidewater goby and southwestern pond turtle with protocol for measures to be taken in the event these wildlife are discovered on the site and in the area of proposed disturbance (MM-BIO-7, condition 14); surveys for overwintering monarch roosts and timing of construction to avoid the resource if present (MM-BIO-8, condition 15); establishment of a 100 foot structural setback and 75 foot driveway setback from the white tailed kite nest identified in the 2013 survey period to avoid impacts to the nesting tree (MM-BIO-9a, condition 16); nesting season surveys and establishment of buffers around construction areas to avoid temporary construction impacts to nesting birds (MM-BIO-9b, condition 17); development of conservation easement management provisions for white tailed kite habitat enhancement and maintenance within the 117-acre conservation easement area (MM-BIO-10, condition 18); installation of replacement trees to provide potential future perches for white tailed kite; review of future landscape planting plans by a biologist to eliminate any invasive exotic species and to ensure the use of locally collected native plant and seed materials for all native species used within or adjacent to open space areas (MM-BIO-11 and MM-BIO-14, conditions 19 and 22); closure of the beach within 300 yards of the seal haul out area during the harbor seal pupping/breeding season and posting of informational signage; (MM-BIO-12 and MM-BIO-13, conditions 20 and 21); limitations of the future use of rodenticides (MM-BIO-17a, condition 23); limitations on night sky lighting (MM-BIO-17b, condition 24); informational signage for the public regarding white-tailed kites, harbor seals and the sensitive resources present at Naples reef; and yearly surveys for the first three to five years and trail closures, as appropriate, to prevent impacts to seals and white-tailed kite nests (MM-BIO-18, condition 25). Therefore, mitigations applied to the project would reduce Biological Resource impacts to less than significant.

Cultural Resources

The EIR finds potentially significant but mitigable impacts associated with Cultural Resources due to the potential for future site development and landscaping to impact four prehistoric archaeological sites (CA-SBA-1323, CA-SBA-1322, CA-SBA-2440 and CA-SBA-2442H) and impacts to CA-SBA-2441 from utility corridor installation. Mitigation to reduce these impacts to less than significant levels includes: additional data collection (MM-CR-1a, condition 26); placement of sterile fill over geotextile matting (MM-CR-1b, condition 27); revegetation of the fill soils with an appropriate mix of native species (MM-CR-1c, condition 28); monitoring of all earth disturbing activities by an archaeologist and a Native American consultant (MM-CR-5, condition 38); and imposition of buffers around the previously mapped boundaries of four of the resource sites (MM-CR-2a MM-CR-2b and MM-CR-4, conditions 30, 31 and 37). These mitigation measures would reduce these cultural resource impacts associated with the proposed development to less than significant levels. Therefore, with the exception of the

Class I Cultural Resources impact discussed in Section 1.4, above, mitigations applied to the project would reduce Cultural Resource impacts to less than significant.

Fire Protection

The EIR finds potentially significant but mitigable impacts associated with Fire Protection. Specifically, the EIR finds that the proposed project would require fire protection services in the future, thereby potentially adversely affecting the Fire Department's ability to serve. Mitigation to reduce impacts to a less than significant level comprises the payment of development impact mitigation fees (MM-FP-1, condition 41). The EIR finds that the project could place homes and residents in an area with the potential for wildland fires. Mitigation to reduce impacts to less than significant levels includes: Fire Department review of any future landscape planting plans; removal of any dead or dying branches on any existing trees located within 100 feet of future development; fire safe construction techniques, including, e.g., Class A or B roofing; provision of adequate access to future structural development; and installation of an adequate number of fire hydrants at 750 gallons per minute (MM-FP-2a through MM-FP-2e, conditions 42 through 46). Therefore, mitigations applied to the project would reduce Fire Protection impacts to less than significant.

Geologic Processes

The EIR finds that the proposed project could expose people or structures to potentially significant impacts associated with seismicity or seismically induced hazards and unstable soil conditions. Mitigations to reduce impacts to less than significant levels include: geotechnical investigation to provide recommendations for construction and required adherence to these recommendations; adherence to applicable sections of the applicable Building Code requirements (MM-GEO-1, condition 47); and incorporation of soils engineering design recommendations addressing expansive soils and differential settlement (MM-GEO-2, condition 48). These mitigation measures would ensure that future structures on-site would be designed and constructed to avoid geologic hazards, thereby reducing impacts to less than significant. Therefore, mitigations applied to the project would reduce Geologic impacts to less than significant.

Hazardous Materials

The EIR identifies the subject site as the western portion of the Ellwood Oil Fields. Drilling, production, storage and distribution of oil and gas occurred on the site beginning in the 1940's and ending with decommissioning in 1996-1997. Identified potentially significant impacts are associated with risks to soil, groundwater, surface water and human health during construction activities and potential exposure of workers and future occupants to unknown or improperly abandoned oil and gas wells. Mitigations to reduce impacts to less than significant levels include the development and implementation of a County approved remedial action plan (RAP) and inspection and review by Santa Barbara County Hazardous Materials Unit of all remediation work (MM-HAZ-1, condition 49); cessation of construction activities in the event of detection of visual contamination or chemical odors during construction, with action taken for appropriate remediation (MM-HAZ-3, condition 50). Hazardous materials mitigation measures require that site remediation occur prior to issuance of Coastal Development Permits for the proposed development and require additional remediation activities if hazardous materials are found during construction, thereby protecting workers and future occupants

of the site from exposure and reducing impacts to less than significant levels. Therefore, mitigations applied to the project would reduce Hazardous Material impacts to less than significant.

Land Use

The EIR identifies potentially significant but mitigable impacts as a result of: introduction of new land uses or structures that would be incompatible with the existing surrounding character of the Gaviota coast; cumulatively considerable land use incompatibilities or policy inconsistencies; and potential inconsistency with Coastal Land Use Plan Archaeological and Historical Policies 10-1, 10-2 and 10-3. Mitigations pertaining to compatibility of development enumerated in the EIR would reduce these land use impacts to less than significant levels. Specifically, with regard to aesthetics, MM AES-1a through MM AES-1c, and MM AES-3a through MM AES-4, conditions 3-5 and 6-10, require preparation and submittal of landscape plans that address maintenance of the developed areas, orchards and open spaces on the lots; require use of dwarf and semi-dwarf citrus only in the designated orchard areas to maintain blue ocean views for the public; review by the Board of Architectural Review; confinement of structural development within development envelopes; a height limit of 22 feet for all proposed and future structures; and use of natural building materials compatible with the surrounding environment.

Consistent with Coastal Land Use Plan Archaeological and Historical Policies 10-1, 10-2 and 10-3, MM-CR-1a through MM-CR-1c conditions 26-28 require: pre-construction survey and data collection at the site, consistent with California Register of Historic Resources (CRHR) criteria; and the placement of geotextile matting followed by clean chemically neutral fill and site re-vegetation at the fill cap. Additionally, MM-CR-3a through MM-CR-3e, conditions32-36, require: testing to determine the edge of CA-SBA-76 within the utility corridor and establishment of 100 foot buffers; monitoring; additional consultations with Native American representatives, preparation of an ethnohistory and descendant genealogy; and fill placement followed by revegetation.

Therefore, mitigations applied to the project would reduce Land Use impacts to less than significant.

Public Facilities

The EIR identifies potentially significant but mitigable impacts to Public Facilities related to increase in water use on the subject lots and the installation of private wastewater disposal systems on the lots. Mitigations which would reduce impacts to less than significant levels include: MM-PF-1/condition 51 which requires measures to reduce water consumption (efficient irrigation systems, water-conserving plumbing, etc.), and MM-PF-2/condition 52 which places restrictions on the location and design of future wastewater disposal systems in order to ensure adequate sanitary service. Therefore, mitigations applied to the project would reduce Public Facility impacts to less than significant.

Transportation and Traffic

The EIR finds that with implementation of a traffic control plan as mitigation (MM-TR-1, condition 53), potentially significant impacts associated with construction traffic would

be mitigated to less than significant levels. Therefore, mitigations applied to the project would reduce Transportation and Traffic impacts to less than significant.

Water and Flooding

The EIR concludes that the proposed project would result in short term, potentially significant but mitigable impacts to surface water quality due to the potential for water pollution during construction. Mitigation to comply with the California State Water Resources Control Board Storm Water Permit Unit to implement best management practices during construction with respect to construction site runoff would reduce impacts to less than significant levels (MM-WAT-1, condition 54). The EIR also identifies potentially significant, but mitigable, impacts associated with: long-term increase in stormwater runoff due to increased impermeable surfaces on the lot; excavation of basements resulting in potential groundwater pollution; potential groundwater and ocean pollution due to the proposed on site wastewater treatment systems; and cumulative impacts to surface water and groundwater quality due to construction activities and residency on the lots. Mitigation measures including implementation of low impact development techniques such as bioswales (MM-WAT-2, condition 55), engineered designs for basements (MM-WAT-3, condition 56), and implementation of wastewater treatment system mitigation required under public facilities (MM-PF-2, condition 52) would reduce impacts to less than significant levels. Therefore, mitigations applied to the project would reduce Water and Flooding impacts to less than significant.

In summary, mitigation measures applied under each issue area where Class II impacts have been identified, would effectively mitigate said impacts to less than significant levels. Therefore, this finding can be made.

1.6 FINDINGS THAT IDENTIFIED PROJECT ALTERNATIVES OR MITIGATION MEASURES ARE NOT FEASIBLE: The Final EIR, 09EIR-00000-00003 (Revised February 2013) as modified by EIR Revision Letter RV1 dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013 and the updated August 2013 Biological Resources section (3.4) of the EIR evaluated a no project alternative and alternative project locations as methods of reducing or eliminating potentially significant environmental impacts.

The Board of Supervisors finds that the following alternatives are infeasible for the reasons stated:

- 1. No Project Alternative. Two different "no project" alternatives were evaluated in Section 6.0 (Alternatives) of the EIR, the previously approved ARCO Dos Pueblos Golf Links project and a no project alternative that assumes the property would remain in its existing state. Both "no project" alternatives would be infeasible, as discussed below:
 - a. ARCO Dos Pueblos Golf Links Project. This alternative would be infeasible because it would meet none of the project objectives and would result in greater impacts than the proposed project. Project objectives including development of two high-quality coastal homes with supporting amenities on two existing legal parcels, retention of a majority of the site in permanent open space and agricultural uses, project design to minimize impacts on natural and cultural resources and public views, dedication of easements for public access through the

site, to, and along the beach and dedication of an open space conservation easement would not be attained by this alternative. Because this alternative was already analyzed under a certified EIR (92-EIR-16) it has been established that it would result in significant and unmitigable impacts to Air Quality and Agricultural Resources (cumulative). Impact conclusions for the ARCO Dos Pueblos Golf Links Project under 92-EIR-16 differ from conclusions identified in environmental review (09EIR-00000-00003) for the currently proposed project. Cumulative impacts to agricultural resources were identified as Class I in 92-EIR-16 as a result of removal of 61-acres of prime soils from potential agricultural production. However, impacts to agricultural resources were found to be Class III under the environmental review for the proposed project as a result of the documented lack of agricultural viability of the site. The two projects also differ because the ARCO Dos Pueblos Golf Links Project would result in permanent conversion of lands and alteration of soils to a use (golf course) that would eliminate the potential for future use of the site for agriculture, whereas the currently proposed project would not permanently alter or disturb the majority of soils on-site. Impacts to air quality were identified as Class I in 92-EIR-16 whereas environmental review (09EIR-00000-00003) for the currently proposed project identified Class III air quality impacts. This difference is accounted for: by the fact that the ARCO Dos Pueblos Golf Links Project involved a fully functioning golf course with full time employees and vehicle trips by patrons of the golf course whereas the proposed project includes two residential estates; and due to the fact that 92-EIR-16 considered air quality impacts from the decommissioning of oil production facilities whereas the currently proposed project occurs following the completion of majority of these decommissioning activities. Environmental review (09EIR-00000-00003) for the currently proposed project identified Class I impacts to Cultural Resources as a result of impacts to site CA-SBa-76 whereas environmental review (92-EIR-16) for the ARCO Dos Pueblos Golf Links Project did not. 92-EIR-16 assumed that the waterline to serve the ARCO Dos Pueblos Golf Links Project would be placed on existing, deteriorating pipe racks and also did not include a discussion of ethnic impacts. Existing pipe racks are no longer available to support the currently proposed waterline and therefore a utility fill cap is now proposed. In addition, recent consultation with Native American groups has provided additional information pertaining to the importance of CA-SBA-76 as an important ethnic site. Therefore, should the ARCO Dos Pueblos Golf Links Project alternative proceed under the current known circumstances, it would require extension of utility service lines through a portion of CA-SBA-76 to provide service to the golf links, and would not eliminate the Class I Cultural Resources impact caused by the proposed project. Therefore this alternative would be infeasible as a result of its inability to meet project objectives and due to the fact that it would result in greater environmental impacts than the proposed project.

b. <u>Property Remains in Existing State</u>. This alternative would be infeasible because it would not meet the project objectives. Specifically, this alternative would not meet the project objectives of: 1) resolving pending litigation between the applicant and the Coastal Commission regarding the Dos Pueblos Golf Links Project, 2) developing two high-quality coastal homes with supporting amenities on two existing legal parcels, 3) retaining a majority of the site in permanent open space and agricultural uses; and 4) providing public recreation access easements.

- 2. <u>Alternative Sites.</u> The EIR identified three alternative site configurations for the Ocean and Inland Estates. None of these alternatives would be environmentally preferred because, as discussed in Section 6.0 (Alternatives) of the EIR, they would not reduce impacts overall and would have greater impacts than the proposed project. The three alternative site configurations, discussed in detail in Section 6.0 (Alternatives) of the EIR, and shown on Attachment-I to the staff report, dated February 21, 2013, include the following:
 - a. <u>Alternative 1-Coastal Commission Inland Estate</u>: Under this alternative, the Inland Estate would be located just west of the existing entry to the site and the Ocean Estate would be located in the same location as the proposed Ocean Estate.

As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 1 would still require extension of utility service lines through a portion of CA-SBA-76 to provide service to the estates, and therefore would not eliminate the Class I Cultural Resources impact caused by the proposed project. As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 1 would continue to result in a considerable contribution to the significant (Class I) cumulative Aesthetic impact. Because the project site is a rural coastal plain directly adjacent to US Highway 101 and is bisected by the Union Pacific Railroad, any homes constructed under Alternative 1 will be visible to the viewing public resulting in a considerable contribution to the overall significant cumulative effect of the transition of the Gaviota Coast. As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 1 would result in greater aesthetic impacts as a result of the location of structures on more visible portions of the site. Therefore, Alternative 1 would not eliminate the project's considerable contribution to cumulative Class I Aesthetic impacts. In addition, Alternative 1 would not meet the project objectives of: 1) providing public recreation access easements; and 2) providing an open space conservation easement.

b. <u>Alternative 2-</u> Coastal Commission Inland Estate and Ocean Estate Alternative Site: Under this alternative, the Inland Estate would be located just west of the existing entry to the site and the Ocean Estate would be located between Drainage #3 and Drainage #4.

As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 2 would still require extension of utility service lines through a portion of CA-SBA-76 to provide service to the estates, and therefore would not eliminate the Class I Cultural Resources impact caused by the proposed project. As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 2 would continue to result in a considerable contribution to the significant (Class I) cumulative Aesthetic impact. Because the project site is a rural coastal plain directly adjacent to US Highway 101 and is bisected by the Union Pacific Railroad, any homes constructed under Alternative 2 will be visible to the viewing public resulting in a considerable contribution to the overall significant cumulative effect of the transition of the Gaviota Coast. As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 2 would result in greater aesthetic impacts as a result of the location of structures on more visible portions of the site. Therefore, Alternative 2 would not eliminate the project's considerable contribution to cumulative Class I Aesthetic impacts. In

addition, Alternative 2 would not meet the project objectives of: 1) providing public recreation access easements; and 2) providing an open space conservation easement. Therefore, for the reasons stated above, Alternative 2 would be infeasible.

c. <u>Alternative 3- East-Side Inland Estate Site and Ocean Estate Alternative Site:</u> Under this alternative, the Inland Estate would be located just east of the existing entry to the site, in an area partly obscured by existing mature trees, and the Ocean Estate would be located between Drainage #3 and Drainage #3.

As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 3 would still require extension of utility service lines through a portion of CA-SBA-76 to provide service to the estates, and therefore would not eliminate the Class I Cultural Resources impact caused by the proposed project. As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 1 would continue to result in a considerable contribution to the significant (Class I) cumulative Aesthetic impact. Because the project site is a rural coastal plain directly adjacent to US Highway 101 and is bisected by the Union Pacific Railroad, any homes constructed under Alternative 1 will be visible to the viewing public resulting in a considerable contribution to the overall significant cumulative effect of the transition of the Gaviota Coast. As discussed in Section 6.0 of the EIR, and incorporated herein by reference, Alternative 3 would result in similar aesthetic impacts as the proposed project. Therefore, Alternative 3 would not eliminate the project's considerable contribution to cumulative Class I Aesthetic impacts. In addition, Alternative 3 would not meet the project objectives of: 1) providing public recreation access easements; and 2) providing an open space conservation easement. Therefore, for the reasons stated above, Alternative 3 would be infeasible.

Therefore, none of the on-site alternative configurations for the Ocean and Inland Estates would be feasible methods of reducing or eliminating the project's potentially significant environmental effects.

1.7 STATEMENT OF OVERRIDING CONSIDERATIONS: The Final EIR, 09EIR-00000-00003 (Revised February 2013) as modified by EIR Revision Letter RV1 dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013 and the updated August 2013 Biological Resources section (3.4) of the EIR for the Paradiso del Mare Ocean and Inland Estates project identifies direct and cumulative impacts to Cultural Resources and cumulative impacts to Aesthetics as significant environmental effects which are considered unavoidable. The Board of Supervisors therefore makes the following Statement of Overriding Considerations which warrants approval of the project notwithstanding that all identified effects on the environment are not fully mitigated. With respect to each of the environmental effects of the project listed below, the Board of Supervisors finds that the stated overriding benefits of the project outweigh the significant effects on the environment and that there is no feasible way to lessen or avoid the significant effects. Pursuant to Public Resources Code Section 21081(b) and CEQA Guidelines Sections 15043, 15092 and 15093, the project's specific economic, social, legal and other benefits outweigh the unavaoidable adverse effects of the project and the adverse environmental effects of the project are considered acceptable.

The project includes a number of offers to dedicate (OTD) easements for both vertical and lateral public access and recreation facilities, which would provide a significant social benefit to the general public. The OTD includes: a segment of the California Coastal Trail along the length of the ocean lot including a loop trail and lookout points (portions of the Coastal Trail are defined as "Floating Trail" to allow for the best initial trail alignment); approximately 1,600 linear feet of the total length of the California Coastal Trail on-site constructed by the property owner; vertical access to the beach from the California Coastal Trail at one of seven potential vertical beach access trail locations; an access road from the existing site entry from Highway 101 to a parking lot for up to 20 vehicles (at one of two potential locations); pedestrian access from a parking lot and over the Union Pacific Railroad tracks from the inland lot to the Coastal Trail (at one of two potential alignments); and, access along the length of the property on the beach from the base of the bluffs to the mean high tide line.

The proposed dedications and development of a segment of the California Coastal Trail is an important step toward achieving State and County public recreation and coastal access goals for the Gaviota Coast.

The project includes a proposed approximately 117-acre Open Space or Conservation Easement extending over both the ocean and inland lots from Eagle Canyon to the edge of the property on the west (excepting the proposed development envelopes). Aside from the future construction of public access improvements, no development would occur within the Open Space Conservation or Easement area, in perpetuity. This Open Space or Conservation Easement would provide biological resource benefits, as it would be managed to protect and enhance white-tailed kite habitat. In addition, the project includes a Conceptual Upland and Riparian Mitigation and Monitoring Plan (Dudek, January 2012). This restoration would occur within a 23.56 acre portion of the Open Space or Conservation Easement area and would enhance white-tailed kite habitat, riparian vegetation and California sagebrush scrub.

All areas of the project site not designated within the approximately 5-acres of development envelopes for residential development and access roads or within the approximately 18-acres of agricultural use areas would be maintained as open space and would not subject to future development. Therefore, the majority of the 143-acre site would remain in open space. Furthermore, the proposed development envelopes are clustered toward the west side of the site. As a result, the majority of public views over the site would continue to be of rural, undeveloped land, in perpetuity.

In summary, approval of the proposed project would provide economic, legal, technological, social, and other public benefits, including: 1) providing easements for public recreational access; 2) constructing 1,600 feet of public trail; 3) taking an important step toward achieving State and County public recreation and coastal access goals for the Gaviota Coast; 4) improving white-tailed kite habitat; 5) enhancing 23.56 acres of native habitat; 6) clustering development and maintaining a large majority (over 80%) of the site in open space, thereby preserving public views; and, 7) providing property tax revenue to the County. Therefore, the project includes benefits that override the findings of Class I impacts associated with aesthetic and cultural resources.

1.8 ENVIRONMENTAL REPORTING AND MONITORING PROGRAM: Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091(d) require the County to adopt a reporting or monitoring program for the changes to the project that it

Paradiso del Mare Ocean and Inland Estates; 06CDH-00000-00038, 06CDH-00000-00039, 07CUP-00000-00065, 09CDP-00000-00045, 10CUP-00000-00039, 10CDP-00000-00094
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has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment.

The Final EIR includes a Mitigation Monitoring and Report Program designed to ensure compliance with adopted mitigation measures during project implementation, including specifications for each adopted mitigation measure that identify the action required and the monitoring that must occur. The Mitigation Monitoring Program is contained within the approved project description and conditions of approval, with their corresponding permit monitoring requirements and is included as Attachment-2 to the February 4, 2014 Board Letter.

2.0 COASTAL DEVELOPMENT PERMIT FINDINGS

2.1 Finding required for all Coastal Development Permits. In compliance with Section 35-60.5 of the Article II Zoning Ordinance, prior to issuance of a Coastal Development Permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and/or the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development.

Access to the Ocean and Inland Estates would be provided by a new shared access driveway. The driveway would enter the site via the existing site entrance off of US Highway 101 at the east side of the property and extend west through the property to the Inland Estate. The driveway would then extend from the Inland Estate, over the UPRR (Union Pacific Railroad) tracks via a new bridge, to the Ocean Estate. Water would be obtained from the Goleta Water District. The proposed project would include construction of two private water lines, an 8-10 inch potable line and a 4 inch reclaimed water line, extending from the existing Goleta Water District line to serve the Ocean and Inland Estates. The water line would be privately owned and designed to serve and provide adequate fire flows to the proposed residential and agricultural development on the ocean and inland lots. A Water Use Agreement was entered into by the applicant and the Goleta Water District in 1998. In addition, the Goleta Water District issued a definitive letter, dated September 15, 2004 committing to deliver water to the property. Sanitary service would be provided through private septic systems as approved by Environmental Health Services (EHS). EHS provided a condition letter, dated February 23, 2012, noting that drywell performance tests were provided which established the feasibility of wastewater disposal for the ocean and inland lots. Fire service would be provided by Santa Barbara County Fire and police protection would be provided by the Santa Barbara County Sheriff. Therefore, this finding can be made.

2.2 Findings required for Coastal Development Permit applications subject to Section 35-169.4.3 for development that may be appealed to the Coastal Commission. In compliance with Section 35-169.5.3 of the Article II Zoning Ordinance, prior to the approval or conditional approval of an application for a Coastal Development Permit subject to Section 35-169.4.3 for development that may be appealed to the Coastal Commission the review authority shall first make all of the following findings.

2.2.1 The development conforms:

- a. To the applicable provisions of the Comprehensive Plan, including the Coastal Land Use Plan;
- b. The applicable provisions of this Article or the project falls within the limited exceptions allowed in compliance with Section 161 (Nonconforming Use of Land, Buildings and Structures).

As discussed in Section 6.2 and 6.3 of the staff report, dated February 21, 2013 and in the memos to the Planning Commission dated March 19. 2013 and November 12, 2013, and incorporated herein by reference, the proposed project is consistent with all applicable policies of the County Comprehensive Plan, including the Coastal Land Use Plan, and with all requirements of the Article II Coastal Zoning Ordinance. Therefore, this finding can be made.

2.2.2 The development is located on a legally created lot.

Parcel validity for both the inland lot (APN: 079-200-008) and ocean lot (APN: 079-200-004) was established by Certificates of Compliance on September 15, 2006 (Grant Deed to CPH Dos Pueblos Associates, recorded December 3, 1998, Instrument No. 1998-094141, County of Santa Barbara). Therefore, this finding can be made.

2.2.3 The subject property and development on the property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of this Article, and any applicable zoning violation enforcement fees and processing fees have been paid. This subsection shall not be interpreted to impose new requirements on legal nonconforming uses and structures in compliance with Division 10 (Nonconforming Structures and Uses).

As discussed in Section 6.3 of the staff report, dated February 21, 2013 and in the memos to the Planning Commission dated March 19. 2013 and November 12, 2013, and incorporated herein by reference, the proposed project would conform to all applicable laws, rules, and regulations pertaining to the AG-II zone. There are no current violations associated with the subject parcel. Therefore, this finding can be made.

2.2.4 The development will not significantly obstruct public views from any public road or from a public recreation area to, and along the coast.

The proposed development would not significantly obstruct public views from any public road or from a public recreation area to, and along the coast. The proposed homes would be located on a coastal bluff of a minimum height of 55 feet, well above the public beach and therefore would not block views up and down the beach or from the beach toward the mountains. From Farren Road, north of US highway 101 from the subject property, the structures would be visible but would not block blue-water views and would not significantly obstruct public views in general.

Proposed development on the site would be visible from the US Highway 101, but would not obstruct blue water views and would not significantly obstruct public views in general. The proposed residences and accessory structures are clustered

on the western edge of the property and would be limited to development envelopes of 1.9 acres (Ocean Estate) and 2.5 acres (Inland Estate). All Inland and Ocean Estate structures have been designed to be a minimum of 11 feet, 10 inches below the road grade of US Highway 101 to maintain public horizon and blue water views over the development. Additionally, the project includes the proposed planting of new dwarf and semi-dwarf citrus orchards between the proposed new estate developments and the highway. These orchards would provide screening of the homes from HWY 101. MM-AES-1c (condition 5) requires maintenance of the proposed orchards to ensure that the trees are maintained at a height below the grade of HWY 101 and that the orchard is maintained for the life of the project. Therefore, this finding can be made.

2.2.5 The proposed development will be compatible with the established physical scale of the area.

The established physical scale of the area is primarily defined by the natural topographic features and rural nature of the site. The site is rural in character, consisting of a broad open terrace bisected by a number of drainages. Small groves of trees including eucalyptus, pines and cypress are clustered near the Ocean Estate development area and along portions of the coastal parcel near the coastal bluff. The homes would be one story in height and would not exceed the height of the existing trees on the project site. Both homes and all related structures are single story and would be designed to be subordinate to the existing landscape. The gentle slope of proposed roof forms would be consistent with the gently sloping nature of surrounding topography. The project would use natural building materials and colors compatible with the surrounding environment.

The project includes the proposed planting of new dwarf and semi-dwarf citrus orchards between the proposed new estate developments and the highway. The orchards would be consistent with the existing rural agricultural nature of the surrounding area. Landscaping would include primarily drought tolerant native or Mediterranean grasses, plants and shrubs. In addition, MM BIO-11 (condition 19) mandates the use of locally occurring native plant materials. This would ensure an aesthetic in the decorative landscaping consistent with the natural context of the Gaviota coast. Therefore, this finding can be made.

2.2.6 The development will comply with the public access and recreation policies of this Article and the Comprehensive Plan including the Coastal Land Use Plan.

The project includes a number of offers to dedicate (OTD) easements for both vertical and lateral public access and recreation facilities. The proposed OTD includes:

- 1. A segment of the California Coastal Trail along the length of the ocean lot including a loop trail and lookout points. Portions of the Coastal Trail are defined as "Floating Trail" to allow for the best final trail alignment. Approximately 1,600 linear feet of the total length of the California Coastal Trail on-site would be constructed by the property owner;
- 2. Vertical access to the beach from the California Coastal Trail at one of seven potential vertical beach access trail locations;

- 3. An access road from the existing site entry from Highway 101 to a parking lot for up to 20 vehicles (at one of two potential locations);
- 4. Pedestrian access from a parking lot and over the Union Pacific Railroad tracks from the inland lot to the Coastal Trail (at one of two potential alignments); and,
- 5. Access along the length of the property on the beach from the base of the bluffs to the mean high tide line.

<u>The</u> 1,600 lineal feet of Coastal Trail constructed by the applicant will be located within a 20 foot easement and will be a multi-use trail consisting of a 6 foot wide decomposed granite path with two foot shoulders and low native vegetation plantings. Construction of this portion of the Coastal Trail will be completed concurrently with the installation of utility lines and will be fully completed prior to building permit issuance for the first residence constructed.

With the exception of 1,600 feet of Coastal Trail, which is proposed to be constructed by the applicant, the exact location of future trails, parking, vertical beach access and access over the UPRR tracks (including UPRR and PUC [Public Utilities Commission] easement and design approval) will be determined at a future date by the County of Santa Barbara. The applicant will partner with the County of Santa Barbara to negotiate the approval of the public easement with UPRR and the PUC to across the UPRR tracks.

With respect to the project's consistency with particular policies, the project would be consistent with Coastal Land Use Plan Policy 7-1 because the County's ability to accept offers of dedication will increase opportunities for public access and recreation. The project will be consistent with Coastal Land Use Plan Policies 7-2 and 7-3 because the project includes the granting of an easement to allow vertical access to the beach and shoreline and along the shoreline from the base of the bluffs to the mean high tide line. Coastal Act Policy 30210 requires that, "in carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational 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." The project would be consistent with this requirement because it would provide an offer to dedicate public access in perpetuity to and along the coast while protecting the rights of the private property owners. Coastal Act Policy 30211 requires that, "development shall not interfere with the public's right of access to the sea where acquired through use, custom, or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation." The project would be consistent with this requirement because it would provide an offer to dedicate in perpetuity public access to and along the coast and access from the base of the bluffs to the mean high tide line, including the use of dry sand and rocky beaches to the first line of terrestrial vegetation.

Therefore the development will comply with the public access and recreation policies of the Article II Coastal Zoning Ordinance and the Comprehensive Plan including the Coastal Land Use Plan, and this finding can be made.

2.3 Additional finding required for sites zoned Environmentally Sensitive Habitat (ESH) Overlay. In compliance with Section 35-97.6 of the Article II Zoning Ordinance, prior to the issuance of a Coastal Development Permit for sites designated with the ESH Overlay zone the review authority shall first find that the proposed development meets all applicable development standards in Section 35-97.8 through Section 35-97.19.

The proposed development would meet all applicable development standards in Section 35-97.8 through Section 35-97.19 of the Article II Zoning Ordinance. With regard to Section 35-97.9 (Development Standards for Wetland Habitats), the proposed project avoids impacts to all wetlands with the exception of a potential impact to .002 acres of Creeping Spike Rush Marsh wetland (isolate wetland #6) as a result of the utility corridor. However, in the Conceptual Upland and Riparian Mitigation and Monitoring Plan (John Davis, Dudek, January 2012) included as part of the proposed project, this potential impact would be mitigated at a ratio of 4:1. In addition, in order to protect the wetland, Mitigation Measure MM-BIO-5 (condition 12) requires that the utility line be attached to the underside of the future public access bridge that would cross the UPRR tracks at the east side of the property and by realigning the utility corridor by approximately 30 feet in the area adjacent to the wetland. Prior to the construction of the future bridge, utilities would be attached to the underside of the existing on-site bridge. The project would involve no wetland dredging, no intensive recreation within wetlands or required wetland buffers, and no wastewater discharge into wetlands. No vehicle traffic within wetlands is proposed or would occur. No mosquito abatement and no grazing or agricultural uses would occur within wetlands. As discussed above, the proposed project avoids impacts to all wetlands and avoids placement of development in close proximity to wetlands with the exception of a potential impact to .002 acres of Creeping Spike Rush Marsh wetland (isolate wetland #6) as a result of the utility corridor, which is mitigated by 4:1 replacement under the proposed Conceptual Upland and Riparian Mitigation and Monitoring Plan. Therefore, the project would be consistent with the requirements of 35-97.9 of the Article II Zoning Ordinance.

Consistent with the requirements of Section 35-97.10 (Development Standards for Native Grassland Habitats) of the Article II Zoning Ordinance, the project would not result in the removal of purple needlegrass grassland, would involve no grazing, and development has been sited and designed to protect native grassland areas.

Consistent with the requirements of Section 35-97.12 (Development Standards Butterfly Tree Habitats) of the Article II Zoning Ordinance, the proposed project would avoid (and would not prune or remove) trees used by overwintering monarch butterflies. In addition, all proposed project development would occur outside the minimum 50-foot setback. Therefore the proposed project would be consistent with this requirement. In addition, MM-BIO-08 (condition 15) requires that, upon identification of the location of the future public access improvements (vertical beach access, parking lot) construction of the future improvements shall avoid the monarch butterfly roosting/overwintering season.

Consistent with the requirements of Section 35-97.13 (Development Standards for Marine Mammal Rookery and Hauling Ground Habitats) recreational activities near or on areas used for marine mammal hauling grounds would be carefully monitored and no marine mammal rookeries shall not be altered or disturbed by recreational or any other uses during the times of the year when such areas are in use for reproductive activities, i.e., mating, pupping, and pup care. The proposed project would include closure of the

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existing unauthorized access to the mouth of Tomate Canyon (near a seal-haul-out) by future homeowners. Closure of this unauthorized trail would eliminate the most direct existing source of disturbance to seals using the haulout. In addition, MM-BIO-12 (condition 20) requires that access to the beach be closed 300 yards in each direction of the harbor seal haulout during the harbor seal pupping/breeding season, posting of informational signage, and restriction of the development of future vertical beach access to the eastern portion of the ocean lot. With the inclusion of these protective measures, the project would be consistent with Section 35-97.13.

The project would be consistent with the requirements of Section 35-97.14 (Development Standards for White-Tailed Kite Habitats). There would be no development within roosting areas as communal roosting has not been documented on-site. The closest documented nesting area to the proposed development is a cluster of Monterey pine trees located within the proposed ocean estate development envelope. The cluster includes a successful nest tree identified in 2013 and surrounding trees (which provide a screening buffer to the nest tree). As mitigated, the development (including agricultural areas and driveways) would be reduced and/or reconfigured to avoid the nest tree and surrounding trees. In addition, as mitigated, all structures would be located a minimum of 100 feet away from the canopy of the nest tree and the driveway would be located a minimum of 75 feet from the nest tree. These setbacks are adequate given that kites do not typically nest in the same tree from year to year; there are many other trees on-site that could be utilized as potential nest sites existing on the lots; MM-BIO-10 (condition 18) would improve foraging habitat for kites (essential to reproductive success) and would establish new trees that could be used for future nesting in closer proximity to foraging habitat; and, kites have exhibited tolerance to regular human activity as seen at UCSB (100 feet to Harder Stadium facilities) and as close as 50-70 feet to residential structures and public trails (Isla vista and More Mesa).

There would be no recreational use within roosting areas as communal roosting has not been documented on-site. Recreational use of nesting areas would be minimal (e.g. walking, bird watching). Pursuant to mitigation measure MM-BIO-18 (condition 25) yearly surveys (for 3 to 5 years) conducted by a County-qualified biologist would establish buffers and/or trail closures around any identified nest sites. Three to five years of management is adequate given that kites will acclimate to human activity and have shown tolerance for human presence in proximity to trails (e.g. More Mesa). Additional protective measures to protect white-tailed kite nesting habitat will include fencing of trasils the posting of educational and informational signage describing the sensitive nature of the nesting habitat for white-tailed kites and identifying trail use limitations. The signage will be located outside of the nesting area and will explain why the public shall refrain from disturbing the avian breeding ecosystem. The project includes the planting of six 36-inch-box coast live oak trees and a 117-acre open space conservation easement area to be managed to protect and enhance white-tailed kite habitat.

As a result of the proposed project, the total available suitable foraging habitat on-site would decrease from 33.7 to approximately 27.82 acres, thus resulting in a net decrease of 5.88 acres of suitable foraging habitat for white-tailed kites. However, the project as proposed includes a 91-acre open space conservation easement (expanded to 117 acres under MM-BIO-10/condition 18), and MM-BIO-10 (condition 18) requires additional measures to protect and enhance white tailed kite foraging habitat. Those measures include long-term maintenance of the conservation easement to remove and prevent the intrusion of black mustard, establishment of 5.88 acres of high quality white-tailed kite

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foraging habitat, and management of restoration areas identified in the proposed Conceptual Upland and Riparian Mitigation and Monitoring Plan to ensure maintenance of kite habitat. With the incorporation of these measures the project can be found consistent with the development standards for protection of white-tailed kite habitat. Therefore, the maximum feasible area would be retained as grassland to provide feeding area for the kites.

Finally, when considered as a whole and in comparison to project alternatives (see Sections 1.6 and 1.7 of the Findings) the proposed project reduces impacts to Environmentally Sensitive Habitat to the maximum extent feasible while still allowing for residential development on each lot as permitted by the Article II Coastal Zoning Ordinance.

- **3.0** CONDITIONAL USE PERMIT FINDINGS: In compliance with Section 35-172.8 of the Article II Zoning Ordinance, prior to the approval or conditional approval of an application for a Major or Minor Conditional Use Permit the review authority shall first make all of the following findings, as applicable:
 - 3.1 That the site for the project is adequate in size, shape, location and physical characteristics to accommodate the type of use and level of development proposed.

The project site is approximately 143-acres (composed of a 64-acre ocean lot and 78-acre inland lot) and is generally level. The proposed project would involve the construction of two residences along with accessory uses including garages and guesthouses. Proposed and future structural development would be confined to a 1.9-acre development envelope on the ocean lot and a 2.5-acre development envelope on the inland lot. The project includes the dedication of easements to allow for future public access improvements on-site as well as a 91-acre open space conservation easement (expanded to 117 acres under MM-BIO-10). Therefore, a majority of the property would remain in open space. The site would be served by the extension of a Goleta Water District waterline. A minor Conditional Use Permit (CUP) is required for the proposed extension of the waterline to serve the project and a Major Conditional Use Permit (MCUP) is required for the applicants' proposal to construct 1,600 feet of public trails. As a result of the overall size of the property and gentle topography of the site, the property would be adequate to support all development proposed, including the proposed waterline and 1,600 feet of trail. Therefore, this finding can be made.

3.2 That adverse environmental impacts are mitigated to the maximum extent feasible.

As discussed in the EIR prepared for the project 09EIR-00000-00003 (Revised February 2013) as modified by EIR Revision Letter RV1 dated March 19, 2013, EIR Revision Letter RV2, dated November 12, 2013 and the updated August 2013 Biological Resources section (3.4) of the EIR and Section 6.1 (Environmental Review) of the staff report, dated February 21, 2013, and incorporated herein by reference, adverse environmental impacts are mitigated to the maximum extent feasible. Therefore, this finding can be made.

3.3 That streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use.

The project site is currently served by one driveway that connects to the south side of US Highway 101. Pursuant to a traffic study prepared by Associated Transportation Engineers (ATE) dated January 2012, the proposed project would not exceed county thresholds for intersection levels of service (LOS). US Highway 101 is a multi-lane, paved Highway, adequate to carry vehicles to the project site. Therefore US Highway 101 is adequate to serve the proposed project. The proposed project would include the construction of a private access road extending from the existing site entrance at US highway 101 to the proposed Ocean and Inland Estate development sites. This access road and driveways extending to the individual Estates would be constructed to County Fire Department engineering requirements, including width, material and slope requirements, and would be adequate for the proposed project.

Over the course of the approximately 24-month construction period, the applicant has estimated that approximately 25 workers per day would use US Highway 101 and the project driveway to access the site, generating an additional average of 50 ADT. Approximately 15 delivery and/or haul trucks would add 30 ADT; therefore, total construction trips would be equal to 80 ADT for 24 months of temporary construction related traffic impacts. This addition of constructionrelated project traffic would result in short-term less than significant impacts at the US Highway 101/project driveway intersection. Similarly, the addition of 80 ADT to US Highway 101 in the project vicinity would not result in a degradation of existing US Highway 101 operations. Roadway operations would remain within County and Caltrans standards and no adverse impacts are anticipated due to the short-term nature of construction. Placement of the fill cap associated with the utilities installation on the adjacent Gaviota Holdings property would require dump trucks to use US Highway 101, Hollister Avenue, and the Bacara resort access road to travel between the subject property and Gaviota holdings property. These roadways and intersections offer adequate line of sight, service levels, and storage capacity to accommodate this increased heavy truck traffic. In addition, MM-TR-1 (condition 53) requires preparation of a traffic control plan to further limit temporary construction traffic impacts. Therefore, streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use during the long term and also during short term construction activities and this finding can be made.

3.4 That there will be adequate public services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.

Access to the Ocean and Inland Estates would be provided by a new shared access driveway. The driveway would enter the site via the existing site entrance off of US Highway 101 at the east side of the property and extend west through the property to the Inland Estate. The driveway would then extend from the Inland Estate, over the UPRR (Union Pacific Railroad) tracks via a new bridge, to the Ocean Estate. Water would be obtained from the Goleta Water District. The proposed project would include construction of two private water lines, an 8-10 inch potable line and a 4 inch reclaimed water line, extending from the existing

Goleta Water District line to serve the Ocean and Inland Estates. The water line would be privately owned and designed to serve and provide adequate fire flows to the proposed residential and agricultural development on the ocean and inland lots. A Water Use Agreement was entered into by the applicant and the Goleta Water District in 1998. In addition, the Goleta Water District issued a definitive letter, dated September 15, 2004 providing committing to deliver water to the property. Sanitary service would be provided through private septic systems as approved by Environmental Health Services (EHS). EHS provided a condition letter, dated February 23, 2012, noting that drywell performance tests were provided which established the feasibility of wastewater disposal for the ocean and inland lots. Fire service would be provided by Santa Barbara County Fire and police protection would be provided by the Santa Barbara County Sheriff. Therefore, this finding can be made.

3.5 That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area.

The project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood. Conditions 64, 67, 68, 69, 70 and 71 place restrictions on the hours of construction and construction parking and require designated staging and washout areas and implementation of erosion control best management practices in order to prevent short term construction impacts to the area and to preserve the health safety and comfort of the area. The project would provide easements to allow future public access to the site and beach below, providing a public benefit. The applicant's proposal to construct 1,600 feet of public trail would contribute to this benefit and would be consistent with applicable Coastal Land Use Plan and Coastal Act policies which encourage the provision of public access to coastal areas and the beach. The proposed project would not be incompatible with the surrounding area. Unauthorized public trails exist on-site and the proposed project would allow for public access to be formalized, increasing public safety when accessing the beach at this location while perpetuating the public trails in the area. The proposed waterline would serve the two proposed residences and accessory uses, which are principally permitted uses within the applicable zone district requiring water service. As discussed in finding 3.7 (below) and incorporated herein by reference, the proposed uses would be compatible with and subordinate to the scenic and rural character of the area. As discussed in finding 2.2.5, above, and incorporated herein by reference, the proposed development will be compatible with the established physical scale of the area. Therefore, this finding can be made.

3.6 That the project is in conformance with the applicable provisions and policies of this Article and the Coastal Land Use Plan.

As discussed in Section 6.2 and 6.3 of the staff report, dated February 21, 2013, the March 19, 2013 memo to the Planning Commission and the November 12, 2013 memo to the Planning and incorporated herein by reference, the proposed project is consistent with all applicable policies of the County Comprehensive Plan, including the Coastal Land Use Plan, and with all requirements of the Article II Coastal Zoning Ordinance. Therefore, this finding can be made.

3.7 That in designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area.

The site is rural in character (and zoned rural under the County Comprehensive Plan), consisting of a broad open terrace bisected by a number of drainages. Small groves of trees including eucalyptus, pines and cypress are clustered near the Ocean Estate development area and along portions of the coastal parcel near the coastal bluff. The homes would be one story in height and would not exceed the height of the existing trees on the project site. Both homes and all related structures are single story and would be designed to be subordinate to the existing landscape. The gentle slope of proposed roof forms would be consistent with the gently sloping nature of surrounding topography. The project would use natural building materials and colors compatible with the surrounding environment. The proposed 1,600 feet of public trail would be located near the southwestern corner of the property on the ocean lot. The trail would be unpaved, consisting of natural dirt or gravel and would be consistent with the rural nature of the existing site, which currently contains partially paved and unpaved trails. The proposed waterline would extend from the adjacent Gaviota Holdings (APN 079-200-005) property to and onto the proposed property. Once on the subject property, the line would attach to the bottom of an existing bridge that spans the UPRR tracks and would then follow the alignment of the proposed access road. During the first stretch of the line, from the adjacent property to the existing bridge, the line would be located within an earthen fill cap. This fill cap would be no more than 3 feet in height and would be re-vegetated with native species following construction. The remainder of the line would be located underground below the proposed access road. Therefore, the line would be obscured from view by vegetation or soils and would be minimally visible to the public. Therefore, the proposed uses would be compatible with and subordinate to the scenic and rural character of the area and this finding can be made.

3.8 That the project will not conflict with any easements required for public access through, or public use of the property.

No authorized easements for public access through the property or for public use of the property currently exist. The project will not conflict with any easements required for public access through, or public use of the property and proposes easements to allow additional public access through the property. Therefore, this finding can be made.

3.9 That the proposed use is not inconsistent with the intent of the zone district.

The property is zoned AG-II-100. The purpose of the Agriculture II district is to establish agricultural land use for large prime and non-prime agricultural lands in the rural areas of the County (minimum 40 to 320 acre lots) and to preserve prime and non-prime soils for long-term agricultural use. Agricultural uses have not occurred on the project site in more than 20 years and the site has never been farmed as a "stand alone" viable farming unit, but rather only as a part of the former Dos Pueblos Ranch. Class II prime (when irrigated) soils on-site are disjunct in nature and constrained for farming due to the characteristics of the particular soil type (Diablo clay soils). Pursuant to the County's Weighted Point System for determining agricultural viability, neither the ocean nor inland parcel

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was determined to be agriculturally viable. This lack of viability is due to the parcel size, lack of a developed water supply, moderate agricultural suitability for crops, lack of existing agriculture, and inability to qualify for the agricultural preserve program. Therefore, it is unlikely that the property could be used for long-term agricultural use. However, the majority of the site would remain in open space (thereby preserving prime soils), the proposed project would include the planting of dwarf citrus orchards in 1.7 acre and 16.3 acre agricultural envelopes, and the project would not rezone or develop the site to prevent future agricultural use. Therefore, the project would be consistent with the intent of the zone district and this finding can be made.

ATTACHMENT 2: CONDITIONS OF APPROVAL

1. **Proj Des-01 Project Description.** This project is based upon and limited to compliance with the project description, the hearing exhibits dated November 20, 2013, and all conditions of approval set forth below, including mitigation measures and specified plans and agreements included by reference, as well as all applicable County rules and regulations. The project description is as follows:

Ocean and Inland Estates

The proposed Ocean Estate residence would be 5,806 (gross) square feet in size, with an attached 1,421 square foot garage/mechanical space, a detached 800 square foot guesthouse with attached 651 square foot garage, and a pool. Future structural development and earth disturbance associated with the proposed Ocean Estate would be limited to a 1.9-acre development envelope. The proposed Ocean Estate would also include designation of a 1.7-acre envelope which would allow agricultural activities such as orchards, row crops, and horse/livestock keeping. Except for fencing and utilities, no buildings, structures, or hardscape is permitted within the agricultural envelope. The maximum height of the proposed guest house and attached garage is 20 feet and the maximum height of the proposed guest house and attached garage is 21 feet.

The proposed Inland Estate residence would be 7,326 (gross) square feet in size with an attached 1,837 square foot basement and garage/mechanical space, a detached 800 square foot guesthouse and a pool. Future structural development and earth disturbance associated with the proposed Inland Estate would be limited to a 2.5-acre development envelope. The proposed Inland Estate would also include designation of a 16.3- acre envelope which would allow agricultural activities such as orchards, row crops, and horse/livestock keeping. Except for fencing and utilities, no buildings, structures or hardscape is permitted within the agricultural envelope. The maximum height of all proposed Inland Estate development is 22 feet, and is designed to be a minimum of 11 feet, 10 inches below the road grade of Highway 101 to maintain public horizon and blue water views over the development.

Total project grading would include approximately 16,890 cubic yards (cy) of cut and approximately 13,280 cy of fill. One blue gum eucalyptus tree would be removed. Landscaping includes native and drought tolerant species including six 36-inch-box oaks and 4.7-acres of dwarf and/or semi-dwarf orchard trees. Only organic and biodegradable fertilizers and pesticides/herbicides shall be used on-site.

Services and Infrastructure

The Ocean and Inland Estates would be served by a new shared access driveway. The driveway would enter the site via the existing site entrance off of US Highway 101 at the east side of the property and extend west through the property to the Inland Estate. The driveway would then extend from the Inland Estate, over the UPRR (Union Pacific Railroad) tracks via a new bridge, to the Ocean Estate. The driveway would be 1.6 acres in total area.

The bridge would be 215 feet long and 17.25 feet wide and would be supported on either side by bridge embankments. Grading for the bridge embankments on the ocean lot would include approximately 110 cy of cut and 9,100 cy of fill, and for the Inland lot approximately 75 cy of cut and 3,160 cy of fill. Bridge abutments would be supported on a 3:1 slope on the inland lot and a 2:1 slope on the ocean lot. The bridge will be

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constructed of weathered steel with wood rail cap and wood decking over a poured concrete deck. The applicant has received design approval and approval of a private easement for the bridge from UPRR.

Water would be obtained from the Goleta Water District. The proposed project would include construction of two private water lines, an 8 to 10 inch potable water line and a 4 inch reclaimed water line, extending from the existing Goleta Water District line to serve the Ocean and Inland Estates. Currently, the Goleta Water District service line terminates off-site near the Bacara Resort. The A private water line would be extended through an existing 20 foot easement across the adjacent Gaviota Holdings property (APN 079-200-005) to the project site. The water line would be privately owned and would serve the proposed residential and agricultural development on the ocean and inland lots. The complete water line to serve the Ocean and Inland Estates would be approximately 7,500 feet in length. Sanitary service would be provided through private septic systems as approved by Environmental Health Services. Fire service would be provided by Santa Barbara County Fire.

Public Access Dedications

The project includes a number of offers to dedicate (OTD) easements for both vertical and lateral public access and recreation facilities, contingent on approval of the proposed project as depicted on the Proposed Project and Open Space or Conservation Easement site plan. The proposed OTD includes:

- 1. A segment of the California Coastal Trail along the length of the ocean lot including a loop trail and lookout points. Portions of the Coastal Trail are defined as "Floating Trail" to allow for the best initial trail alignment. Approximately 1,600 linear feet of the total length of the California Coastal Trail on-site would be constructed by the property owner;
- 2. Vertical access to the beach from the California Coastal Trail at one of seven potential vertical beach access trail locations;
- 3. An access road from the existing site entry from Highway 101 to a parking lot for up to 20 vehicles (at one of two potential locations);
- 4. Pedestrian access from a parking lot and over the Union Pacific Railroad tracks from the inland lot to the Coastal Trail (at one of two potential alignments); and,
- 5. Access along the length of the property on the beach from the base of the bluffs to the mean high tide line.

The 1,600 lineal feet of California Coastal Trail constructed by the applicant will be located within a 20 foot easement and will be a multi-use trail consisting of a 6 foot wide decomposed granite path with two foot shoulders and low native vegetation plantings. Construction of this portion of the Coastal Trail will be completed concurrently with the installation of utility lines and will be fully completed prior to building permit issuance for the first residence constructed.

With the exception of 1,600 feet of Coastal Trail, which is proposed to be constructed by the applicant, the exact location of future trails, parking, vertical beach access and access over the UPRR tracks (including UPRR and PUC [Public Utilities Commission] easement and design approval) will be determined at a future date by the County of Santa Barbara.—The applicant (Brooks Street) will partner with the County of Santa Barbara to

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negotiate the approval of the public easement with UPRR and the PUC across the UPRR tracks.

Open Space or Conservation Easement and Habitat Restoration

The project includes a proposed approximately 117 acre Open Space or Conservation Easement extending over both the ocean and inland lots from Eagle Canyon to Drainage #5 on the west as depicted on the Open Space Conservation Easement site plan (included as Attachment-H to the November 12, 2013 Staff Memorandum to the Planning Commission). Aside from construction allowed under the Open Space or Conservation Easement Management Condition, no development would occur within The Easement, in perpetuity. The proposed project includes habitat restoration as identified in the Conceptual Upland and Riparian Mitigation and Monitoring Plan (Dudek, January 2012). This restoration would occur within a 23.56 acre portion of The Easement.

Any deviations from the project description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

Gaviota Seals Watch

The proposed project includes the deposit of \$20,000 of seed money for the formation of a Gaviota Seals Watch volunteer group. The project applicant (Brooks Street) shall deposit the funds with the County of Santa Barbara. Release of the funds shall not occur unless and until the first Coastal Development Permit for the proposed project is issued and the Project approval is "final" and no longer subject to administrative or judicial challenge. The Project approval shall be deemed "final" when all administrative appeal periods have expired without an appeal having been filed; or when all statutes of limitation for judicial challenge to the Project approval have expired without litigation being filed; or, if litigation is filed, when a successful defense in such litigation has resulted in a final judgment upholding the Project approval.

2. Proj Des-02 Project Conformity. The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of the structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval thereto. All plans (such as Landscape and Tree Protection Plans) must be submitted for review and approval and shall be implemented as approved by the County.

Mitigation Measures from Revised 09EIR-00000-00003

3. MM AES-1a. All cut slopes excavated to reconstruct the existing access roadway shall be landscaped pursuant to specifications contained in a landscape plan with the goal of reducing the visibility and prominence of any exposed slopes and soils and shall mimic of native habitat forms on and around such slopes. Additionally, all grading of the project site as necessary to minimize visibility shall not involve the placement of fill having an

average depth of greater than 18 inches and a maximum depth of greater than 36 inches² The recontouring shall follow and extend the natural, underlying topography and upon completion, result in slopes that have a natural appearance and generally blend with the existing topographic landforms. **Plan Requirements and Timing.** Plans and procedures to address landscaping and grading requirements shall be incorporated into plans submitted to the County Planning and Development Department and subject to review and approval by CBAR. Plans shall be submitted to and approved by the County and CBAR prior to issuance of the Coastal Development Permits for each lot. **Monitoring:** The grading inspector shall ensure conformance with the provision on grading plans and in the field.

- **4.** MM AES-1b. The applicant shall prepare and submit a landscaping plan to the County for review and approval. The landscaping plan shall include provisions for landscaping of the home sites as well as the berms supporting the private bridge between the Ocean and Inland Estates. In addition to plant species and layout, the landscape plan shall address maintenance of home site landscaping, berm landscaping, orchard plantings, and open space areas. The plan shall be consistent with the County-approved Conceptual Upland and Riparian Mitigation and Monitoring Plan and the terms of the Open Space Conservation Easement. The plan shall include maintenance provisions for ensuring that landscaping is maintained for the life of the project. The vegetation shall be maintained to ensure maximum screening of the Ocean and Inland Estates from US HWY 101 but shall protect public blue-water views. Plan Requirements and Timing. Plans and procedures to address these issues shall be incorporated into plans submitted to the County Planning and Development Department and shall be subject to review and approval by CBAR. Plans shall be submitted to and approved by the County and CBAR prior to issuance of the Coastal Development Permits for each lot. Landscaping of the bridge berms shall occur within two weeks of the completion of berm grading.-Monitoring. Site plans shall be submitted to County Planning and Development and CBAR for review and consideration prior to of Coastal Development Permits. P&D Permit Compliance staff shall ensure compliance on site. Final occupancy of the proposed structures shall not be granted until site landscaping and orchards are installed.
- 5. MM AES 1c. The applicant shall plant a mix of dwarf and semi-dwarf citrus trees with a maximum height of approximately 10-feet (dwarf citrus) and 15 feet (semi-dwarf citrus), or other P&D-approved species consistent with agricultural uses common on the Gaviota Coast. The trees shall be planted within the proposed Agricultural Envelopes. Plantings shall follow the existing topography of the site and shall be maintained at a height below the grade of US Highway 101 to ensure mature trees do not obstruct blue water and horizon views. The trees shall be planted and maintained throughout the life of the project. The property owner shall replace new plantings as necessary throughout the life of the project. Terms for maintenance of the orchard shall be included in the landscape plan submitted to the County for review and approval. Plan Requirements and Timing. This requirement shall be shown on a landscape plan to be reviewed and approved by P&D prior to-issuance of the Coastal Development permits for each lot. Monitoring. P&D compliance monitoring staff shall ensure tree installation and maintenance.
- **6. MM AES-3a.** Current and future proposed structures, including accessory structures and elements shall be subject to approval by the Board of Architectural Review (BAR) prior

This fill depth would not apply to utilities trenching or filling, or to the bridge berms.

to issuance of a Coastal Development Permit. The application to the Board of Architectural Review shall include a plot plan showing any landscaping, finished building elevations, fencing, data showing the proposed color scheme, materials of construction, and a drawing to scale showing any signs to be erected, attached to, or painted on such structure. The Board of Architectural Review shall evaluate the following aspects of the project:

- o Structures shall be sited and designed to preserve unobstructed broad views of the ocean from US Highway 101.
- o Structures shall not be of an unsightly or undesirable appearance.
- Structures shall be clustered to reduce visual impacts.

Plan Requirements and Timing. Plans and procedures to address these issues shall be incorporated into plans submitted to the County Planning and Development Department and subject to review and approval by CBAR. Plans shall be submitted to and approved by the County and CBAR prior to issuance of the Coastal Development Permits for each lot. Submittals shall be consistent with the most current County Planning and Development BAR submittal requirements. **Monitoring.** P&D shall inspect prior to occupancy clearance.

- 7. **AES-3b.** All development on the project site shall occur within the approved development envelopes. All structures (including any ancillary structures that may be permitted within the Agricultural Zone) shall be considered part of the proposed project and therefore subject to all approved mitigation measures related to visual character, including height, color, and building material. **Plan Requirements and Timing.** This measure shall be implemented throughout the lifetime of the proposed project. Plans for additional structures shall be submitted to the County for review and approval. **Monitoring.** Compliance with project requirements shall be checked by P&D monitoring staff.
- 8. MM AES-3c. Approved and future structures on-site shall be one story and note be higher than 22 feet above natural or finished grade, which results in a lower building height, except for chimneys and rooftop antenna. All approved and future structures shall be sited within the development envelope and shall be of a height that is below the road grade of US Highway 101 to maintain public blue water views. Structures within shall be clustered to the maximum extent feasible. Plan Requirements and Timing. This measure shall be included on building plans submitted for County approval. Plans shall be submitted prior to issuance of Coastal Development Permit. Monitoring. Height of structures shall be checked by Building and Safety during frame/inspection.
- 9. MM AES-3d. Natural building materials and colors compatible with surrounding terrain (earth-tones and non-reflective paint) shall be used on exterior surfaces of all structures including water tanks and fences. Use of reflective glass, metal, paints, etc. shall be minimized. Plan Requirements and Timing. Materials shall be noted on building plans and shall be reviewed and approved by the Central Board of Architectural Review. Plans shall be submitted for review and approval by P&D and BAR staff prior to issuance of Coastal Development Permits. Structures shall be painted and all materials shall be in place prior to Final Building Inspection. The applicant shall provide a copy of the CBAR-approved color and materials board with their Permit Compliance application.

Monitoring. P&D compliance monitoring staff shall inspect and ensure compliance prior to Building Inspection Clearance.

- 10. MM AES-4. The Applicant shall ensure any exterior night lighting installed on the project is of low intensity, low glare design, minimum height, and shall be hooded to direct light downward onto the subject lot and prevent spillover lighting. The applicant shall install timers or otherwise ensure lights are dimmed after 10:00 PM. Plan Requirements and Timing. The applicant shall develop a Lighting Plan for CBAR approval incorporating these requirements and showing locations and height of all exterior lighting fixtures with arrows showing the direction of light being cast by each fixture. The lighting plan shall also incorporate the following elements:
- 1. Conserve energy and follow night sky lighting practices, generally conforming to the standards and recommendations of the International Dark-Sky Association (IDA) and the Illuminating Engineering Society of North America (IESNA);
- 2. Through design and installation, and permitted only within the building envelopes, use lamps that are fully shielded such that the lamp image is not directly visible beyond the area of illumination;
- 3. Through design and location within the building envelopes, avoid creating glare, light spillover outside of the building envelopes onto adjacent areas, or upward illumination into the night sky;
- 4. Use low intensity and low glare designs;
- 5. Use motion, light, and time sensors that minimize duration of use;
- 6. Ensure that all light poles, fixtures and hoods are constructed or coated with a non-reflective exterior finish;
- 7. Prohibit uplighting of landscape or structures; and
- 8. Minimize location of exterior lighting to that necessary for safety along driveways, roads, and parking areas. The driveway lighting shall be low intensity and indirect with ondemand switching to minimize nighttime light visibility from public viewing places.
- 9. Lighting shall be installed in compliance with this measure prior to Final Building Inspection Clearance.
 - <u>Monitoring.</u> P&D compliance monitoring staff shall review a Lighting Plan for compliance with this measure prior to Final Building Inspection Clearance and shall ensure that exterior lighting fixtures are installed consistent with their depiction on the final Lighting Plan.
- 11. MM BIO-2. Southern Tarplant and other Special Status Plant Communities Avoidance or Restoration. The utility corridor locations shall utilize existing roads and disturbed areas to the maximum extent feasible. Trenching shall be accomplished by hand tools when working near sensitive plants. Prior to construction, the applicant shall survey and

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flag by a qualified biologist the alignment of the water lines. Where determined to be feasible by the project biologist, the utility corridor will be realigned the corridor to avoid impacts to sensitive plant species. Similarly, the public access easements throughout the site shall be surveyed for special status plant species and aligned specifically to avoid impacts, to the maximum extent feasible, to these special species. Special status plant species and communities to be avoided include Southern Tarplant, Creeping Spike Rush Marsh, Arroyo Willow Thicket, California Sagebrush Scrub, and Purple Needle Grass Grasslands. Any field revisions shall be plotted on a revised site plan submitted to Santa Barbara County Planning and Development (P&D) for review and approval.

Plan Requirements and Timing. Pre-construction surveys for the presence of any sensitive plant species must be completed, along with plans if necessary for the collection of seed from any individuals discovered, prior to ground disturbance. The revised plans depicting relocated water lines and the exact alignment of the proposed trails and other access improvements throughout the site shall be submitted to P&D for review and approval prior to issuance of grading permit. Individual sensitive species shall be indicated on the Map and on grading plans.

- 12. MM BIO-5. Utility Corridor and Coastal Trail Final Design. The utility corridor and coastal trail in proximity to the southern end of the wooden bridge, and future replacement of the existing bridge shall be designed to avoid direct impacts to isolated wetland #6 and the creeping spike rush marsh habitat. Avoidance will best be achieved by providing a 100 foot buffer (may be reduced to no less than 30 feet if a greater buffer is infeasible) from the outer edge of isolated wetland #6 for all construction and development activities outside of the designated utility/Coastal Trail corridor and by attaching the utility corridor infrastructure to the underside or side of the wooden bridge to cross the Union Pacific railroad tracks. The property owners for the ocean and inland lots shall be jointly responsible for construction and maintenance of the utilities. Should the County demolish the existing bridge and construct a replacement bridge, the County shall not be responsible for relocation of the utilities. The property owners for the ocean and inland properties shall be jointly responsible for relocation of the utilities prior to demolition of the existing bridge should demolition be proposed by the County. Prior to construction, orange construction fencing shall be placed by a qualified biologist around the outer edge of theis wetland. The final design of utility corridor and coastal trail shall be plotted on a revised site plan submitted to P&D for review and approval. Plan Requirements and Timing: Orange construction fencing shall be in place prior to ground disturbance. The revised plans depicting the utility corridor and coastal trail alignment shall be submitted to P&D for review and approval prior to Coastal Development Permit issuance for development adjacent to wetland #6. Monitoring: P&D shall review and approve the final design prior to Coastal Development Permit issuance for development adjacent to wetland #6to ensure that the isolated wetland #6 is avoided during construction and project development. P&D permit compliance and Building and Safety staff shall ensure that fencing is in place prior to and throughout construction.
- **13. MM BIO-6.** <u>Riparian Vegetation.</u> The applicant shall submit a revised habitat restoration plan for site-specific restoration for loss of arroyo willow thicket resulting from the construction of the utility corridor. The draft habitat restoration plan call for creation of new riparian areas at a ratio of 3:1 in the vicinity of upper reaches of Drainage #4, immediately adjacent to existing arroyo willow thicket riparian vegetation. The mitigation area would total 0.06 acre. The plan shall include the following measures:

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- Protection and preservation of existing hydrologic and topographic features.
- Revegetation using only native endemic plant species.
- Non-native species, if present, shall be removed from the affected drainage.

Plan Requirements and Timing. The applicant shall submit the restoration plan to P&D for review and approval prior to issuance of grading permit. The plan shall be prepared by a P&D approved biologist. The plan shall be implemented after completion of access road improvements. **Monitoring.** P&D shall review and approve the restoration plan prior to issuance of grading permit and will monitor for subsequent implementation.

- 14. MM BIO-7. Pre-Construction Surveys. Pre-construction surveys for California redlegged frogs, tidewater goby, and other special-status aquatic species (such as western pond turtle) shall be conducted prior to construction activities associated with the utility corridor and the public access trail and stairway, no more than one week before construction begins. If any individuals of California red-legged frog or tidewater goby are found, the U.S. Fish and Wildlife Service shall be contacted and appropriate avoidance measures shall be taken to ensure their protection as recommended by the consulting biologist and approved by P&D. These measures shall include installation of exclusionary fencing to prevent California red legged frog from entering the construction area, installation of orange construction fencing to mark the limits of where construction activities may safely take place, and the use of best management practices to prevent pollutants from entering the Eagle Canyon. The crossing of Eagle Canyon will be through the use of an elevated pipe bridge. <u>Post-Construction Use</u>. The post-construction efforts to protect California red legged frog and tidewater goby shall include the use of open fencing to hinder direct access to the open water of Eagle Canyon, the posting of an educational and informational sign describing the sensitive habitat of the lagoon and open water with an explanation with the public shall refrain from disturbing the stream ecosystem. The design and signage content shall be submitted to P&D for review and approval prior to construction activities associated with the public access trail and beach access stairway. Plan Requirements and Timing. Orange construction fencing shall be in place prior to ground disturbance. The revised plans depicting the utility corridor and coastal trail alignment shall be submitted to P&D for review and approval prior to issuance of grading permit. **Monitoring.** P&D shall review and approve the construction protection measures prior to grading permit issuance to ensure that construction activities will avoid direct and indirect impacts to California red-legged frog, western pond turtle, and tidewater goby. The design for open fencing and educational signage shall be reviewed and approved by P&D prior to opening of the public access trail and beach access stairway.
- 15. MM BIO-8. The future construction of the public access stairway to the beach (if located within Eagle Canyon) and public parking lot can proceed only after all overwintering monarch roosts have dispersed in late winter or early spring. The applicant prepare hire County-qualified biologist monarch shall a butterfly roosting/overwintering survey prior to the start of grading and construction. Plan **Requirements and Timing.** The monarch roosting/overwintering survey shall be submitted for review and approval by the P&D biologist and P&D permit compliance staff prior to issuance of grading permits. Construction plan notes shall state that construction shall be prohibited until such time that overwintering monarch roosts have dispersed in late winter/early spring. Said plans shall be submitted to P&D for review and approval prior to issuance of grading/construction permit. **Monitoring.** P&D shall review and approve the construction protection measures prior to grading permit issuance to

ensure that construction activities do not impact monarch butterfly trees. Permit compliance staff shall monitor construction on site.

- **16. MM-BIO-9a.** Setback. All structural development on the ocean lot (with the exception of the driveway) shall be located a minimum of 100 feet from the canopy of the Monterey Pine nesting tree identified in the 2013 survey period. The driveway and unoccupied landscape areas shall be located a minimum of 75 feet from the nesting tree canopy.
 - Plan Requirements and Timing: The reconfigured conceptual design for the ocean estate development (i.e. development footprint) shall be submitted for review and approval by P&D staff prior to issuance of the Coastal Development Permit for the ocean estate. The applicant/property owner shall be responsible for redesign and submittal. All project plans (e.g. architectural, grading/drainage, landscape) for the ocean estate development shall show the location of the nest tree canopy and associated 75 and 100 foot buffers.
- 17. MM-BIO-9b. Nesting Season Restrictions. If grading or construction activities occur during the breeding season (i.e. February through August) the applicant/property owner for any proposed development on-site shall retain a qualified, County-approved biologist to conduct pre-construction bird surveys to avoid impacts to raptors, special status breeding birds and other nesting birds protected by the Migratory Bird Treaty Act. The survey shall include the area approximately 500 feet around construction work areas or to the limits of the property lines if they are closer than 500 feet from the work areas. If an active nest of a common migratory or resident bird species is located, a 300 foot buffer (i.e. no work zone) or greater shall be implemented as determined by the Countyapproved biologist. In the event that an active nest of any raptor or other special status breeding birds is observed within the construction work areas or within 500 feet of these areas, the applicant shall delay construction work until (a) after September 15; or (b) until continued monitoring demonstrates that the nest is vacated and juveniles have fledged; or (c) a buffer zone sufficient to prevent disturbance of nesting activities, as determined by P&D in consultation with California Department of Fish and Wildlife (CDFW) and/or U.S. Fish and Wildlife Service (USFWS) as appropriate, is implemented. Results of the surveys shall be provided to the County and CDFW/USFWS and shall include a description of any nests located and the measures implemented to avoid the nest sites. **Plan Requirements and Timing:** The biologist shall conduct any pre-construction nest surveys prior to the start of grading and construction. Any required buffer zones shall be established prior to initiation of construction activities. Monitoring. The biologist shall document all pre-construction surveys and buffer zones in field notes and in a summary report provided to P&D permit compliance staff on a bi-weekly basis during construction activities.
- **18. MM BIO-10.** The applicant shall submit a revised Conceptual Upland and Riparian Mitigation and Monitoring Plan (dated January 2012) for the proposed restoration areas and a Conservation Easement Management Plan for the proposed conservation easement that provide for white tailed kite habitat enhancement and maintenance. The plan shall be subject to review and approval by the P&D biologist and shall be updated as follows:
 - 1. Habitat Restoration. Restoration areas shall continue to include 4.56 acres of California sagebrush scrub, 0.11 acre of arroyo willow thicket, and 5.92 acres of purple needlegrass grassland. The Upland and Riparian Mitigation and Monitoring Plan shall be revised such that 5.88 acres of the currently proposed

12.97-acre exotics-free buffer zone shall be seeded with native grasses that would provide 1:1 replacement of high quality white-tailed kite foraging habitat. Six (6) 36-inch box coast live oak trees and twenty (20) 1-gallon coast live oak saplings shall be planted in a location proximate to suitable foraging habitat as future potential nest trees. The trees shall be arranged so as to provide maximum cover or canopy area to enhance nesting potential for white-tailed kites.

- 2. Restoration Area Maintenance. The proposed 23.5-acre restoration area shall be managed in a manner that sustains high to moderate quality kite foraging habitat to provide for long-term maintenance of restoration acreages identified in item 1, above, and in order to prevent a reduction in grassland foraging habitat due to succession to other habitat types (e.g., scrub habitat). Specific management treatments (e.g. seasonal mowing, type conversion, focused herbicide application (i.e. spot spray) or other manipulation of vegetation) shall be identified in the Upland and Riparian Mitigation and Monitoring Plan. All other management techniques shall be given priority over herbicide use. The plan shall be revised to include this management goal.
- 3. Conservation Easement Maintenance. The proposed 91-acre conservation easement area shall be expanded to include Drainage 5 on the Ocean and Inland Lots, and the approximate 1.7-acre agricultural envelope proposed between Drainage 5 and 6 and just east of the access bridge on the Ocean Lot deleted, resulting in a 117-acre conservation easement area. The proposed 117-acre conservation easement area shall be managed for the life of the project in order to prevent the spread of invasive black mustard and to prevent the transition of the existing mosaic of herbaceous plants to shrubby areas opaque to kites. In addition to any other management practices, existing mustard fields within the 117-acre conservation easement shall be moved annually, in spring (March to April), to a height of 1 foot prior to the flowering of mustard plants. A second mowing shall occur late in spring (May to June) to a height of I foot to remove late-blooming mustard or mustard plants that develop additional inflorescence stalks. In areas where flowering continues to be problematic, focused herbicide application may be required. Mowing shall not be required where it is determined infeasible or where it might conflict with the management objective of improving prey for white-tailed kites due to adjacency to sensitive habitats. This determination shall be made by the P&D Biologist in conjunction with the Project Biologist.
- 4. Adaptive Management. The revised Conceptual Upland and Riparian Mitigation and Monitoring Plan shall include an adaptive management plan to account for habitat alterations, natural or otherwise, that negatively affect white-tailed kite prey abundance or the ability of kites to access prey items within the conservation easement. The adaptive management plan is applicable to: 1) ensuring that performance criteria are achieved for the proposed 23.5-acre restoration area as detailed in the Conceptual Upland and Riparian Mitigation and Monitoring Plan and 2) ensuring fulfillment of the requirements of MM-BIO 10 Conservation Easement Maintenance relative to preventing the spread of black mustard and shrubby vegetation within the Conservation Easement, as applicable to maintaining adequate white tailed kite foraging habitat.
- 5. The Plan shall consider specific restoration treatments to improve habitat value for native rodents, including the California vole. A goal of the restoration and

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management plan shall be to enhance and maintain habitat characteristics favorable to such rodent populations. The Plan shall include qualitative performance measures.

Plan Requirements and Timing: The revised Conceptual Upland and Riparian Mitigation and Monitoring Plan shall be submitted for review and approval by the P&D biologist prior to Coastal Development Permit issuance. Restoration planting, seeding, irrigation, and protective fencing shall be in place prior to final occupancy clearance by the P&D compliance planner and Building and Safety staff. **Monitoring:** Monitoring reports prepared by the Project Biologist shall be submitted to the permit compliance planner on an annual basis in June for five years following completion of restoration activities. The Project Biologist shall schedule and attend an annual site visit with the permit compliance planner to review the status of site maintenance.

- 19. MM BIO-11. The applicant shall retain a qualified local biologist (approved by P&D) to review and approve the Landscaping Plan for this project. Species to be used in ornamental areas such as entrances, windrows, yards, agricultural use areas and development envelopes, shall be appropriate for their intended use and shall be selected to minimize the potential for invasiveness or other adverse effects on nearby native vegetation. In order to protect the genetic integrity of the native plant populations on the undeveloped portions of the subject property, the Landscape Plan shall prohibit the use of non-locally collected native plants and seed materials for any native species used within or adjacent to open space areas (including plantings proposed for habitat/buffer restoration, native grassland mitigation, and landscape plantings outside perimeter fencing). The Landscape Plan shall also prohibit the planting of any invasive, exotic plant species as identified by the California Invasive Plant Council (Cal-IPC). Wherever native species are specified for plantings or seeding, all seed or plant material shall come from sources in the Dos Pueblos Canyon or Eagle Canyon watersheds or, if not available, coastal Santa Barbara County. Plan Requirements and Timing. The applicant has submitted a landscape concept plan that identifies general goals and features of landscaping and hardscaping for developed areas. Landscape Plans for future development shall be reviewed and approved by the P&D Staff Biologist. The applicant shall use native, locally collected plant species (coastal Santa Barbara species or other non-invasive plant material) for landscaping purposes. **Monitoring.** P&D and a qualified local biologist approved by the County shall monitor Plan compliance throughout the performance period, as appropriate.
- **20. MM BIO-12.** <u>Harbor Seal Haulout.</u> The County or other public agency or non-government organization constructing, operating, or maintaining the vertical coastal access point shall prepare and implement a harbor seal protection/restricted access implementation plan. The plan shall include, but not be limited to, the following measures:
 - Vertical access from the bluff top to the beach shall be restricted to the eastern portion of the Ocean Estate within the floating easement proposed as part of the project. Specifically, should vertical access to the beach be proposed at drainage 4 or west of drainage 4 on the subject property, the top of the stairway shall be closed during the harbor seal pupping/breeding season (e.g., February 1 to May 31).

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- No construction of the vertical access stairway shall occur during the harbor seal pupping/breeding season (e.g., February 1 to May 31) should vertical access to the beach be proposed at drainage 4 or west of drainage 4 on the subject property.
- Access to the beach shall be closed 300 yards in each direction (i.e., north and south) of the harbor seal haulout during the harbor seal pupping/breeding season (e.g.., February 1 to May 31).
- Signs informing users of access restrictions and relevant requirements of the Marine Mammal Protection Act shall be posted at the parking area, vertical access point, beach, and other appropriate locations.
- The County shall encourage and support the formation of a Gaviota Seals Watch similar to the Carpinteria Seals Watch.

Plan Requirements and Timing. The County or other implementing entity shall submit the seal haulout protection/restricted access implementation measures to P&D for review and approval prior to construction of the vertical coastal access point (stairway). The plan shall be prepared by a P&D approved biologist in consultation with the National Marine Fisheries Service and the California Department of Fish and Game. The agency or organization constructing, operating, or maintaining the vertical beach access stairway shall be responsible for ensuring compliance with the approved harbor seal protection/restricted access implementation plan. Monitoring. P&D shall review and approve the final design prior to grading permit issuance to ensure that the required signage is correctly installed prior to construction and project development.

- 21. MM BIO-13. Public Information. The applicant, County, or other implementing entity shall post information at the trailhead of the future public coastal access trail, at the observation lookout, and the top of the beach access stairway, informing visitors that no off-leash pets are allowed on the trail and beach, and that the beach access is closed pursuant to MM-BIO-12 during the harbor seal pupping/breeding season (e.g., February 1 to May 31). Other activity restrictions or beach access closure dates may be approved by P&D with appropriate supporting biological information. The purpose of the off-leash pet restriction and closure period is to minimize harassment and adverse effects to the harbor seal haul-out area and to minimize the effects of visitor use on the plants and animals found in the Naples Reef and adjacent marine and beach habitat, including Southern sea otters. Plan Requirements and Timing. The County or other implementing entity shall submit plans for the proposed public information, and proposal for securing the beach access stairway during times when access is prohibited. Responsibility for supervising access and communicating the access restrictions to the public shall be borne by the applicant or subsequent public access manager. Monitoring. P&D and a qualified local biologist approved by the County shall monitor compliance throughout the performance period, as appropriate.
- 22. MM BIO-14. Replacement trees for removal of non-native mature trees. The applicant shall plant six coast live oaks (Quercus agrifolia) to replace removal of three non-native trees from the project site. To address the temporal loss of potential perch/nest sites, replacement trees shall be 36-inch box trees with approximate overall heights of 12 to 14 feet. Planting locations shall be incorporated into the Conceptual Upland and Wetland Mitigation and Monitoring Plan for the Paradiso del Mare Residential Project, specifically within Drainage 4 and/or Drainage 5. Irrigation and maintenance criteria shall also be included in the Conceptual Upland and Wetland Mitigation and Monitoring

Plan for the Paradiso del Mare Residential Project. All mitigation trees shall be monitored for a period of not less than 5 years. During Years 1 and 2, monitoring shall occur quarterly. During Years 3 through 5, monitoring shall occur twice annually. One annual monitoring report shall be submitted to the County by the applicant for each year of the five-year monitoring period. The reports shall address tree survival/mortality totals, site observations, and any corrective actions necessary to promote tree health. In the event that the tree survival total falls below six trees prior to the completion of the five-year monitoring period, the applicant shall replant to reach the six-tree survival minimum with 36-inch box coast live oak trees. Mitigation trees planted for tree losses occurring during the five-year monitoring period shall also be monitored for five years, with annual reporting to the County on tree health/survival. Where development encroaches into the root or canopy zone of retained trees, each affected tree shall be monitored annually for a period of not less than five years. An annual monitoring report shall be submitted to the County by the applicant for each of the five years, concurrent with the submittal of the monitoring report for planted mitigation trees. Should any of these trees be lost or suffer worsened health or vigor as a result of the proposed development, the applicant shall mitigate the impacts at a 5:1 ratio with seedling sized trees. Mitigation planting shall occur annually, if necessary, based on the results of the annual monitoring reports. Mitigation trees planted for tree losses occurring during the five-year monitoring period shall also be monitored for five years, with annual reporting to the County on tree health/survival. Plan Requirements and Timing. The applicant shall submit plans for the Conceptual Upland and Wetland Mitigation and Monitoring Plan for the Paradiso del Mare Residential Project that incorporates the replacement tree plantings for review and approval by the County. Annual reports shall be submitted to the County for a minimum of five years. Monitoring. P&D shall review and approve the final tree planting design prior to grading permit and shall ensure that the required replacement trees are planted after construction

- 23. MM BIO-17a. Rodenticides. No rodenticides shall be used within the Open space and Conservation Easement or outside of the development envelopes for the Ocean and Inland Estates. Within the development envelopes, anticoagulant rodenticides are prohibited, however, safe-trapping and proper disposal of noxious rodent pests such as black rat or other non-native invasive rodent species, is permitted. Native rodents shall be safely transferred to the conservation easement area and released. Monitoring: Property owners shall keep records from extermination contractors demonstrating that the contractors hired for management of rodents use methods specified under this condition. Records shall be made available to P&D staff upon request.
- **24. MM BIO-17b.** Night lighting limitations. The applicant will design and implement a lighting plan with the following elements:
- Conserve energy and follow night sky lighting practices, generally conforming to the standards and recommendations of the International Dark-Sky Association (IDA) for rural setting;
- Exterior night lighting will be of low intensity, low glare design, minimum height, and shall be fully hooded and shielded to direct light downward, such that lamp usage is not directly visible beyond the area of illumination;
- Exterior lighting shall only be permitted within the development envelopes;
- Motion, light, and time sensors shall be used that minimize duration of use and 24-hour security lighting shall be avoided;
- Uplighting of landscaping or structures shall be prohibited;

• Locations of exterior lighting shall be minimized to that necessary for safety along driveways and parking areas. The driveway lighting shall be low intensity and indirect with on-demand switching to minimize night light visibility from public viewing places.

Plan Requirements and Timing. All exterior lighting fixtures, with an arrow showing the direction of light being cast by each fixture, and the height of fixtures will be depicted on a lighting plan to be reviewed and approved by P&D prior to building permit for future residential development. Monitoring. P&D will review a lighting plan for compliance with this measure prior to approval of a Coastal Development Permit. Permit Compliance will inspect structures upon completion to ensure that exterior lighting fixtures have been installed consistent with their depiction on the final lighting plan.

25. MM BIO-18. Post-construction Coastal Trail Use. The post-construction efforts to protect white-tailed kite nesting habitat will include the posting of educational and informational signage describing the sensitive nature of the nesting habitat for whitetailed kite and identifying trail use limitations. The signage will be located outside of the nesting area and shall explain why the public shall refrain from disturbing the avian breeding ecosystem. The design and signage content shall be submitted to P&D for review and approval prior to construction activities associated with the public access trail. Use of the Coastal Trail will be from dawn to dusk only. Yearly surveys shall occur for white-tailed kite nesting for up to five years following the establishment of trail use. Surveys will be the responsibility of the implementing entity (e.g. County, non-profit organization) and shall be completed by a County-qualified biologist. Surveys shall occur between mid-February to early March as determined by the surveying biologist. If active nests are found, measures shall be taken by the implementing entity (e.g. County, nonprofit organization) as necessary to protect nests. Alternate trail connections around documented, active kite nest sites shall be used if available. If alternate trail connections are not available, the use of trails (during the nesting season if nesting white-tailed kites are present) may be limited.

Requirements to protect future nests adjacent to the Coastal Trail shall be determined by the County-qualified surveying biologist in consultation with the County or other implementing entity. Because human tolerance by white-tailed kites varies and because kites are known to become acclimated to human activity over time, required measures will be based upon yearly recommendations provided by the surveying biologist. At three years following establishment of trail use, the surveying biologist shall determine whether annual surveys for nests remain appropriate or whether the surveys should cease. In no case shall annual surveys be required after five years following establishment of trail use. Depending upon the date any nests are determined to be active, and at the discretion of the County-qualified biologist, an end-of-season nesting survey shall be conducted to determine when measures to protect nesting habitat adjacent to the trail can be discontinued. Plan Requirements and Timing. The plans depicting the coastal trail alignment and the design for the educational signage shall be submitted to P&D for review and approval prior to issuance of grading permit. Monitoring. P&D shall review and approve the design for open trail fencing and educational signage prior to opening of the public access trail.

26. MM CR-1a. Prior to placement of the fill cap, a data collection program shall be implemented at CA SBA-2441. The data collection shall be preceded by definition of the site's boundaries where the utility line and public access corridor enter and exit the site, in order to determine the appropriate amount of sampling. The number and interval of

excavation units shall be determined in consultation with the P&D Archaeologist, based on the results of the boundary testing. Data collection shall include mapping of surface artifacts, collection of functionally or temporally diagnostic tools and debris, and excavation of samples from within the area to be filled as well as adjacent site areas for comparative purposes. Cultural materials collected from the site shall be processed and analyzed in the laboratory according to standard archaeological procedures. The age of the remains shall be determined using radiocarbon dating and other appropriate procedures; lithic artifacts, faunal remains, and other cultural materials shall be identified and analyzed according to current professional standards; prior archaeological collections from the site shall be included in the comparative analysis. The significance of the site shall be evaluated according to the criteria of the CRHR, and the cultural resource record shall be updated to reflect the results of the investigation; such results also shall be presented in a technical report following the standards of the California Office of Historic Preservation publication "Archaeological Resource Management Reports: Recommended and Format" (http://ohp.parks.ca.gov/pages/1054/files/armr.pdf). completion of the work, all artifacts, other cultural remains, records, photographs, and other documentation shall be curated at the Repository for Archaeological and Ethnographic Collections of the University of California, Santa Barbara, or another facility approved by P&D. All fieldwork, analysis, report production, and curation shall be fully funded by the applicant. Plan Requirements and Timing. All work shall be completed by a P&D-approved Registered Professional Archaeologist and shall be funded by the applicant; a Chumash tribal representative shall monitor all excavation. Upon completion of fieldwork, the archaeologist shall supply a brief report to P&D indicating that the fieldwork has been completed satisfactorily and providing any additional recommendations. All fieldwork shall be completed and the results of the program shall be reviewed and approved by P&D prior to issuance of permits for placement of the fill cap. All recommendations in the report shall be implemented as approved. **Monitoring.** P&D shall review and approve the study and Permit Compliance staff shall ensure that approved recommendations are carried out in the field.

- **27. MM CR-1b.** Following completion of the fieldwork described in mitigation measure MM CR-1a, geotextile matting and clean, culturally sterile, chemically neutral fill shall be deposited across the specified portion of the site as follows:
 - 1. Existing vegetation along the proposed water line corridor shall be removed by hand equipment, instead of by motorized vehicles.
 - 2. A County-approved archaeological and Native American monitor shall be retained to observe removal of the vegetation within the archaeological site boundaries.
 - 3. After removal of surface vegetation, a geo-textile fabric shall be laid over the ground surface throughout the corridor where fill soils are proposed.
 - 4. Imported soils shall be placed on top of the geo-textile fabric. The soils shall be chemically inert (i.e., not acidic) such that any potential for leaching into the underlying archaeological deposits is minimized. The pH of the fill soils shall be tested prior to their placement on top of archaeological site areas.
 - 5. Placement of fill soils on top of the geo-textile fabric shall be done in no greater than 18-inch lifts with rubber-tired heavy equipment, such that the equipment only encroaches within the fill soil corridor after the initial fill soil lift is placed.
 - 6. Placement of the geotextile fabric and top 18 inches of fill soils on top of the geotextile fabric shall be monitored by a County-qualified archaeologist and local Native American observer.

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7. A pre-construction meeting shall be held with the contractor, County-qualified archaeologist, and Native American observer to communicate protocols for undertaking this activity.

Plan Requirements and Timing. A P&D-approved archaeologist and Chumash representative shall monitor fill placement. The conditions for monitoring and treatment of discoveries shall be printed on all building and grading plans. Prior to issuance of CDHs, the applicant shall submit a contract or Letter of Commitment with the archaeologist. The contract must include a project description and scope of work, and shall be prepared, executed, and submitted to P&D for review and approval. Monitoring. Permit Compliance staff shall confirm monitoring by archaeologist and Building and Safety Division grading inspectors shall spot check field work.

- **28. MM CR-1c.** The applicant shall re-vegetate the fill soil overlying the utilities easement with an appropriate mix of native species. This re-vegetation will occur after final soil compaction has been completed. **Plan Requirements and Timing.** The applicant will prepare a re-vegetation plan, specifying which plants will be used and in what quantities, and submit this plan to P&D. P&D will review and approve this plan before issuance of the required CDH. **Monitoring**. Permit Compliance staff will confirm that re-vegetation efforts conform to the approved re-vegetation plans and that re-vegetation efforts are successful. This mitigation will only be considered complete when revegetation is successful and vegetation persists for more than one year. Otherwise, additional efforts by the applicant will be required to complete the mitigation.
- 29. MM CR-1d. Where the utility corridor and the proposed future Coastal Trail are aligned, the applicant shall design and engineer the utility corridor, including appropriate compaction of all fill soils to the standard required to accommodate future construction of the Coastal Trail. All necessary engineering methods to protect the underlying cultural resources (refer to Section 3.5 Cultural Resources of the Final Revised EIR, 09EIR-00000-00003) shall be utilized. Plan Requirements and Timing. The applicant shall prepare a compaction plan for the areas of the utility corridor that overlap with the Coastal Trail easement, and submit this plan to P&D and the County Parks and Public Works Departments. This plan shall specify the engineering techniques that shall be used to protect the underlying cultural resources. P&D and a County-approved archaeologist will review this plan to determine whether specified measures are sufficient to protect archaeological resources and support future construction of the Coastal Trail. This plan must be certified by P&D prior to issuance of any permits for work within the utilities easement. Monitoring. The Grading Inspector shall confirm that identified engineering techniques are used when placing and compacting the fill soil.
- **30. MM CR-2a.** A buffer of 100 feet around the previously mapped boundaries of archaeological site CA SB-1322 shall be incorporated into the project design as unbuildable open space where no grading, construction, utility placement, landscaping, or other ground disturbance or development can occur. This area shall be seeded with shallow-rooted native vegetation to stabilize the site, protect it from erosion, and obscure the surface so that casual artifact collection or deliberate looting by residents and visitors can be avoided. During construction, the archaeological site and 100-foot buffer area shall be temporarily fenced with chain link flagged with color or other material authorized by P&D. **Plan Requirements and Timing.** P&D shall receive, review, and approve final plans prior to approval of CDHs. Security shall be posted and fencing installed prior to issuance of building permits. Site shall be seeded during the rainy

season to optimize the chances of successful sprouting. Permit Compliance staff will confirm that seeding efforts are successful. This mitigation will only be considered complete when seeding is successful and vegetation persists for more than one year. Otherwise, additional efforts by the applicant will be required to complete the mitigation. **Monitoring.** Permit Compliance staff shall verify installation of fencing by reviewing photo documentation or by site inspection prior to approval of grading permits, and shall ensure fencing remains in place throughout grading and construction through site inspections. Permit Compliance staff shall also inspect site to ensure installation and maintenance of plantings according to plan and sign off release of performance security when appropriate.

- **31. MM CR-2b.** The final plans shall include a notation designating the known archaeological site as unbuildable area where no grading, construction, utility placement, landscaping, or other ground disturbance or development can occur. The area shall not be identified as an archaeological site on the plans. **Plan Requirements, Timing and Monitoring.** P&D shall receive, review, and approve final plans prior to issuance of CDHs.
- 32. MM-CR-3a. Prior to placement of the fill cap, an extended Phase I presence-absence testing program shall be implemented at eastern and western margins of CA-SBA-76 along the 20 foot wide utility easement corridor. Testing shall begin 200 feet outside of the currently mapped site boundaries and proceed toward the site until cultural materials are identified. Upon discovery of cultural materials, presence/absence testing shall cease and a 100 foot buffer established outward from the point of discovery. The fill cap referenced in mitigation measure CR-3d shall be placed along the utility easement from 100 feet east to 100 feet west from the newly identified site boundaries. The applicant shall include a notation on the final plans designating the buffer as unbuildable area. The area shall not be identified as an archaeological site on the plans. Plan Requirements Timing. P&D shall receive, review, and approve final plans prior to approval of CDHs. Monitoring. All work shall be conducted by a County-qualified archeologist and shall be monitored by a Native American observer. Permit Compliance staff shall spot check fieldwork.
- **33. MM-CR-3b.** Prior to initiation of the extended Phase I presence-absence testing program described in mitigation measure MM CR-3a the applicant shall fund additional consultations with the Santa Ynez Tribal Elders Council and other interested Native American representatives to ensure their concerns are taken into account during the course of the project. **Plan Requirements and Timing.** The additional consultations shall be completed prior to issuance of the first Coastal Development Permit for the project. Upon completion of consultation, the archaeologist shall supply a brief report to P&D indicating that the work has been completed satisfactorily and providing any additional recommendations. **Monitoring.** P&D shall monitor compliance with this requirement and ensure its results are incorporated into the final cultural resource reports.
- **34. MM CR-3c.** The applicant shall fund a P&D-qualified ethnohistorian to prepare an ethnohistory and descendant genealogy of the archaeological site area. **Plan Requirements and Timing.** The ethnohistory and genealogy shall be undertaken prior to issuance of the first Coastal Development Permit for the project. **Monitoring.** The ethnohistory shall be submitted for review and approval by the P&D Archaeologist. P&D shall monitor compliance with this requirement and ensure its results are incorporated into the final cultural resource reports.

- **35. MM CR-3d**. Following completion of the fieldwork and consultations described in MM CR-3a, 3b, and 3c, above, geotextile matting and clean, culturally sterile, chemically neutral fill shall be deposited across the specified portion of the site, as follows:
 - 1. Existing vegetation along the proposed water line corridor shall be removed by hand equipment, instead of by motorized vehicles.
 - 2. A County-approved archaeological and Native American monitor shall be retained to observe removal of the vegetation within the archaeological site boundaries.
 - 3. After removal of surface vegetation, a geo-textile fabric shall be laid over the ground surface throughout the corridor where fill soils are proposed.
 - 4. Imported soils shall be placed on top of the geo-textile fabric. The soils shall be chemically inert (i.e., not acidic) such that any potential for leaching into the underlying archaeological deposits is minimized. The pH of the fill soils shall be tested prior to their placement on top of archaeological site areas.
 - 5. Placement of fill soils on top of the geo-textile fabric shall be done in no greater than 18-inch lifts with rubber-tired heavy equipment, such that the equipment only encroaches within the fill soil corridor after the initial fill soil lift is placed.
 - 6. Placement of the geotextile fabric and top 18 inches of fill soils on top of the geotextile fabric shall be monitored by a County-qualified archaeologist and local Native American observer.
 - 7. A pre-construction meeting shall be held with the contractor, County-qualified archaeologist, and Native American observer to communicate protocols for undertaking this activity.

Plan Requirements and Timing. A P&D-approved archaeologist and Chumash representative shall monitor fill placement. The conditions for monitoring and treatment of discoveries shall be printed on all building and grading plans. Prior to issuance of CDHs, the applicant shall submit a contract or Letter of Commitment with the archaeologist. The contract must include a project description and scope of work, and shall be prepared, executed, and submitted to P&D for review and approval. Monitoring. Permit Compliance staff shall confirm monitoring by archaeologist and Building and Safety Division grading inspectors shall spot check field work.

- **36. MM CR-3e.** The applicant shall re-vegetate the fill soil overlying the utilities easement with an appropriate mix of native species. This re-vegetation will occur after final soil compaction has been completed. **Plan Requirements and Timing.** The applicant will prepare a re-vegetation plan, specifying which plants will be used and in what quantities, and submit this plan to P&D. P&D will review and approve this plan before issuance of the required CDH. **Monitoring.** Permit Compliance staff will confirm that re-vegetation efforts conform to the approved re-vegetation plans and that re-vegetation efforts are successful. This mitigation will only be considered complete when revegetation is successful and vegetation persists for more than one year. Otherwise, additional efforts by the applicant will be required to complete the mitigation.
- **37. MM CR-4.** A buffer of 100 feet around the boundaries of archaeological sites CA-SBA-1323, CA SBA-2440 and CA SBA-2442H shall be defined and incorporated into the project design as unbuildable open space where no grading, construction, utility placement, landscaping, or other ground disturbance or development can occur. The applicant shall include a notation on the final plans designating the known archaeological

sites as unbuildable area. The area shall not be identified as an archaeological site on the plans. **Plan Requirements Timing and Monitoring.** P&D shall receive, review, and approve final plans prior to approval of CDHs. Monitoring. Permit Compliance staff shall spot check fieldwork.

- 38. MM CR-5. The applicant shall retain a P&D-qualified archaeologist and a Native American consultant to monitor all earth disturbances within the Ocean and Inland Estate development envelopes to ensure that previously unidentified buried archaeological deposits are not inadvertently exposed and damaged. In the event archaeological remains are encountered during grading or other earth disturbance, work in the vicinity shall be stopped immediately and redirected to another location until a P&D qualified Registered Professional Archaeologist and Native American representative are retained by the applicant to conduct a Phase 2 investigation and evaluate the significance of the find pursuant to County Archaeological Guidelines. If remains are found to be significant, they shall be subject to a Phase 3 mitigation program consistent with County Archaeological Guidelines and funded by the applicant. Plan Requirements and **Timing.** The conditions for monitoring and treatment of discoveries shall be printed on all building and grading plans. Prior to issuance of CDHs, the applicant shall submit a contract or Letter of Commitment with the archaeologist. The contract must include a project description and scope of work, and shall be prepared, executed, and submitted to P&D for review and approval. **Monitoring.** Permit Compliance staff shall confirm monitoring by the archaeologist and Building and Safety Division grading inspectors shall spot check field work.
- **39. MM EN-1a**, The applicant shall comply to the maximum extent feasible with all adopted County policies regarding energy consumption, such as:
 - Incorporation of cost-effective, renewable, non-depleting energy resources into the project design, wherever possible;
 - Site and building design to avoid unwanted heat gain from solar exposure. Features that provide shading at suitable times of the day and year generally shall be "passive" or automatic, avoiding the need for occupants to regularly monitor or adjust them; and
 - Include solar panels in building design to heat spa and swimming pool areas.
- **40. MM EN-1b.** Construction vehicles shall be turned off when not in use to avoid leaving in idling position. Construction vehicles shall be left on site for the duration of construction to avoid wasteful or inefficient use of gasoline. **Plan Requirements and Timing.** The applicant will submit an energy efficiency plan to P&D outlining the measures they will take to minimize wasteful use of non-renewable resources. **Monitoring.** Permit compliance staff shall confirm with field visits that energy-conserving measures are used during construction and incorporated into the final project design.
- 41. MM FP-1. The applicant shall pay development impact mitigation fees (DIMFs) to the Santa Barbara County Fire Department that would be directed toward the eventual construction of a new fire station. Required mitigation fees shall be as determined by County-adopted mitigation fee resolutions and ordinances and applicable law. Plan Requirements and Timing: Fire DIMFs shall be paid to the County Fire Department prior to Final Building Inspection and shall be based on the fee schedules in effect when paid. Monitoring: Building and Safety staff shall ensure payment of fire DIMFs prior to Final Building Inspection.

- **42. MM FP-2a.** Landscaping for the development envelopes will incorporate the recommendations presented in the Applicant's VMP, consistent with County Fire Department standards. **Plan Requirements and Timing.** The final landscape plan shall define precisely the final disposition of existing trees, as well as locations and types of new plantings to allow for expedient review and approval by P&D and the Fire Department prior to approval of any CDH. The plans shall incorporate language and illustrations such as those found in Goleta Water District and Santa Barbara Botanical Garden publications advocating low water use plantings. Landscape plan components shall be reviewed prior to approval of any CDH. Landscaping shall be installed in accordance with the approved landscape plan prior to final inspection. **Monitoring.** Permit compliance staff shall verify the installation of the required landscaping in the field.
- **43. MM FP-2b.** For any existing trees within 100 feet of structures that are retained, all dying and diseased branches shall be removed. A certified arborist shall prepare a report detailing the disposition and condition of all existing trees within the development envelope. **Plan Requirements and Timing.** The final landscape plan shall define precisely the final disposition of existing trees as well as locations and types of new plantings to allow for expedient review and approval by P&D and the County Fire Department prior to CDH approval. Plan components shall also be reviewed prior to approval of any CDH. Recommendations of the approved arborist report shall be implemented prior to final inspection. **Monitoring.** P&D and Permit Compliance staff shall review the arborist's report and verify the required tree maintenance in the field.
- **44. MM FP-2c**. The following fire prevention methods shall be used for all proposed and future structures:
 - a. Building materials for all structures including residences, fences, and accessory structures shall be constructed of fire resistant materials.
 - b. P&D Building & Safety Class A or B roofing (i.e., non-combustible tile or asphalt composite shakes) shall be required for all future on-site structures.
 - c. Spark arresters shall be required for wood burning fireplaces.
 - d. Private decks and structural overhangs proposed for all new structures shall be constructed with fire retardant materials or heavy timber.
 - e. Structures shall be fully equipped with sprinklers.

Plan Requirements and Timing: Where appropriate, the fire prevention measures shall be graphically depicted on grading and building plans. Measures shall be installed prior to final inspection. **Monitoring.** P&D building inspectors shall site inspect during construction.

45. MM FP-2d. Adequate Fire Department structural access requirements shall be provided. **Plan Requirements and Timing:** Access routes shall be by all-weather surface roads and shall be submitted by the applicant for review and approval by the County Fire Department prior to issuance of a CDH. Primary access shall be installed during initial grading and secondary access shall be completed prior to final inspection. **Monitoring.** Access shall be reviewed and approved by P&D and County Fire Department prior to issuance of a CDH. The Fire Department and Permit Compliance shall ensure compliance through site inspections.

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- **46. MM FP-2e.** The applicant shall provide an adequate number of 750-gallon per minute fire hydrants as determined by the County Fire Department. **Plan Requirements and Timing:** Prior to approval of a CDH, the applicant shall meet with the County Fire Department to review placement of additional fire hydrants throughout the site. Required hydrants shall be installed prior to final inspection. **Monitoring.** Fire Department shall ensure compliance prior to final inspection.
- **47. MM GEO-1.** The project shall be designed to earthquake standards in accordance with applicable sections of the California Building Code and County of Santa Barbara Building Code adopted amendments. Required site-specific and plan-specific geotechnical investigations shall be performed at the site. The recommendations for site preparation, grading, backfill, and foundations developed during the site-specific geotechnical investigation shall be incorporated into the project design. **Plan Requirements and Timing.** Prior to plan check review by P&D, the applicant shall submit building plans indicating building standards to the satisfaction of the County Building and Safety Division. **Monitoring.** Building inspectors shall site inspect prior to issuance of occupancy clearance.
- **48.** MM GEO-2. Soils engineering design recommendations addressing expansive soils and differential settlement in the site-specific soils engineering reports (Earth Systems Pacific for the Ocean Estate and Inland Estate, 2007) shall be incorporated into the project design in accordance with applicable sections of the California Building Code and County of Santa Barbara Building Code adopted amendments. Plan Requirements and Timing. The site-specific investigation of soils conditions and foundation recommendations shall determine the extent of any landslide deposits and unstable soils on each lot to be developed. The report shall document either that the proposed structures and improvements will be located outside of any landslide areas or that remedial grading or foundation designs will provide suitable development conditions through the removal of unstable soils. Recommendations from the soils investigations shall be incorporated into grading and foundation designs as appropriate. Site-specific and plan-specific geological and/or soils engineering reports shall be submitted and approved, prior to approval of building permits for the proposed Ocean and Inland Estates. Monitoring. P&D's Building and Safety Division and Public Works shall review reports and plans. Permit Compliance shall ensure compliance with plans. Grading inspectors shall monitor technical aspects of the grading activities.
- 49. MM HAZ-1. A Remedial action plan (RAP) shall be implemented by ARCO/BP and the property owner with oversight by the County Public Health Department Hazardous Materials Unit, in accordance with all applicable regulatory guidelines. Results of the site assessment shall be used to develop remedial alternatives and ultimately an updated RAP, including mitigation for potential secondary impacts such as dust emissions; disturbance to sensitive ecosystems (e.g., wetlands); and worker health and safety hazards. As a part of the Remedial Action Plan, and prior to Coastal Development Permit issuance for project development, Arco/BP shall submit a vapor monitoring work plan to Santa Barbara County P&D for the three wells in the immediate vicinity of the development envelope. The plan shall include vapor sampling methods, protocol and frequency, proposed action levels for chemicals of potential concern (e.g., methane), reporting requirements, and contingencies for vapor mitigation if needed. The work plan shall be approved prior to implementation. County Public Health Department Hazardous Materials Unit approval of the RAP shall be obtained and the RAP shall be implemented with County Public Health Department Hazardous Materials Unit oversight, in accordance

with all applicable regulatory guidelines (such as the Health and Safety Code) and action levels. **Plan Requirements and Timing.** Remediation at the proposed project site by ARCO/BP and the property owner shall be completed in accordance with an approved RAP. Site remediation shall occur prior to issuance of a Coastal Development Permit for project development. **Monitoring.** The County Public Health Department Hazardous Materials Unit shall review and approve the RAP and monitor and inspect remediation activities and documentation to ensure compliance with approved plans and applicable guidelines.

- **50. MM HAZ-3.** In the event that visual contamination or chemical odors are detected while implementing the approved work on the project site, all work shall cease immediately. The property owner or appointed agent shall contact the County Fire Department's Hazardous Materials Unit (HMU); the resumption of work requires the approval of the HMU. **Plan Requirements and Timing.** This requirement shall be noted on all grading and building plans. **Monitoring.** Permit Compliance personnel shall perform periodic inspections.
- **51. MM PF-1.** The proposed project shall include the following measures to reduce water consumption:
 - Efficient irrigation systems which minimize runoff and evaporation, avoid unnecessary watering, and maximize water reaching the plant roots shall be installed. Landscape plans shall emphasize low water consumption grasses and plants wherever possible.
 - Water in fountains, ponds, and other landscape features shall use recirculating water systems to prevent waste.
 - Water saving techniques, including water-conserving plumbing, low flow toilets, showers, and faucets shall be incorporated.
 - Recycled water shall be used instead of potable water for landscaping within the development envelopes.

Plan Requirements and Timing. The final landscape plan shall precisely define high-and lower-demand species areas to allow for expedient review and approval by the P&D and the Board of Architectural Review prior to issuance of a Coastal Development Hearing (CDH). The conditions, covenants, and restrictions shall incorporate language and illustrations such as those found in GWD and Santa Barbara Botanical Garden publications advocating low water use plantings. Landscape plan components and conditions, covenants, and restrictions shall be reviewed prior to issuance of a CDH. Final project plans shall include the necessary water-conserving fixtures and plumbing systems. The plans shall be reviewed and approved by P&D prior to issuance of a CDH. Monitoring. Permit Compliance staff shall verify the installation of the required landscaping, fixtures, and plumbing in the field.

52. MM PF-2. The waste disposal system shall be located within the development envelope of the affected parcel and shall be designed to include at least two drywells on each lot, within the vicinity and of a similar diameter and depth as the ones constructed and tested. **Plan Requirements and Timing.** All layouts, tests, and recommendations for the proposed waste disposal system shall be prepared and/or certified by a registered civil or geotechnical engineer or a certified engineering geologist. According to Section 35-147.2.g of the Coastal Zoning Ordinance, the applicant shall also submit an application for a Minor Conditional Use Permit (MCUP) for any proposed experimental waste disposal system. The MCUP shall be reviewed and approved concurrently with the

Coastal Development Permit with Hearing (CDH) for the affected parcel. EHS shall determine that the proposed waste disposal system has adequate capacity for the project prior to approval of any zoning permits, including any Minor Conditional Use Permit (MCUP), or Coastal Development Permits (CDH). **Monitoring.** P&D shall ensure that all necessary reviews and approvals have occurred prior to approval of any zoning permits, including any MCUP or CDH.

- 53. MM TR-1. Traffic Control Plan. The owner/applicant shall submit to P&D and Caltrans the expected project construction schedule. The County shall allow concurrent construction of the project improvements. The plan shall specify that northbound construction vehicles shall be prohibited from accessing the site via the at grade crossing but rather shall use CalTrans offramps and overcrossings to access the site from the southbound Hwy 101 lane. Plan Requirements: The owner/applicant shall submit the traffic control plan. Timing: The traffic control plan shall be submitted to P&D for review and approval prior to Coastal Development Permit issuance. Monitoring: The owner/applicant shall provide P&D compliance monitoring staff with proof that all traffic control plan requirements have been met.
- 54. MM WAT-1. Prior to issuance of any construction/grading permit and/or the commencement of any clearing, grading, or excavation, a Notice of Intent (NOI) shall be submitted to the California State Water Resources Control Board Storm Water Permit Unit. Compliance with the General Permit includes the preparation of a Storm Water Pollution Prevention Plan (SWPPP), which shall identify potential pollutant sources that may affect the quality of discharges to stormwater, and shall include the design and placement of Best Management Practices (BMPs) to effectively prohibit the entry of pollutants from the project site into area water bodies during construction. The Storm Water Pollution Prevention Plan must contain some or all of the following specific mitigation measures designed to reduce or eliminate construction site runoff pollution, which can be grouped into four classes of BMPs:

Construction site planning BMPs including but not limited to:

- Development planning shall fit the topography, soils, drainage patterns, and natural vegetation of the site.
- Only the minimum amount of vegetation necessary for construction shall be removed.
- The clearing limits, setbacks, protected habitat areas, trees, drainage courses, and buffer zones shall be delineated on plans and in the field to prevent excessive or unnecessary soil disturbance and exposure.
- The amount of cuts and fills shall be minimized.
- Temporary and permanent roads and driveways shall be aligned along slope contours.
- Grading operations shall be phased to reduce the extent of disturbed areas and length of exposure.
- Excavation and grading shall be avoided during the rainy season.
- Impervious surface areas shall be minimized and permeable paving materials shall be used whenever possible.

BMPs to minimize soil movement on all slopes greater than or equal to 5:1 and including but not limited to:

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- Disturbed soil areas shall be covered with geotextile fabric, jute netting, erosion control blankets, silt fence, or other erosion control materials.
- Soil stockpiles shall be covered.
- Soil stabilizers shall be employed, as appropriate.
- Disturbed soils shall be restored and revegetated as soon as practicable.
- Stabilized access roads and entrances shall be constructed in the initial phase of construction.
- Tire wash stations, gravel beds, and/or rumble plates will be installed at site entrance and exit points to prevent sediment from being tracked onto adjacent roadways.
- Sediments and construction materials shall be dry-swept from finished streets the same day they are deposited.
- Site runoff control structures, such as earth berms, drainage swales, and ditches that convey surface runoff during construction into temporary or permanent sediment detention basins shall be installed and made operational in the initial phase of construction as necessary.

BMPs to capture sediment on all slopes greater than or equal to 5:1, including but not limited to:

- Perimeter sediment controls (silt fence, fiber rolls, etc.) shall be installed, as necessary, prior to land-disturbing activities, and additional runoff control measures shall be installed during construction as necessary.
- Storm drain inlets shall be protected from sediment-laden runoff with inlet protection devices such as gravel bag barriers, filter fabric fences, block and gravel filters, excavated inlet sediment traps, sand bag barriers, and/or other devices.
- Sediment shall be removed from dewatering discharge with portable settling and filtration methods, such as Baker tanks or other devices.
- Graded areas shall be revegetated within a time frame to be determined by County P&D.

Good housekeeping BMPs, including but not limited to:

- All storm drains, drainage patterns, and creeks located near the construction site prior to construction shall be identified to ensure that all subcontractors know their location to prevent pollutants from entering them.
- Washing of concrete trucks, paint, equipment, or similar activities shall occur only in areas where polluted water and materials can be contained for subsequent removal from the site. Wash water shall not be discharged to the storm drains, street, drainage ditches, creeks, or wetlands. Areas designated for washing functions shall be at least 100 feet from any storm drain, water body or sensitive biological resources; the location(s) of the wash-out area(s) shall be clearly noted at the construction site with signs; the applicant shall designate a washout area, acceptable to Building and Safety and P&D staff; the wash-out areas shall be shown on the construction and/or grading and building plans and shall be in place and maintained throughout construction.
- All leaks, spills, and drips shall be immediately cleaned up and disposed of properly.

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- Vehicles and heavy equipment that are leaking fuel, oil, hydraulic fluid, or other
 pollutants shall be immediately contained and either repaired immediately or
 removed from the site.
- One or more emergency spill containment kits shall be placed on site in easily visible locations and personnel will be trained in proper use and disposal methods.
- Vehicles and heavy equipment shall be refueled and serviced in one designated site located at least 500 feet from creeks and drainage swales.
- Temporary storage of construction equipment shall be limited to a 50 x 50-foot area preferably located along an existing dirt access road, and shall be located at least 100 feet from any water bodies.
- Dry clean-up methods shall be used whenever possible.
- Clean site runoff shall not be contaminated with polluted water through the use of berms or ditches to divert surface runoff around the construction site.

Plan Requirements and Timing. Prior to issuance of a Coastal Development Permit (CDP), the applicant shall submit a copy of the RWQCB's NOI acceptance letter to the County. The applicant shall provide a copy of the required SWPPP to the County for review and approval (the SWPPP may be submitted in lieu of an Erosion and Sediment Control Plan per Chapter 14-29). The plan shall be designed to protect water quality during all phases of construction activity. BMPs described in the SWPPP shall be shown on the plans prior to issuance of CDP. The SWPPP shall be kept on site during construction activities and be available to operating personnel, as well as to any regulatory agency staff with authority over the project development. The applicant shall amend the SWPPP whenever there is a change in construction that may affect the discharge of significant quantities of sediment or other pollutants to surface waters, ground waters, or a municipal storm drain system. Such changes shall be approved by County staff and recorded on the construction plans. The applicant shall notify the County prior to commencement of grading. Erosion and sediment control measures shall be maintained for the duration of the grading period and development of the project until graded areas have been permanently stabilized by structures, long-term erosion control measures or landscaping. The County or its consultant shall conduct periodic "tailgate" meetings about site maintenance and water quality issues during construction. **Monitoring.** The County and other agencies, as appropriate, shall inspect the site during construction for compliance with the SWPPP. During the rainy season (between November 1 and April 15), a minimum of two County inspections per month shall be conducted. County staff shall inspect the site for all requirements prior to final inspection. The County shall photodocument revegetation to ensure compliance with plans. Grading inspectors shall monitor technical aspects of the grading activities, and ensure enforcement of County requirements consistent with the Grading Ordinance. Upon strict adherence to requirements set forth in the RWQCB-approved SWPPP, including sitemonitoring routines, additional downstream water quality sampling and testing would not be necessary.

- **55. MM WAT-2.** To reduce increases in runoff to site drainages and watersheds due to the increase in impervious surfaces, most notably the paved driveway, the applicant shall:
- Use bioswales and storm drains to channel water from the development envelope away from erodible coastal ravines; and,
- Minimize creation of impervious surfaces through the use of pervious concrete, pavers, or a similar product. Where impervious surfaces are present, drainage will be controlled in such a way as to minimize the chance of channelization and erosion.

Plan Requirements and Timing. Locations and design specifications of storm water structures and devices shall be depicted on grading and drainage plans. The plans shall be reviewed and approved by County Flood Control Project Clean Water and P&D prior to CDH issuance. If these structures and devices shall also function to reduce water-borne pollutants in post-construction surface runoff, then they shall also be reviewed and approved by the County Water Resources Division for compliance with County Public Works Department Standard Conditions for Project Approval – Water Quality BMPs. Monitoring. P&D staff shall site inspect implementation pursuant to approved plans prior to final inspection

- **56. MM WAT-3.** While encountering groundwater is not expected based upon testing conducted on the project site, to reduce impacts to groundwater resources associated with excavation of basements, the proposed project shall incorporate standard engineering designs, as recommended by Earth Systems Pacific in the site-specific Soils Engineering Reports (2007) and found in **Appendix 3.8** of this EIR, which will be submitted to the County as part of the building permit application process. Such measures to mitigate potential impacts resulting from water during basement construction shall include:
- The basement areas shall include drainage systems to intercept water from around the retaining walls and below the slabs to transmit water into the sites' drainage systems. If it is not possible to outlet water into the sites' storm drain systems by gravity flow, sump pumps will be necessary. Specific design of the drainage systems shall follow those recommended in the soils engineering reports.

Plan Requirements and Timing. Site-specific soils engineering reports shall be submitted to the County as part of the building permit application process. Recommended locations and design specifications of drainage systems shall be depicted on grading and drainage plans. The plans shall be reviewed and approved by the County Building and Safety Division for conformance with this condition prior to Building Permit issuance. **Monitoring.** Building and Safety staff shall conduct a site inspection.

Standard Conditions Applicable to all Permits

- **57. Aest-09 Construction Clean-up**. The developer shall clear the project site of all excess construction debris. **PLAN REQUIREMENT**: This requirement shall be noted on final building plans. **TIMING:** Debris clearance shall occur prior to Final Building Inspection Clearance. **MONITORING:** P&D compliance monitoring staff shall site inspect prior to Final Building Inspection Clearance.
- **58. Air-01 Dust Control**. The Owner/Applicant shall comply with the following dust control components at all times including weekends and holidays:
- a. Dust generated by the development activities shall be kept to a minimum with a goal of retaining dust on the site.
- b. During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, use water trucks or sprinkler systems to prevent dust from leaving the site and to create a crust after each day"s activities cease.
- c. During construction, use water trucks or sprinkler systems to keep all areas of vehicle movement damp enough to prevent dust from leaving the site.
- d. Wet down the construction area after work is completed for the day and whenever wind exceeds 15 mph.

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- e. When wind exceeds 15 mph, have site watered at least once each day including weekends and/or holidays.
- f. Order increased watering as necessary to prevent transport of dust off-site.
- g. Cover soil stockpiled for more than two days or treat with soil binders to prevent dust generation. Reapply as needed.
- h. If the site is graded and left undeveloped for over four weeks, the Owner/Applicant shall immediately:
- i. Seed and water to re-vegetate graded areas; and/or
- ii. Spread soil binders; and/or
- iii. Employ any other method(s) deemed appropriate by P&D or APCD.
 - PLAN REQUIREMENTS: These dust control requirements shall be noted on all grading and building plans. PRE-CONSTRUCTION REQUIREMENTS: The contractor or builder shall provide P&D monitoring staff and APCD with the name and contact information for an assigned onsite dust control monitor(s) who has the responsibility to: a. Assure all dust control requirements are complied with including those covering weekends and holidays. b. Order increased watering as necessary to prevent transport of dust offsite. c. Attend the pre-construction meeting. TIMING: The dust monitor shall be designated prior to CDH issuance. The dust control components apply from the beginning of any grading or construction throughout all development activities until Final Building Inspection Clearance is issued and landscaping is installed. MONITORING: P&D processing planner shall ensure measures are on plans. P&D grading and building inspectors shall spot check; Grading and Building shall ensure compliance onsite. APCD inspectors shall respond to nuisance complaints.
- **59. Bio-01a Tree Protection Plan-Site Plan Component.** The Owner/Applicant shall submit a Tree Protection Plan (TPP) prepared by a P&D-approved arborist and/or biologist and designed to protect on-site native and habitat trees. The plan shall include the following site plan components:
 - 1. The Owner/Applicant shall comply with and depict the following on the TPP exhibit and Grading and Building Plans:
 - a. With the exception of the three non-native trees adjacent to the Coastal Estate that would be removed and mitigated for pursuant to MM-BIO-14 all trees shall be preserved. No grading for buildings, accessways, easements, subsurface grading sewage disposal and well placement shall take place within the area within six feet of the dripline of any of these trees.
 - b. Depict approved development envelopes. Include utility corridors, irrigation lines, roadways, driveways.
 - c. Depict equipment storage (including construction materials, equipment, fill soil or rocks) and construction staging and parking areas outside of the protection area.
 - d. Depict the type & location of protective fencing (see below) or other barriers to be in place to protect trees in protection areas during construction.
 - e. Depict the location of all tree wells or retaining walls. These shall be located outside the area within six feet of the dripline of all protected trees unless authorized by P&D.
 - f. Depict the location of all paths within 25 feet of dripline areas. Only pervious paving materials (gravel, brick without mortar, turf block) are permitted within 6 feet of dripline areas.

PLAN REQUIREMENTS: The Owner/Applicant shall: (1) Submit the TPP; (2) Include all applicable components in Tree Replacement Plan and/or Landscape and Irrigation

Plans if these are required; (3) include as notes or depictions all plan components listed above, graphically depicting all those related to earth movement, construction, and temporarily and/or permanently installed protection measures. **TIMING:** The Owner/Applicant shall comply with this measure prior to CDH issuance. Plan components shall be included on all plans prior to the issuance of the CDH. The Owner/Applicant shall install tree protection measures onsite prior to issuance of grading permits and pre-construction meeting. **MONITORING:** The Owner/Applicant shall demonstrate to P&D compliance monitoring staff that trees identified for protection were not damaged or removed or if damage, or removal occurred, that correction is completed as required by the TPP prior to Final Building Inspection Clearance.

- **60. Bio-01b Tree Protection Plan Construction Component.** The Owner / Applicant shall submit a Tree Protection Plan (TPP) prepared by a P&D-approved arborist and/or biologist and designed to protect on-site native and habitat trees. The Owner Applicant shall comply with and specify the following as notes on the TPP and Grading and Building Plans:
 - 1. Fencing of all trees to be protected at least six feet outside the dripline with chain-link (or other material satisfactory to P&D) fencing at least 3 ft high, staked to prevent any collapse, and with signs identifying the protection area placed in 15-ft intervals on the fencing.
 - 2. Fencing/staking/signage shall be maintained throughout all grading and construction activities.
 - 3. All trees located within 25 ft of buildings shall be protected from stucco and/or paint during construction.
 - 4. No irrigation is permitted within 6 ft of the dripline of any protected tree unless specifically authorized.
 - 5. The following shall be completed only by hand and under the direction of a P&D approved arborist/biologist: a. Any trenching required within the dripline or sensitive root zone of any specimen. b. Cleanly cutting any roots of one inch in diameter or greater, encountered during grading or construction. c. Tree removal and trimming.
 - 6. Special equipment: If the use of hand tools is deemed infeasible by P&D, P&D may authorize work with rubber-tired construction equipment weighing five tons or less. If significant large rocks are present, or if spoil placement will impact surrounding trees, then a small tracked excavator (i.e., 215 or smaller track hoe) may be used as determined by P&D staff and under the direction of a P&D approved biologist.
 - 7. The following are not permitted: a. Any trenching within the dripline or sensitive root zone of any specimen. b. Cutting any roots of one inch in diameter or greater. c. Tree removal and trimming.
 - 8. Grading shall be designed to avoid ponding and ensure proper drainage within driplines of oak trees.

PLAN REQUIREMENTS: The Owner/Applicant shall: (1) submit the TPP; (2) Include all applicable components in Tree Replacement Plan and/or Landscape and Irrigation Plans if these are required; (3) include as notes or depictions all plan components listed above, graphically depicting all those related to earth movement, construction, and temporarily and/or permanently installed protection measures. **TIMING:** The Owner/Applicant shall comply with this measure prior to CDH issuance. Plan components shall be included on all plans prior to CDH issuance. The Owner/Applicant shall install tree protection measures onsite prior to issuance of grading/building permits and pre-construction meeting. **MONITORING:** The Owner/Applicant shall demonstrate

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- to P&D compliance monitoring staff that trees identified for protection were not damaged or removed or, if damage or removal occurred, that correction is completed as required by the TPP prior to Final Building Inspection Clearance.
- **61. Bio-08 Fish and Game.** No alteration to stream channels or banks shall be permitted (no CDH shall be issued) until the Owner/Applicant demonstrates receipt of all authorizations from the California Department of Fish and Game and/or federal agencies for any planned alteration to stream channels or banks associated with the utilities, road and driveway construction, and bridge installation.
- **62. Bio-09 Fish and Wildlife Jurisdiction Advisory.** The project site is within the range of CA Red-legged frog, tidewater goby and southwestern pond turtle, species listed as Endangered by the U.S. Fish and Wildlife Service. Based upon the EIR for the proposed project (09EIR-00000-00003, revised February 2013) it has been determined that the probability for CA Red-legged frog, tidewater goby and southwestern pond turtle, occurrence on the site is likely. The issuance of this permit does not relieve the permitholder of any duties, obligations, or responsibilities under the Endangered Species Act or any other law. The permit-holder shall contact the Ventura office of the U.S. Fish and Wildlife Service at (805)644-1766 to ascertain his or her level of risk under the Endangered Species Act in implementing the project herein permitted.
- 63. Bio-13 Habitat Protection. Excavation work within or adjacent to sensitive habitats including native trees shall be avoided to the maximum extent feasible. Where excavation must be performed within sensitive areas (as determined by P&D), it shall be performed with hand tools only. If the use of hand tools is deemed infeasible by P&D, excavation work may be authorized by P&D to be completed with rubber-tired construction equipment weighing five tons or less. If significant large rocks are present, or if spoil placement will impact surrounding trees, then a small tracked excavator (i.e., 215 or smaller track hoe) may be used as determined by P&D staff. PLAN REQUIREMENTS: The above measure shall be noted on all grading and construction plans. MONITORING: P&D compliance monitoring staff shall ensure compliance on site during construction.
- **64. Bio-20 Equipment Storage-Construction.** The Owner/Applicant shall designate one or more construction equipment filling and storage areas within the designated development envelopes to contain spills, facilitate clean0up and proper disposal and prevent contamination from discharging to the storm drains, street, drainage ditches, creeks, or wetlands. The areas shall be no larger than 50 x 50 foot unless otherwise approved by P&D and shall be located at least 100 feet from any storm drain, waterbody or sensitive biological resources. **PLAN REQUIREMENTS:** The Owner/Applicant shall designate the P&D approved location on all CDH, grading and building plans. **TIMING:** The Owner/Applicant shall install the area prior to commencement of construction. **MONITORING:** P&D compliance monitoring staff shall ensure compliance prior to and throughout construction.
- **65. Bio-22 Fish and Game Fees**. The Owner/Applicant shall provide Planning and Development with a check payable to the "County of Santa Barbara" within 10 days of project approval as required by California Fish and Game Code Section 711.4 for that Department's review of the EIR associated with the project.

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- 66. DevEnv-01a Development Envelope. All structural development shall be limited to the development envelope(s) designated on plans dated March 20, 2013. All site preparation, ground disturbances and construction activities including those for structures, access, easements, subsurface grading, sewage disposal, drainage components and well placement shall occur within the designated development envelope(s). No field alteration to plans shall allow construction, storage or staging outside of these development envelopes. PLAN REQUIREMENTS: The development envelope(s) shall be depicted on all plans submitted for CDH approval, grading and building permits. TIMING: The development envelope(s) shall be staked in the field prior to CDH approval. MONITORING: During plan check, the P&D permit processing planner shall confirm that all structural development is confined to the approved development envelope. Staking shall be verified by compliance monitoring staff at the preconstruction meeting or prior to building permit approval. P&D building inspectors and compliance monitoring staff shall ensure that structural development is confined to the development envelopes and that staking remains in place during construction.
- 67. Noise-02 Construction Hours. The Owner /Applicant, including all contractors and subcontractors shall limit construction activity, including equipment maintenance and site preparation, to the hours between 7:00 a.m. and 4:00 p.m. Monday through Friday. No construction shall occur on weekends or State holidays. Non-noise generating construction activities such as interior plumbing, electrical, drywall and painting (depending on compressor noise levels) are not subject to these restrictions. Any subsequent amendment to the Comprehensive General Plan, applicable Community or Specific Plan, or Zoning Code noise standard upon which these construction hours are based shall supersede the hours stated herein. PLAN REQUIREMENTS: The Owner/Applicant shall provide and post 3 signs stating these restrictions at construction site entries. TIMING: Signs shall be posted prior to commencement of construction and maintained throughout construction. MONITORING: The Owner/Applicant shall demonstrate that required signs are posted prior to grading/building permit issuance and pre-construction meeting. Building inspectors and permit compliance staff shall spot check and respond to complaints.
- **68. Noise-04 Equipment Shielding-Construction.** Stationary construction equipment that generates noise which exceeds 65 dBA at the project boundaries shall be shielded with appropriate acoustic shielding to P&D's satisfaction. **PLAN REQUIREMENTS:** The Owner/Applicant shall designate the equipment area with appropriate acoustic shielding on building and grading plans. **TIMING:** Equipment and shielding shall be installed prior to construction and remain in the designated location throughout construction activities. **MONITORING:** The Owner/Applicant shall demonstrate that the acoustic shielding is in place prior to commencement of construction activities. P&D compliance staff shall perform site inspections throughout construction to ensure compliance.
- 69. Parking-02 Onsite Construction Parking. All construction-related vehicles, equipment staging and storage areas shall be located onsite and outside of the road and highway right of way, sensitive biological resources and cultural sites. The Owner/Applicant shall provide all construction personnel with a written notice of this requirement and a description of approved parking, staging and storage areas. The notice shall also include the name and phone number of the Owner/Applicant"s designee responsible for enforcement of this restriction. PLAN REQUIREMENTS: Designated construction personnel parking, equipment staging and storage areas shall be depicted on project plans submitted for CDH issuance. TIMING: A copy of the written notice shall be submitted

- to P&D permit processing staff prior to CDH issuance. This restriction shall be maintained throughout construction. **MONITORING:** P&D permit compliance and Building and Safety shall confirm the availability of designated onsite areas during construction, and as required, shall require re-distribution of updated notices and/or refer complaints regarding offsite parking to appropriate agencies.
- 70. SolidW-03 Solid Waste-Construction Site. The Owner/Applicant shall provide an adequate number of covered receptacles for construction and employee trash to prevent trash & debris from blowing offsite, shall ensure waste is picked up weekly or more frequently as needed, and shall ensure site is free of trash and debris when construction is complete. PLAN REQUIREMENTS: All plans shall contain notes that the site is to remain trash-free throughout construction. TIMING: Prior to building permit issuance, the Owner/Applicant shall designate and provide P&D with the name and phone number of a contact person(s) responsible for trash prevention and site clean-up. Additional covered receptacles shall be provided as determined necessary by P&D. MONITORING: Permit compliance monitoring staff shall inspect periodically throughout grading and construction activities and prior to Final Building Inspection Clearance to ensure the construction site is free of all trash and debris.
- 71. NPDES-16 Storm Water Retention-Roof Runoff Collection. To reduce storm water runoff, allow for infiltration, reduce pollutants and minimize degradation of storm water quality from development, parking lots and other paved surfaces the Owner/Applicant shall install a roof runoff collection and disposal system to infiltrate storm water runoff. Runoff shall be directed to either a subsurface infiltration trench, french drains, planter boxes, landscaped areas or connected to the site's irrigation system. An overflow or high flow bypass system will be provided. PLAN REQUIREMENTS: The Owner/Applicant shall include the roof runoff collection and disposal system design, including any plant palettes and the sources of plant material, on the grading and drainage and landscape plans, and any special roof design elements on building and roofing detail plans, depicted graphically. MONITORING: P&D compliance monitoring staff shall site inspect for installation prior to Final Building Inspection Clearance.

Coastal Development Permit Specific Conditions (06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 10CDP-00000-00094)

- 72. DIMF-24d DIMF Fees-Fire. In compliance with the provisions of ordinances and resolutions adopted by the County, the Owner/Applicant shall be required to pay development impact mitigation fees for both the Ocean and Inland Estates to finance the development of facilities for the Fire Department. Required mitigation fees shall be as determined by adopted mitigation fee resolutions and ordinances and applicable law in effect when paid. The total Fire DIMF amount is currently estimated to be \$.10 per square foot (sprinklered). This is based on a project type of a single-family dwelling. TIMING: Fire DIMFs shall be paid to the County Fire Department prior to Final Building Inspection and shall be based on the fee schedules in effect when paid.
- **73. DIMF-24e DIMF Fees-Parks.** In compliance with the provisions of ordinances and resolutions adopted by the County, the Owner/Applicant shall be required to pay development impact mitigation fees both the Ocean and Inland Estates to finance the development of facilities for the Parks Department. Required mitigation fees shall be as determined by adopted mitigation fee resolutions and ordinances and applicable law in

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effect when paid. The Parks DIMF amount is currently estimated to be \$1,195 per residence. This is based on a project type of a single-family dwelling. TIMING: Parks DIMFs shall be paid to the County Parks Department prior to the date of final inspection or the date the certificate of occupancy is issued, whichever comes first.

- **74. DIMF-24g DIMF Fees-Transportation.** In compliance with the provisions of ordinances and resolutions adopted by the County, the Owner/Applicant shall be required to pay development impact mitigation fees both the Ocean and Inland Estates to finance the development of facilities for transportation. Required mitigation fees shall be as determined by adopted mitigation fee resolutions and ordinances and applicable law in effect when paid. The total DIMF amount for Transportation is currently estimated to be \$2,047 per residence. This is based on a project type of a single-family dwelling. TIMING: Transportation DIMFs shall be paid to the County Public Works Department-Transportation Division prior to the date of final inspection or the date the certificate of occupancy is issued, whichever comes first.
- 75. Rules-10 CDP Expiration-No CUP or DVP. (06CDH-00000-00038 and 06CDH-00000-00039) The approval or conditional approval of a Coastal Development Permit shall be valid for one year from the date of action by the Board of Supervisors. Prior to the expiration of the approval, the review authority who approved the Coastal Development Permit may extend the approval one time for one year if good cause is shown and the applicable findings for the approval required in compliance with Section 35-169.5 can still be made. A Coastal Development Permit shall expire two years from the date of issuance if the use, building or structure for which the permit was issued has not been established or commenced in conformance with the effective permit. Prior to the expiration of such two year period the Director may extend such period one time for one year for good cause shown, provided that the findings for approval required in compliance with Section 35-169.5, as applicable, can still be made.
- 76. Rules-11 CDP Expiration-With CUP or DVP. (09CDP-00000-00045 and 10CDP-00000-00094) The approval or conditional approval of a Coastal Development Permit shall be valid for one year from the date of decision-maker action. Prior to the expiration of the approval, the review authority who approved the Coastal Development Permit may extend the approval for one year if good cause is shown and the applicable findings for the approval required in compliance with Section 35-169.5 can still be made. Prior to the expiration of a time extension approved in compliance with Subsection a. above, the review authority who approved the time extension may approve two additional time extensions for two years each if good cause is shown and the applicable findings for the approval required in compliance with Section 35-169.5 can still be made. A Coastal Development Permit shall expire two years from the date of issuance if the use or structure for which the permit was issued has not been established or commenced in conformance with the effective permit. A Coastal Development Permit whose expiration date has been extended in compliance with the above will nevertheless expire at the earlier of: (1) the expiration of the most recent time extension or (2) the expiration of the associated Conditional Use Permit or Development Plan (as modified by any extension thereto).
- **77. Rules-28 NTPO Condition**. A recorded Notice to Property Owner document is necessary to ensure that the proposed guesthouses on the ocean and inland lots shall be used only for its permitted uses. The property owner shall sign and record the document prior to CDH issuance.

- **78. Utilities and Access**. The applicant shall enter into and record an agreement in a form acceptable to and approved by the Planning and Development to reserve an access and utilities easement over the Inland Estate (APN: 079-200-008) in favor of the Ocean Estate (APN: 079-200-004) at the time of conveyance of either parcel. This agreement is to be recorded with the appropriate instruments as determined by the County Surveyor.
- 79. Maintenance Agreement for Utilities and Access. Prior to issuance of the first Coastal Development Permit for the proposed project, the applicant shall record a maintenance agreement for the maintenance of the proposed utilities, bridge, access road and driveways. The agreement shall specify the responsibilities of the Inland Estate (APN: 079-200-008) and Ocean Estate (APN: 079-200-004) property owners for long-term maintenance of the bridge, access road and driveways serving the two estates. This agreement is to be recorded with the appropriate instruments as determined by the County Surveyor.
- **80. Utilities Easement.** Prior to issuance of the first Coastal Development Permit for the proposed project, the applicant/property owner shall submit revised plans that demonstrate that the utility line is located entirely within the 20 foot recorded easement on the adjacent property the east (APN: 079-200-005) or shall demonstrate that additional easement rights have been obtained.
- **81. Coastal Sage Scrub.** In order to protect coastal sage scrub vegetation on the ocean lot, the ocean estate shall be redesigned, or fuel clearance plan re-designed (with fire Department approval) to avoid fuel clearance within coastal sage scrub habitat. Plan **Requirements and Timing:** Redesign shall occur prior to issuance of the first Coastal Development Permit for the project. Plans shall be reviewed by P&D staff and the Fire Department.

Conditional Use Permit Specific Conditions (07CUP-00000-00065, 10CUP-00000-00039)

- **82. Rules-12 CUP Expiration**. The Owner/Applicant shall obtain the required CDP within the 18 months following the effective date of this Conditional Use Permit. If the required CDP is not issued within the 18 months following the effective date of this Conditional Use Permit, or within such extended period of time as may be authorized in compliance with Section Article II and an application for an extension has not been submitted to the Planning and Development Department, then Conditional Use Permit shall be considered void and of no further effect.
- 83. Rules-17 CUP-Void. Conditional Use Permits shall become void and be automatically revoked if the development and/or authorized use allowed by the Conditional Use Permits is discontinued for a period of more than 12 months, or within such extended period of time as may be authorized in compliance with Article II. Any use authorized by this Conditional Use Permit shall immediately cease upon expiration or revocation of this Conditional Use Permit. Any CDP approved or issued pursuant to this Conditional Use Permit shall expire upon expiration or revocation of the Conditional Use Permit. Conditional Use Permit renewals must be applied for prior to expiration of the Conditional Use Permit (ARTICLE II §35-172.9).

84. Rules-18 CUP and DVP Revisions. The approval by the Planning Commission of a revised CUP shall automatically supersede any previously approved CUP upon the effective date of the revised permit.

County Rules and Regulations (All Permits)

- **85.** Rules-02 Effective Date-Appealable to CCC. The proposed Coastal Development Permits and Conditional Use Permits shall become effective upon the expiration of the applicable appeal period provided an appeal has not been filed. If an appeal has been filed, the planning permit shall not be deemed effective until final action by the review authority on the appeal, including action by the California Coastal Commission if the planning permit is appealed to the Coastal Commission. [ARTICLE II § 35-169].
- **86.** Rules-05 Acceptance of Conditions. The Owner/Applicant's acceptance of this permit and/or commencement of use, construction and/or operations under this permit shall be deemed acceptance of all conditions of this permit by the Owner/Applicant.
- **87. Rules-23 Processing Fees Required**. Prior CDH issuance the Owner/Applicant shall pay all applicable P&D permit processing fees in full as required by County ordinances and resolutions.
- **88.** Rules-29 Other Dept Conditions. Compliance with Departmental/Division letters required as follows:
 - 1. Air Pollution Control District dated February 1, 2013
 - 2. Goleta Water District dated September 15, 2004 and December 3, 1998
 - 3. Flood Control dated August 16, 2006
 - 4. Environmental Health Services Division dated February 23, 2012
 - 5. Fire Department dated February 14, 2013 and December 2, 2010
 - 6. Public Works Transportation dated February 22, 2013
 - 7. Santa Barbara County Parks dated March 19, 2013
- **89.** Rules-31 Mitigation Monitoring Required. The Owner/Applicant shall ensure that the project complies with all approved plans and all project conditions including those which must be monitored after the project is built and occupied. To accomplish this, the Owner/Applicant shall:
 - 1. Contact P&D compliance staff as soon as possible after project approval to provide the name and phone number of the future contact person for the project and give estimated dates for future project activities;
 - 2. Pay fees prior to CDH issuance as authorized by ordinance and fee schedules to cover full costs of monitoring as described above, including costs for P&D to hire and manage outside consultants when deemed necessary by P&D staff (e.g. non-compliance situations, special monitoring needed for sensitive areas including but not limited to biologists, archaeologists) to assess damage and/or ensure compliance. In such cases, the Owner/Applicant shall comply with P&D recommendations to bring the project into compliance. The decision of the Director of P&D shall be final in the event of a dispute;

- 3. Note the following on each page of grading and building plans "This project is subject to mitigation Compliance Monitoring and Reporting. All aspects of project construction shall adhere to the approved plans, notes, and conditions of approval, and mitigation measures from Revised Final EIR 09EIR-00000-00003.
- 4. Contact P&D compliance staff at least two weeks prior to commencement of construction activities to schedule an on-site pre-construction meeting to be led by P&D Compliance Monitoring staff and attended by all parties deemed necessary by P&D, including the permit issuing planner, grading and/or building inspectors, other agency staff, and key construction personnel: contractors, sub-contractors and contracted monitors among others.
- 5.The applicant shall provide a specific notification to construction personnel advising them that they must remain within the construction area of the development envelope during construction activities and during breaks in order to prevent disturbance of seals. A copy of this notice shall be provided to P&D Permit Compliance staff prior to the start of construction. Permit compliance staff shall specifically discuss this limitation during the pre-construction meeting and monitor throughout construction. Signs informing users of access restrictions and relevant requirements of the Marine Mammal Protection Act shall be posted on fencing at the boundaries of the development envelopes/construction areas.
- 6. If construction occurs during the harbor seal pupping/breeding season (e.g., February 1 to May 31), a County qualified biologist shall be hired by the applicant to provide construction personnel with specific training regarding avoidance of disturbance to harbor seals and to monitor construction activities at least twice weekly during the harbor seal pupping/breeding season. Monthly reports regarding compliance with protective measures shall be provided to P&D permit Compliance staff by the County qualified biologist.
- **90. Rules-32 Contractor and Subcontractor Notification**. The Owner/Applicant shall ensure that potential contractors are aware of County requirements. Owner / Applicant shall notify all contractors and subcontractors in writing of the site rules, restrictions, and Conditions of Approval and submit a copy of the notice to P&D compliance monitoring staff.
- **91. Rules-33 Indemnity and Separation**. The Owner/Applicant shall defend, indemnify and hold harmless the County or its agents or officers and employees from any claim, action or proceeding against the County or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the County's approval of this project. In the event that the County fails promptly to notify the Owner / Applicant of any such claim, action or proceeding, or that the County fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.
- **92. Lighting.** In order to minimize lighting of the night sky, the project shall be subject to the following lighting requirements:
 - 1. All exterior lighting be limited to a height of 18" (less any building lighting needed per building code.

- 2. Lighting of swimming pools shall be turned off by 10pm. All lighting shall be dimmed after 10:00 PM.
- 3. The applicant shall prepare photo-simulations of night-time lighting from the house and exterior lighting for Central Board of Architectural Review (CBAR) review prior to final approval by the CBAR.
- 4. There shall be no uplighting of landscape or structures

Plan requirements and Timing: Lighting plans shall be submitted for review and approval by County Planning and Development and the Board of Architectural Review (BAR) prior to Coastal Development Permit issuance and prior to final BAR approval. **Monitoring:** Building and Safety and Permit Compliance staff shall ensure that lighting is installed in accordance with approved lighting plans.

- **93.** Ocean Lot Open Space or Conservation Easement. Subsequent to recordation of the Offer to Dedicate and prior to issuance of the first Coastal Development Permit for the ocean lot, the permit holder shall grant a 60.3 acre Open Space or Conservation Easement (hereafter referred to as "The Easement") in perpetuity, as shown on Attachment C to the Memorandum to the Planning Commission, dated November 12, 2013 and offered as part of the Project Description, to the County or a qualified nonprofit organization as defined by California Civil Code Section 815.3(a) or California Government Code Section 51075(f), which shall accept and record the The Easement. The Easement shall be recorded free of prior liens and encumbrances (other than existing and approved easements for roads, trails, and utilities) which the County determines may affect the interest being conveyed, and shall run with the land in favor of the County or conservation organization, binding all successors and assigns. The recorded grant of easement shall include a formal legal description of the entire property and a metes and bounds legal description and graphic description, prepared by a licensed surveyor, of The Easement. The easement language shall indicate that no development shall occur within the Ocean Lot Open Space or Conservation Easement except the following activities as approved for the Project, or pursuant to a future permit:
 - 1. Habitat restoration, enhancement and maintenance, including associated grading and drainage improvements for such purposes;
 - 2. Installation, repair or upgrading of approved roads, utilities, including storm drains, water lines, irrigation lines, and similar facilities;
 - 3. Construction of water quality management structures, erosion control and flood control management activities;
 - 4. Fuel modification required by the County of Santa Barbara Fire Department undertaken in accordance with the final fuel modification plan approved pursuant to this permit, or other fuel modification plans required and approved by the County:
 - 5. Improvements for and maintenance of public access, recreation, and/or environmental education and research including, but not limited to, trails, fencing along designated pathways, and associated appurtenances and necessary signage;
 - 6. Reconstruction of existing drains or maintenance and repair activities consistent with permit conditions;
 - 7. Activities for the remediation of hazardous materials as approved by the County; and.
 - 8. Minor earth disturbance for archaeological study.

Management: Management and maintenance of the Ocean Lot Easement, consistent with adopted mitigation measures, conditions for the proposed project, and the Open

Space or Conservation Easement Stewardship Plan and the Upland and Riparian Mitigation and Monitoring Plan shall be the responsibility of the permit holder. However, nothing shall preclude the permit holder from entering into an agreement with the grantee of The Easement for management and maintenance of The Easement. **Plan Requirements and Timing:** Subsequent to recordation of the Offer to Dedicate and prior to issuance of the first Coastal Development Permit for the ocean lot the permit holder shall 1) submit the easement language to the County for review and approval by the Planning and Development Department and County Counsel and 2) grant the proposed 60.3 acre Ocean Lot Open Space or Conservation Easement in perpetuity to the County or a qualified nonprofit organization as defined by California Civil Code Section 815.3(a) or California Government Code Section 51075(f), which shall accept and record The Easement.

- 94. Inland Lot Open Space or Conservation Easement. Subsequent to recordation of the Offer to Dedicate and prior to issuance of the first Coastal Development Permit for the inland lot, the permit holder shall grant a 57.0 acre Inland Lot Open Space or Conservation Easement in perpetuity (hereafter referred to as "The Easement"), as shown on Attachment C to the Memorandum to the Planning Commission, dated November 12, 2013 and offered as part of the Project Description, to the County or a qualified nonprofit organization as defined by California Civil Code Section 815.3(a) or California Government Code Section 51075(f), which shall accept and record The Easement. The Easement shall be recorded free of prior liens and encumbrances (other than existing and approved easements for roads, trails, and utilities) which the County determines may affect the interest being conveyed, and shall run with the land in favor of the County or conservation organization, binding all successors and assigns. The recorded grant of easement shall include a formal legal description of the entire property and a metes and bounds legal description and graphic description, prepared by a licensed surveyor, of The Easement. The easement language shall indicate that no development shall occur within the Inland Lot Easement except the following activities as approved for the Project, or pursuant to a future permit:
 - 1. Habitat restoration, enhancement and maintenance, including associated grading and drainage improvements for such purposes;
 - 2. Installation, repair or upgrading of approved roads and utilities, including storm drains, water lines, irrigation lines, and similar facilities;
 - 3. Construction of water quality management structures, erosion control and flood control management activities;
 - 4. Fuel modification required by the County of Santa Barbara Fire Department undertaken in accordance with the final fuel modification plan approved pursuant to this permit, or other fuel modification plans required and approved by the County;
 - 5. Improvements for and maintenance of public access, recreation, and/or environmental education and research including, but not limited to, trails, public parking facilities, fencing along designated pathways, and associated appurtenances and necessary signage;
 - 6. Reconstruction of existing drains or maintenance and repair activities consistent with permit conditions;
 - 7. Activities for the remediation of hazardous materials as approved by the County; and.
 - 8. Minor earth disturbance for archaeological study.

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Management: Management and maintenance of the Inland Lot Easement, consistent with adopted mitigation measures, conditions for the proposed project, the Open Space or Conservation Easement Stewardship Plan, and the Upland and Riparian Mitigation and Monitoring Plan shall be the responsibility of the permit holder. However, nothing shall preclude the permit holder from entering into an agreement with the grantee of The Easement for management and maintenance of The Easement. Plan Requirements and Timing: Prior to issuance of the first Coastal Development Permit for the inland lot the permit holder shall 1) submit the easement language to the County for review and approval by the Planning and Development Department and County Counsel and 2) grant the proposed 57.0 acre Inland Lot Open Space Easement or Conservation Easement in perpetuity to the County or a qualified nonprofit organization as defined by California Civil Code Section 815.3(a) or California Government Code Section 51075(f), which shall accept and record The Easement.

95. <u>Upland and Riparian Mitigation and Monitoring Plan & Open Space or Conservation Easement Stewardship Plan</u>

The proposed project includes a 60.3 acre Open Space or Conservation Easement on the Ocean lot and a 57 acre Open Space or Conservation Easement on the Inland lot, for a total open space area of 117.3 acres. Within the 117.3 acre Open Space or Conservation Easement, the applicant has proposed a 23.5-acre habitat restoration area. The 23.5 acres of restoration is described in the Conceptual Upland and Riparian Mitigation and Monitoring Plan prepared by the applicant.

Upland and Riparian Mitigation and Monitoring Plan

The Upland and Riparian Mitigation and Monitoring Plan is described in MM-BIO-10 and would be implemented as a part of the proposed project following issuance of the Coastal Development Permit. The permit holder for the inland lot shall be responsible for implementation and 5 years of maintenance of the 23.5-acre habitat restoration area consistent with the Upland and Riparian Mitigation and Monitoring Plan. However, nothing shall preclude the permit holder(s) from entering into an agreement with the grantee of the Open Space or Conservation Easement for maintenance of the habitat restoration area, consistent with the Upland and Riparian Mitigation and Monitoring Plan. Should no agreement occur, implementation of and maintenance consistent with the Upland and Riparian Mitigation and Monitoring Plan will remain with the permit holder(s) and their successors and assigns.

Open Space or Conservation Easement Stewardship Plan

The permit holder(s) shall be responsible for maintenance of the entire 117.3 acre perpetual Open Space or Conservation Easement consistent with the Open Space or Conservation Easement Stewardship Plan. However, nothing shall preclude the permit holder(s) from entering into an agreement with the grantee of the easement for maintenance of the Open Space or Conservation Easement, consistent with the Stewardship Plan. Should no agreement occur, implementation of and maintenance consistent with the Stewardship Plan will remain with the permit holder(s) and their successors and assigns. The Stewardship Plan shall consist of the following:

- 1. Narrative, statistics and related elements to fully describe the approved Project and all relevant adopted Mitigation Measures and Conditions of Approval bearing on biological resource protection and enhancement;
- 2. Identification of the County or the specific qualified nonprofit organization as defined by California Civil Code Section 815.3(a) or California Government Code Section 51075(f), to whom the Open Space or Conservation Easement ("OSCE") is to be conveyed and identification of the permit holder(s) as the responsible party until the Open Space or Conservation Easement is granted, accepted, and recorded by the County or identified organization. The County or identified organization shall agree in writing to accept the OSCE and to be bound by the Stewardship Plan.
- 3. Identification of the Monitoring and Enforcement provisions of the OSCE to fully distinguish between responsibilities for short-term, and long-term monitoring in perpetuity and between responsibilities held by the County, nonprofit conservation organization, or by the permit holder(s); and
- 4. The Open Space or Conservation Easement Stewardship Plan shall in no way conflict with the requirements of this condition or with the requirements of adopted mitigation measures.

Plan Requirements and Timing: An OSCE Stewardship Plan and Final Upland and Riparian Mitigation and Monitoring Plan shall be prepared either 1) jointly by the permit holder(s) of the Ocean and Inland lots to govern maintenance and management of the Open Space or Conservation Easements on both parcels; or 2) independently by each parcel owner to govern maintenance and management of the Open Space or Conservation Easement on that permit holder's parcel. If the Open Space or Conservation Easement Stewardship Plan(s) and Final Upland and Riparian Mitigation and Monitoring Plan(s) are not submitted jointly, the independently prepared plans for the coastal lot shall be submitted prior to the issuance of Coastal Development Permits for the coastal lot and the independently prepared plans for the inland lot shall be submitted prior to the issuance of Coastal Development Permits for the inland lot. If the Open Space or Conservation Easement Stewardship Plan(s) and Final Upland and Riparian Mitigation and Monitoring Plan(s) are submitted jointly, the plan must be submitted prior to the issuance of the first Coastal Development Permit on either lot. The OSCE Stewardship Plan and Final Upland and Riparian Mitigation and Monitoring Plan shall be submitted for review and approval Planning and Development.

- **96. Public Access Offers-to-Dedicate.** The proposed Public Access Offers-to-Dedicate (OTD) are shown on Attachment-H to the Memo to the Planning Commission, dated November 12, 2013 and are subject to the following requirements:
- (i) OTD Recordation. No later than 10 calendar days following Planning Commission approval of the proposed project, the applicant/property owner shall execute and submit to the Planning and Development Department and County Counsel an irrevocable OTD to the County for all areas on the Inland and Ocean lots within which permanent public easements for public pedestrian access and passive recreational use are proposed and shown on Attachment-H to the Memo to the Planning Commission dated November 12, 2013 (OTD areas). The OTD shall be in a form and content acceptable to the Planning and Development Department and the County Counsel. The OTD shall include a formal legal description of the entire property and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, for each of the OTD areas being conveyed. Upon approval of the form and content of the OTD, the OTD shall be

recorded free of prior liens and encumbrances (other than existing and approved easements for roads, trails, and utilities) which the County determines may affect the interest being conveyed, and shall run with the land in favor of the County. The OTD shall be binding upon the owners of both the Inland and Ocean lots and their heirs, assigns, or successors in interest.

The OTD (and the subsequent alignment of the public access easements within the OTD areas, as addressed in subparagraph (ii) below) shall not become effective unless and until the first Coastal Development Permit for the proposed project is issued and the Project approval is "final" and no longer subject to administrative or judicial challenge. The Project approval shall be deemed "final" when all administrative appeal periods have expired without an appeal having been filed; or when all statutes of limitation for judicial challenge to the Project approval have expired without litigation being filed; or, if litigation is filed, when a successful defense in such litigation has resulted in a final judgment upholding the Project approval.

- (ii) Alignment of Public Access Easements. Upon acceptance of the OTD, the County shall determine the exact alignment of the specific public access easements within the OTD areas. The determination shall be made based on a site-specific analysis of the environmental conditions existing at the time and improvements related to the trail project would be subject to a separate CDP/CUP. The County shall record an official document to reflect the alignment of the specific public access easements. Until acceptance of the OTD, the OTD areas shall be included and managed as a part of the Open Space or Conservation Easement (described in conditions 94 and 95). Upon recordation of specific easement alignments, the accepted public access easements would be removed from the Open Space or Conservation Easement.
- (iii) Public Access Easement Management. Once the OTD has been accepted by the County, management and maintenance of the dedicated public access easement areas and the physical improvements within those easement areas shall be the responsibility of the County. The County may receive assistance and enter into partnerships with conservation organizations and nonprofit groups for the construction, management and maintenance of the public access easement areas and improvements.
- 97. Agricultural Envelopes. The perimeter of the "agricultural envelopes" proposed on the ocean and inland lots shall be fenced with low fencing of no greater than 4.5 feet in height. Fencing shall be post and wire fencing or similar type and the fencing style and material shall be approved by the Board of Architectural Review (BAR) prior to issuance of Coastal Development Permits. Plan Requirements and Timing. Plans for Coastal Development Permit issuance shall clearly indicate the location and type of fencing. Fencing shall be constructed along the perimeter of the approved agricultural envelopes. Fencing shall be shown on plans submitted for Coastal Development Permit issuance and shall be in place prior to Permit Compliance sign-off and prior to the start of livestock or horsekeeping on-site. Monitoring. Permit Compliance and Building and Safety staff shall confirm that fencing is in place prior to granting Permit Compliance sign-off.
- **98.** <u>Declaration of Land Use Restrictions.</u> Prior to issuance Coastal Development Permits for the Ocean and Inland Estates, the applicant/property owners shall record a Declaration of Land Use Restrictions that includes a copy of all final conditions and mitigation measures approved for the proposed project. **Plan Requirements and**

Paradiso del Mare Ocean and Inland Estates; 06CDH-00000-00038, 06CDH-00000-00039, 07CUP-00000-00065, 09CDP-00000-00045, 10CUP-00000-00039, 10CDP-00000-00094
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Timing: Prior to CDH issuance the Declaration of Land Use Restrictions shall be submitted for review and approval by Planning and Development (P&D) staff. **Monitoring:** Proof of recordation shall be submitted to P&D staff prior to CDH issuance.

- Development Permits for the Ocean and Inland Estates, the applicant shall submit for each property, an acknowledgement that they are aware of the responsibilities associated with living near the sensitive habitats and special-status species documented on the project site. The acknowledgement shall include specific information related to the seal haul-out, White-tailed kite, and other sensitive species occurring on the property as identified in the FEIR for the project, including an acknowledgement that trail and beach access closures apply to private homeowners on-site as well as the public and an acknowledgement that they (the property owner) are subject to the mitigation measures contained in final EIR 09EIR-00000-00003. Plan Requirements and Timing: Prior to CDH issuance the acknowledgement letter shall be submitted for review and approval by Planning and Development (P&D) staff. Monitoring: The acknowledgement letter shall be submitted to P&D staff prior to CDH issuance.
- 100. Oil Well Setback. The proposed development envelope on the ocean lot shall be redesigned so that the boundary of the development envelope is located a minimum of 10 feet from any abandoned on-site oil wells. This revised development envelope shall be graphically illustrated on all plans. Plan Requirements and Timing: Prior to recordation of the development envelope boundaries for the Ocean Estate, plans showing the revised development envelope shall be submitted to Planning and Development for review and approval. Prior to issuance of the first Coastal Development Permit the boundaries of the development envelope shall be recorded and proof of recordation shall be submitted to P&D staff by the applicant. Monitoring: Development envelope boundaries shall be staked by in the field by a licensed surveyor prior to the start of grading and construction. P&D Permit Compliance staff shall confirm that staking is in place prior to grading and construction.



February 1, 2013

Nicole Lieu Santa Barbara County Planning and Development 123 E. Anapamu Street Santa Barbara, CA 93101

Re:

APCD Comments on Paradiso Del Mare Ocean and Inland Estates
06CDH-00000-00038, 06CDH-00000-00039, 07CUP-00000-00065, 09CDP-00000-00045,
09EIR-00000-00003, 10CUP-00000-00039, 10CDP-00000-00094

Dear Ms. Lieu:

The Air Pollution Control District (APCD) has reviewed the referenced case, which consists of construction of two new residences on two vacant parcels. A 7,227 square foot residence including attached 1,421 garage and 1,451 square feet of accessory structures is proposed on a 64.8-acre ocean-adjacent parcel. A residence of 9,163 square feet and an 800 square foot guest house is proposed for the inland 77.9-acre parcel. Also proposed as part of the project is a shared access driveway including a bridge structure, agricultural production and animal keeping. Conditional Use Permits are also proposed for a water line extension and for the establishment of public trails on the site. Grading for the project consists of 17,275 cubic yards of cut and 17,275 cubic yards of fill to be balanced onsite. Both parcels are zoned AG-II-100 and are identified in the Assessor Parcel Map Book as APNs 079-200-004 and 079-200-008. The project is located at the intersection of Highway 101 and Dos Pueblos Road in the unincorporated community of Gaviota.

Air Pollution Control District staff offers the following suggested conditions:

- Standard dust mitigations (Attachment A) are recommended for all construction and/or grading activities. The name and telephone number of an on-site contact person must be provided to the APCD prior to issuance of land use clearance.
- APCD Rule 345, Control of Fugitive Dust from Construction and Demolition Activities establishes limits on the generation of visible fugitive dust emissions at demolition and construction sites. The rule includes measures for minimizing fugitive dust from on-site activities and from trucks moving on- and off-site. The text of the rule can be viewed on the APCD website at www.sbcapcd.org/rules/download/rule345.pdf.
- 3. Fine particulate emissions from diesel equipment exhaust are classified as carcinogenic by the State of California. Therefore, during project grading, construction, and hauling, construction contracts must specify that contractors shall adhere to the requirements listed in Attachment B to reduce emissions of ozone precursors and fine particulate emissions from diesel exhaust.
- Prior to occupancy, APCD permits must be obtained for any equipment that requires an APCD permit. APCD Authority to Construct permits are required for diesel engines rated at 50 bhp and

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greater (e.g., firewater pumps and emergency standby generators) and boilers/large water heaters whose combined heat input rating exceeds 2.0 million BTUs per hour.

- 5. All portable diesel-fired construction engines rated at 50 brake-horsepower or greater must have either statewide Portable Equipment Registration Program (PERP) certificates or APCD permits prior to operation. Construction engines with PERP certificates are exempt from APCD permit, provided they will be on-site for less than 12 months.
- 6. Small boilers and water heating units (rated between 75,000 and 2.0 million Btu/hr) must comply with the emission limits and certification requirements of APCD Rule 360. Combinations of units totaling 2.0 million Btu/hr or greater are required to obtain a District permit prior to installation. Please see www.sbcapcd.org/eng/boiler/rule360/rule360.htm for more information and a list of certified boilers (note: any units fired on fuel(s) other than natural gas must be certified by the SBCAPCD on a case-by-case basis, even if the unit is certified when fired on natural gas).
- If contaminated soils are found at the project site, the APCD must be contacted to determine if Authority to Construct and/or Permit to Operate permits will be required.
- 8. At a minimum, prior to occupancy any feasible greenhouse gas reduction measures from the following sector-based list should be applied to the project:
 - Energy use (energy efficiency, low carbon fuels, renewable energy)
 - Transportation (reduce vehicle miles traveled, compact and transit-oriented development, pedestrian- and bicycle-friendly communities)
 - Water conservation (improved practices and equipment, landscaping)
 - Waste reduction (material re-use/recycling, composting, waste diversion, waste minimization)
 - Architectural features (green building practices, cool roofs)
- Asphalt paving activities shall comply with APCD Rule 329, Cutback and Emulsified Asphalt Paving Materials.

If you or the project applicant have any questions regarding these comments, please feel free to contact me at (805) 961-8893 or via email at edg@sbcapcd.org.

Sincerely,

Air Quality Specialist

Technology and Environmental Assessment Division

Attachments: Fugitive Dust Control Measures

Diesel Particulate and NO_x Emission Measures

cc: Project File, TEA Chron File



ATTACHMENT A FUGITIVE DUST CONTROL MEASURES

These measures are required for all projects involving earthmoving activities regardless of the project size or duration. Proper implementation of these measures is assumed to fully mitigate fugitive dust emissions.

- During construction, use water trucks or sprinkler systems to keep all areas of vehicle movement
 damp enough to prevent dust from leaving the site. At a minimum, this should include wetting
 down such areas in the late morning and after work is completed for the day. Increased watering
 frequency should be required whenever the wind speed exceeds 15 mph. Reclaimed water should
 be used whenever possible. However, reclaimed water should not be used in or around crops for
 human consumption.
- Minimize amount of disturbed area and reduce on site vehicle speeds to 15 miles per hour or less.
- If importation, exportation and stockpiling of fill material is involved, soil stockpiled for more than
 two days shall be covered, kept moist, or treated with soil binders to prevent dust generation.
 Trucks transporting fill material to and from the site shall be targed from the point of origin.
- Gravel pads shall be installed at all access points to prevent tracking of mud onto public roads.
- After clearing, grading, earth moving or excavation is completed, treat the disturbed area by
 watering, or revegetating, or by spreading soil binders until the area is paved or otherwise
 developed so that dust generation will not occur.
- The contractor or builder shall designate a person or persons to monitor the dust control program
 and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties
 shall include holiday and weekend periods when work may not be in progress. The name and
 telephone number of such persons shall be provided to the Air Pollution Control District prior to
 land use clearance for map recordation and land use clearance for finish grading of the structure.

Plan Requirements: All requirements shall be shown on grading and building plans and as a note on a separate information sheet to be recorded with map. Timing: Requirements shall be shown on plans or maps prior to land use clearance or map recordation. Condition shall be adhered to throughout all grading and construction periods.

<u>MONITORING</u>: Lead Agency shall ensure measures are on project plans and maps to be recorded. Lead Agency staff shall ensure compliance onsite. APCD inspectors will respond to nuisance complaints.



ATTACHMENT B DIESEL PARTICULATE AND NO, EMISSION MEASURES

Particulate emissions from diesel exhaust are classified as carcinogenic by the state of California. The following is an updated list of regulatory requirements and control strategies that should be implemented to the maximum extent feasible.

The following measures are required by state law:

- All portable diesel-powered construction equipment shall be registered with the state's portable equipment registration program OR shall obtain an APCD permit.
- Fleet owners of mobile construction equipment are subject to the California Air Resource Board (CARB) Regulation for In-use Off-road Diesel Vehicles (Title 13 California Code of Regulations, Chapter 9, § 2449), the purpose of which is to reduce diesel particulate matter (PM) and criteria pollutant emissions from in-use (existing) off-road diesel-fueled vehicles. For more information, please refer to the CARB website at www.arb.ca.gov/msprog/ordiesel/ordiesel.htm.
- All commercial diesel vehicles are subject to Title 13, § 2485 of the California Code of Regulations, limiting
 engine idling time. Idling of heavy-duty diesel construction equipment and trucks during loading and unloading
 shall be limited to five minutes; electric auxiliary power units should be used whenever possible.

The following measures are recommended:

- Diesel construction equipment meeting the California Air Resources Board (CARB) Tier 1 emission standards for off-road heavy-duty diesel engines shall be used. Equipment meeting CARB Tier 2 or higher emission standards should be used to the maximum extent feasible.
- Diesel powered equipment should be replaced by electric equipment whenever feasible.
- If feasible, diesel construction equipment shall be equipped with selective catalytic reduction systems, diesel oxidation catalysts and diesel particulate filters as certified and/or verified by EPA or California.
- Catalytic converters shall be installed on gasoline-powered equipment, if feasible.
- All construction equipment shall be maintained in tune per the manufacturer's specifications.
- The engine size of construction equipment shall be the minimum practical size.
- The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time.
- Construction worker trips should be minimized by requiring carpooling and by providing for lunch onsite.

Plan Requirements: Measures shall be shown on grading and building plans. Timing: Measures shall be adhered to throughout grading, hauling and construction activities.

MONITORING: Lead Agency staff shall perform periodic site inspections to ensure compliance with approved plans. APCD inspectors shall respond to nuisance complaints.

HILL & TRAGER, LLP

Gary J. Hill* Timothy J. Trager ** Russell R. Ruiz Nicole L. Champion

°A Professional Corporation ™Also Licensed In Illinois and Utali Attorneys At Law 800 Presidio Avenue Santa Barbara, California 93101-2210

Telephone (805) 963-14-53 Facsimile (805) 963-14-57

September 15, 2004

Sean Finnegan c/o Makar Properties 4100 MacArthur Blvd., Suite 200 Newport Beach, CA 92660

Re: Water Delivery to the Dos Pueblos Estates Property (the "Property") owned By CPH Dos Pueblos Associates. LLC

Dear Mr. Finnegan:

As a follow up to our meeting in Santa Barbara on Monday June 21, 2004, and our letter sent to Douglas Fell on July 7, 2004, the Goleta Water District's General Manager, Kevin Walsh, asked that I confirm our commitment regarding water delivery to the Property located oceanward off Highway 101 just north of the City of Goleta, owned by CPH Dos Pueblos Associates, LLC ("Makar").

The Goleta Water District is willing to provide you with a Water Service Classification Letter for your application to the County and a Can and Will Serve Letter that will provide 30 acre feet of potable water per year for the Property. Goleta Water District will work with the Property owner to find a proper conveyance system to deliver water. This is anticipated to involve a new water line from the point of connection on the Bacarra property through other properties terminating at the eastern end of the Property at the existing Naples lots. The cost of this infrastructure can be applied to the \$4.5 million previously deposited with Goleta Water District.

Conveyance of the water will involve various easements for the water line. These easements may occur within undeveloped and/or paved portions of the Bacarra Property, or the Parsons Property. If Makar cannot obtain easements from other property owners for the placement of a water line or terms acceptable to Makar, Goleta Water District is committed to assist in the process, including exercising its condemnation powers if necessary.

6. 11 m-194

Sean Finnegan

Re: Water Delivery to the Dos Pueblos Estates Property

September 15, 2004

Page 2

We look forward to working together to accomplish a permanent water solution for your Property. If you have any questions please feel free to contact me.

Very truly yours,

Russell R. Ruiz

General Counsel ...

Goleta Water District

RRRVkv

cc: Kevin Walsh

Douglas E. Fell



4699 HOLLISTER AVENUE GOLETA, CALIFORNIA 93110-1999 TELEPHONE 805/964-6761 FAX 805/964-700Z

CAN AND WILL SERVE LETTER

December 3, 1998

CPHPAH Dos Pueblos Associates, LLC C/o R.W. Hollis Jr. Dudek & Associates 841 Mohawk Street, Suite 100 Bakersfield, CA 93309

Re:

APN 079-180-10, 079-180-48 Through 079-180-70, 079-200-04, 079-200-08

GWD Job No. 98-3202 County Case # 91-CP-085

Dear Mr. Hollis:

The Goleta Water District can and will serve the referenced project. All financial arrangements, right-of-way and/or easements have been made to the satisfaction of the District for the service required.

Sincerely,

GOLETA WATER DISTRICT

KEVIN D. WALSH General Manager and Chief Engineer

KDW/kim



Santa Barbara County Public Works Department Flood Control & Water Agency

August 16, 2006

Stephen Chase, Zoning Administrator County of Santa Barbara Planning & Development 123 E. Anapamu Street Santa Barbara, CA 93101

Re: 06CDH-00000-00039; Dos Pueblos Ranch Estates Lot 2

APN: 079-200-008/Goleta

Dear Mr. Chase:

This District recommends that approval of the above referenced project be subject to the following conditions:

- Prior to issuance of Coastal Development Permit, the applicant shall comply with the Flood Control Standard Conditions of Approval.
- Prior to issuance of Coastal Development Permit, the applicant shall submit drainage plans for all proposed road crossings of creeks and drainage courses.
- The applicant will be required to pay the current plan check fee deposit at the time the plans are submitted for District review and approval.

Sincerely,

Dale W. Weber, P.E. Development Engineer

cc: Allen Bell, Planner, Planning & Development

Makar Properties LLC, c/o Michael Gagnet, 4100 MacArthur Blvd., Suite 200, Newport Beach, CA 92660 CPH Dos Pueblos Associates LLC, 4100 MacArthur Blvd., Suite 200, Newport Beach, CA 92660 April Verbanac, Dudek & Associates, 621 Chapala Street, Santa Barbara, CA 93101

Penfield & Smith 101 Fast Victoria Street, Santa Barbara, CA 93101

Penfield & Smith, 101 East Victoria Street, Santa Barbara, CA 93101

FORMA, 17712 Mitchell North, Irvine, CA 92614

Mike Zimmer, Building & Safety

PUBLIC GOLL

Environmental Health Services

2125 S. Centerpointe Pkwy. #333 • Santa Maria, CA 93455-1340 805/346-8460 • FAX 805/346-8485

Takoshi M. Wado, MD, MPH Director/Health Officer Anne M. Fenron Deputy Director Suzanne Jácobson, CPA Chief Financial Officer Michele Micklewicz, MPH Deputy Director Elizobath Snyder, MHA Deputy Director

Jenniter Bernstein, Director of Environmental Health

TO:

Nicole Lieu, Planner

Planning & Development Department

Development Review Division

FROM:

Paul Jenzen

Environmental Health Services

DATE:

February 23, 2012

SUBJECT:

Case No. 06CDH-00000-00038/06CDH-00000-00039

Goleta Area

Applicant:

Makar Properties, LLC

4100MacArthur Blvc., Suite 200 Newport Beach, CA. 92660

Property Location:

Assessor's Parcel No. 079-200-004, zoned AG-II-100, located

approximately .4 miles west of the city of Goleta.

Case No. 06CDH-00000-00038/06CDH-00000-00039 represents a request to development two single-family homes on two separate, adjacent parcels totaling almost 143 acres on the Gaviota Coast, approximately 0.4 of a mile west of the City of Goleta. One home, referred to as the Ocean Estate, would be approximately 7,227 square feet in size and would also include approximately 1,451 square feet of accessory structures for a detached guest house and garage. The other home, referred to as the Inland Estate, would be approximately 9,163 square feet in size with an attached 800 square foot guesthouse. Supporting infrastructure would include construction of approximately 0.91 mile of potable and recycled water line extensions from the Bacara Resort approximately 0.4 of a mile east of the project site in the City of Goleta.

Domestic water supply is proposed to be provided by the Goleta Water District. The Goleta Water District will need to review the project and provide a 'can and will serve' letter prior to land use clearance. Additionally the Goleta Water District will need to review any proposal for the use of recycled water.

Sewage disposal is proposed to be provided by two onsite wastewater treatment systems. The applicant has provided to Environmental Health Services drywell performance tests and preliminary engineering completed by Penfield & Smith and dated November 17, 2011 to establish the feasibility of wastewater disposal on the subject lots. Prior to zoning clearance the applicant will need to obtain approved from Environmental Health Services permits to construct onsite wastewater treatment system permits.

Providing the Zoning Administrator grants approval of the applicant's request, Environmental Health Services recommends the following be included as <u>Conditions of Approval</u>:

1. Prior to Issuance of Zoning Clearance, Environmental Health Services shall receive and approve written notice from the Goleta Water District indicating that said district can and will provide domestic water service upon demand and without exception.

Planning and Development Department Case Numbers 06CDH-00000-00038 & 06CDH-00000-00039 February 23, 2012 Page 2 of 2

 Prior to Issuance of Zoning Clearance, an application for an onsite wastewater treatments system (OWTS) permit shall be reviewed and approved by Environmental Health Services.

Paul Jenzen, R.E.H.S

Senior Environmental Health Specialist

cc:

Applicant

Goleta Water District

Jeff Thomas, Planning & Development Dept, Building Div., Santa Maria

Norman Fujimoto, Environmental Health Services Marilyn Merrifield, Environmental Health Services

LU-5112

Memorandum

Date:

February 14, 2013

To:

Nicole Lieu

Planning & Development

Santa Barbara

From:

Dwight Pepin, Captain

Fire Department

Subject:

APN: 079-200-004/008; Case #: 06CDH-00038/39; Site: Dos Pueblos Canyon Rd.

Project Description: 78 Acres Ranch Estate

This Condition Memorandum Supersedes the Previous Condition Memorandum Dated

August 28, 2006

The above project is located within the jurisdiction of the Santa Barbara County Fire Department. To comply with the established standards, we submit the following with the understanding that the Fire Protection Certificate application may involve modifications, which may determine additional conditions.

PRIOR TO ERECTION OF COMBUSTIBLE BUILDING MATERIALS THE FOLLOWING CONDITIONS MUST BE MET:

All access ways (public or private) shall be installed and made serviceable. Roadway
plans, acceptable to the fire department, shall be submitted for approval prior to any
work being undertaken.

Access to this project shall conform to Santa Barbara County Private Road and Driveway Standard #1. The roadway shall have a minimum width of 24 feet. Dead end access roads shall terminate with a fire department approved turnaround.

Access ways shall be extended to within 150 feet of all portions of the exterior walls of the first story of any building.

A minimum of 13 feet 6 inches of vertical clearance shall be provided and maintained for the life of the project for emergency apparatus access.

Driveways serving one residential parcel are required to have a minimum width of 12 feet. Driveways serving two residential parcels are required to have a minimum width of 16 feet. Driveways serving three to nine residential parcels are required to have a minimum width of 20 feet. If any future development is planned for this parcel or will



be served by this driveway, the applicant is encouraged to coordinate these standards into their plans and with other interested parties.

Any portion of the driveway exceeding 10 percent in slope shall be paved.

- 2. A bridge is required for this project. The bridge shall conform to the following standards:
 - Bridge shall have a minimum H-20 rated load-bearing capacity.

· Bridge width shall be equal to approved road width.

Both ends of bridge shall have signage indicating load-bearing capacity. Lettering
and numbers shall be a minimum height of three (3) inches, reflective, and a color
contrasting to the background color. Signage shall be elevated at least three (3) feet
from the ground for clear visibility and easy directional identification. Signage shall
be visible from the access road when traveling in either direction.

 All other aspects of bridge construction shall conform to standards set forth by the Santa Barbara County Public Works Department, Road Division.

- Plans shall be certified and stamped by a civil engineer as meeting all applicable standards for load baring capacity and construction. Plans to be approved by the fire department prior to installation.
- Bridge railings shall not exceed three feet in height.
- 3. Fire hydrant(s) shall be installed. The hydrant(s) shall be located per fire department specifications and shall flow 750 gallons per minute at a 20 psi residual pressure. Prior to installation, plans showing locations, size and type of hydrant(s), valves, main lines and lateral lines shall be approved by the fire department. The hydrant(s) shall consist of one 4-inch outlet and one 2½-inch outlet. The system shall be tested by the fire department to ensure compliance with recognized standards. See Standard #2.

PRIOR TO OCCUPANCY CLEARANCE THE FOLLOWING CONDITIONS MUST BE MET:

- 4. The fire department shall determine and assign all address numbers and shall issue such numbers to property owners and occupants. Please call the Fire Prevention Division at (805) 681-5523 if you have questions.
- 5. Building address numbers must be a minimum height of four (4) inches and a color contrasting to the background color. The address number shall be elevated at least three (3) feet from the ground for clear visibility and easy directional identification. The numbers shall be visible from the access road when traveling in either direction. If the driveway is over 150 feet in length or the building is obstructed from view at the access road, numbers shall be posted at any driveway and road intersections as is necessary.
- 6. Stop work immediately and contact the County Fire Department, Hazardous Materials Unit (HMU) at 686-8170 if visual contamination or chemical odors are detected while implementing the approved work at this site. Resumption of work requires approval of the HMU.

- When access ways are gated a fire department approved locking system shall be installed. Please call the Fire Prevention Division at 681-5523 for additional information and application procedures.
- 8. Santa Barbara County Fire Department fire sprinkler system requirements shall be met. Fire sprinkler system plans shall be approved prior to installation. Location of any fire department connection shall be determined by the fire department.
- Payment of development impact fees is required. The fees shall be computed on each new building, including non-habitable spaces.

Fees will be calculated as follows:

Mitigation Fee at \$.10 per square foot for structures with fire sprinkler systems

These conditions apply to the project as currently described. Future changes, including but not limited to further division, change of occupancy, intensification of use, or increase in hazard classification, may require additional mitigation to comply with applicable development standards in effect at the time of change.

As always, if you have any questions or require further information please call 681-5500.

DP:mkb

网络斯萨州ED

Memorandum

DATE:

December 2, 2010

TO:

Allen Bell

Planning and Development

Santa Barbara

FROM:

Glenn Fidler, Captain

Fire Department

SUBJECT:

APN: 079-200-004 and 079-200-008

Case #: 06CDH-00038, 06CDH-00039, 06CDH-00048, 07CUP-00065 and

09CDH-00045, 09EIR-0003

Site: HWY 101, Santa Barbara

Project Description: Draft EIR for Paradiso del Mare Ocean and Inland Estates

This Development Letter Supersedes the Previous Development Letter

Dated November 6, 2009

The above project is located within the jurisdiction of the Santa Barbara County Fire Department. To comply with the established standards, we submit the following with the understanding that the Fire Protection Certificate application may involve modifications, which may determine additional conditions.

1. Section 2.4.2 Utilities

The fire department supports the approval by LAFCO to annex the project into the Goleta Water District (GWD). The fire department will always want the most reliable water source to be provided and a municipal water provider is best. The applicant is required to receive water from the purveyor when the applicant is within the boundaries of the water district for fire protection.

The extension of the GWD main is agreeable to the fire department. The size of the main would need to be determined by GWD as the fire department makes the determination of the required fire flow and the water purveyor shall be responsible to calculate the hydraulics to provide that requirement. The minimum size pipe the American Water Works Association recognizes is 6 inch.

2. Section 3.10 Land Use

3.10.4.3 LU-1

The impacts are not significant as the fees will be charged to offset them

The fire department strongly disagrees with any downsizing of water main pipe. The totality of the future should be considered when designing a system so the main line would not have to be dug up in the future and upsized. This would result in a waste of time, money and material as well as disturbing the environment again.



3.10.4.5 Mitigation Measures

MM LU-1a

This paragraph should be removed. The fire department does not support any downsizing of pipe nor does it condone the use of onsite water storage tanks. A fire flow of 750 gpm with a residual of 20 psi for two hours minimum is the minimum standard. Onsite storage of 10,000 and 12,000 gallons would not be affective for fire fighting a large fire as we have seen in the resent past.

MM LU-1b

This paragraph should be removed if it is regarding onsite water storage for fire protection. The applicant shall be required to receive full service from GWD and not provide a modified hybrid system.

MM LU-2 Plan Requirements, Timing and Monitoring

The fire department shall review the plans regarding any and all water mains that are fire water related. The applicant is required to receive fire department approval of the design of the system prior to going to the GWD. It is my understanding that Planning and Development may have additional criteria to the requirement or the impact but not the sole authority for the water mains.

3. Section 3.7 Fire Protection

3.7.1.1 Regional Fire Danger

Paragraph four on page 3.7-2 that starts on line 27 strongly supports the necessity for the proper water supply to be provided by the most reliable source. Full-size fire mains from GWD will be the most dependable water for an emergency. Onsite water storage tanks degrade over time, can be damaged from any number of factors, i.e. fires, have a limited amount of water and require regular maintenance that is usually not done until they realize there is no water coming out of the faucet.

3.7.1.3 Fire Protection Services

These areas of concern shall be address through the proper installation of

- 750 gpm fire hydrants
- Standard Fire Protection Certificate requirements
- · Fully fire sprinklered buildings
- · Proper vegetation management
- Fire department access requirements
- Development fees that will contribute to the new Fire Station #10 and purchase of equipment

As always, if you have any questions or require further information, please telephone 805-681-5523 or 805-681-5500.

GF:mkb

COUNTY OF SANTA BARBARA PUBLIC WORKS DEPARTMENT 123 East Anapamu Street Santa Barbara, California 93101 805/568-3232 FAX 805/568-3222



February 22, 2013

TO: Nicole Lieu, Planner

Development Review

FROM: William Robertson, Transportation Planner

Public Works, Transportation Division

SUBJECT: Conditions of Approval (1 page)

Paradiso Del Mare Ocean and Inland Estates

06CDH-00000-00038, -39 APN: 079-200-004, -008/ Goleta

Traffic Mitigation Fees

 Pursuant to Ordinance No. 4270 regarding Transportation Impact Fees, the applicant will be required to pay a fee for each new peak hour trip (PHT), for the purpose of funding transportation facilities within the Unincorporated Planning Areas of the County.

Based on the current fee schedule, the total estimated fee for the proposed project is \$1100 (2 new single family homes x \$550/home). The Transportation Impact Mitigation Fee Program is designed to collect fees from any project that generates more than one additional peak hour trip. Fees are due prior to map recordation and shall be based on the fee schedule in effect when paid. This office will not accept payment or process a check received prior to project approval.

Fees are payable to the County of Santa Barbara, and may be paid in person or mailed to: Santa Barbara County Transportation Division, 123 E. Anapamu St., 2nd Floor, Santa Barbara, CA 93101 or Santa Barbara County Transportation Division North, 620 West Foster Road, Santa Maria, CA 93455. Please phone this office prior to payment if unsure as to the final fee required.

If you have any questions, please contact me at 739-8785.

Sincerely,

William T. Robertson

Date

cc. D6CDH-00000-00038, -39 Chris Sneddon, Transportation Manager, County of Santa Barbara, Public Works Department K:\Goleta\Paradiso Del Marc Estates 06CDH-Cond.doc



STANDSTILL AND SETTLEMENT AGREEMENT

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CPH Dos Pueblos Associates, LLC, Makar Properties, LLC (collectively, "Makar"), and the California Coastal Commission ("Commission") have agreed to enter into this standstill and settlement agreement in order to allow Makar to pursue a residential development proposal for the Dos Pueblos site. The parties agree as follows:

1. MAKAR'S DEVELOPMENT PROPOSAL

As part of an overall settlement (the "Settlement") Makar will expeditiously pursue, and, as a condition precedent to final settlement, obtain, on terms and in a form reasonably acceptable to Makar, the following:

- Submittal to the County of Santa Barbara of a Coastal Permit Application for the (i) development within the existing Naples townsite on Makar's property of up to a maximum of 10 single-family residential lots ("Dos Pueblos Naples Development"). The application will include a request for such other entitlements as may be required for the approval of the development; and
- Submittal of applications for coastal development permits and/or such other (ii) entitlements as may be required for development of a maximum of one-single family residence on each of Makar's two non-Naples lots ("Non-Naples Applications") for a total of two residences. Makar, in its sole discretion, may apply for such development separately or as part of its Coastal Permit Application for the Naples development area. In the event Makar determines to apply separately for development on the two non-Naples lots, Makar recognizes that the Commission and/or the County may consider the totality of the Dos Pueblos property, including the number, configuration, and anticipated future development of the Naples lots, in determining the conformity of the residential development with the policies of the County's certified LCP and public access and recreation policies of the Coastal Act. The Commission recognizes that one single family dwelling unit is a permitted use on each of the non-Naples lots, and Makar recognizes that, if it decides to apply separately for development of the non-Naples lots, the Commission retains the discretion to impose conditions on any such application to ensure that development on the totality of the Dos Pueblos property is sited and designed in a

Standstill and Settlement Agre

EXHIBIT 11

A-4-STB-10-0010

Standstill and Settlement Agreement

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manner that is consistent with the certified LCP and the public access and recreation policies of the Coastal Act.

Prior to issuance of the first building permit for a single-family residence within the Naples development area, Makar shall take all actions on its part necessary to permanently and irrevocably merge lots in the existing Naples townsite on its property so that there are a maximum of 10 single-family residential lots.

2. COMMISSION PROCESSING AND REVIEW

The parties acknowledge that coordination of the processing of the Coastal Permit Applications will be complex and time-consuming. The Commission recognizes that many environmental and planning issues will need to be considered in the review of residential development for the Dos Pueblos site, including but not limited to the protection of environmentally sensitive habitat. The Commission also expressly notes that the number of residential units on the site is not as critical as the protection of coastal resources, hence the Commission intends to be flexible with regard to the maximum number of residential units on the Naples townsite part of the Dos Pueblos site, but to ensure that development is sited and designed in a manner that maximizes protection of those resources.

To facilitate this process, the Commission agrees to:

- cooperate with the County of Santa Barbara (the "County") to review and process the Applications, including, but not limited to, responding, without unreasonable delay, to requests for advice or comment during processing of the Applications by the County;
- (ii) process the Coastal Permit Applications for the Dos Pueblos Naples Development as they relate to the Dos Pueblos Naples lots independent of any non-Dos Pueblos Naples lots (i.e., Naples lots owned by Osgood or Schulte), if so requested by Makar and if approved in that manner by the County of Santa Barbara;
- expeditiously process, within all applicable deadlines unless waived by the parties, the Coastal Permit Applications and Non-Naples Applications and exercise its discretionary authority to review and either approve, approve with conditions, or deny the Coastal Permit Applications for the Dos Pueblos Naples Development and any separate Non-



Naples Applications;

(iv) issue all permits authorized by the approved Coastal Permit Applications for the Dos Pueblos Naples Development and any separate Non-Naples Applications at the earliest possible date consistent with the Commission's legal authority.

3. RESERVATION OF DISCRETIONARY AUTHORITY

The Settlement Agreement shall not, in any way, limit the Commission's exercise of its discretion when considering the Coastal Permit Applications and any separate Non-Naples Applications, but such discretion shall be exercised in good faith.

4. <u>SUPPORT OF ACQUISITION OF NON-NAPLES LOTS</u>

For so long as requested by Makar, the Commission agrees to support acquisition of all or a portion of Makar's lots for open space, habitat protection, public access and related purposes (except, in the case of acquisition of the non-Naples lots, as necessary to provide Makar with access to the Dos Pueblos Naples Development area); provided, however, that no expression of such support by the Commission, orally or in writing, shall be used or referred to in any manner in the Action or in any subsequent court action relating to development of the Dos Pueblos property.

5. STAY OF LITIGATION

The parties agree to stay the Action as follows:

- (i) to execute a stipulation requesting the Court to stay the Action for such period of time as is necessary and appropriate to permit performance by the parties of the matters set forth herein;
- (ii) the stay will be terminable by either party, with good cause, upon thirty (30) days notice;
- (iii) the parties agree to report back to the judge assigned at periodic case management conferences;
- (iv) the parties agree not to seek dismissal (with or without prejudice) of the Action except as otherwise provided herein;
 - (v) the parties agree that all statutory deadlines, statutes of limitation or other

deadlines or times applicable to the Action (including, without limitation, the time limit within which to bring the Action to trial) are suspended, waived, extended and tolled during the pendency of this Settlement until a date which is thirty (30) days after the date that is the earlier to occur of (i) the date on which any of the Coastal Permit and/or Non-Naples Applications are denied; (ii) if approved, the date on which the County approvals or the Commission approvals are reversed or nullified by any challenge (including, without limitation, a judicial challenge or challenge by initiative or referendum); or (iii) the date on which this Settlement is terminated pursuant to the provision hereof; and

(vi) the parties agree that neither the stay nor the filing of the Coastal Permit

(vi) the parties agree that neither the stay nor the filing of the Coastal Permit

Applications for the Dos Pueblos Naples Development or the Non-Naples Applications shall

operate as an estoppel, waiver or constitute laches with respect to any legal rights the Parties may
have in the Action, or otherwise operate to prejudice Makar in any manner.

6. DISMISSAL OF ACTION

Makar agrees to file a dismissal of the Action, with prejudice, no later than thirty (30) days after Commission approval of the Coastal Permit Applications for the Dos Pueblos Naples Development and any separate Non-Naples Applications, providing such approval (1) permits single-family residential development of a minimum of 10 Dos Pueblos Naples lots and on the two non-Naples lots, and (ii) is final and no longer subject to challenge (including, without limitation, a judicial challenge or challenge by initiative or referendum), (iii) no further approvals by the Commission are required or appeals will lie with respect to such approvals, and (iv) the Commission and County have issued all required permits and approvals for the Dos Pueblos Naples Development and any separate Non-Naples Applications.

7. REACTIVATION OF LITIGATION; RESERVATION OF CLAIMS

If (i) this Settlement is terminated pursuant to the provisions of this Settlement Agreement, or if (ii) the Coastal Permit Applications, or any separate Non-Naples Applications are denied by the County or the Commission, (iii) the Coastal Permit Applications or any separate Non-Naples Applications are approved by the County or Commission on terms or in a form which is not reasonably acceptable to Makar, or (iv) the granted County Approvals and/or

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Coastal Commission Approvals are finally reversed or nullified by an challenge (including, without limitation, a judicial challenge or challenge by initiative or referendum), Makar shall have the right to reactivate the Action and to pursue its claims in the Action against the Commission and all other parties in interest.

The Parties agree that in the event this Settlement is terminated,

- (i) the Commission shall commence preparation of the Administrative Record in the Action no later than sixty (60) days after written notice from Makar and shall complete and deliver to the Court the Administrative Record as soon as possible after such notice; and
- (ii) any party may request the Court to set a case management conference at which time the matter shall be scheduled for trial on the mandate causes of action and a briefing schedule shall be established.

8. LITIGATION OF NEW CHALLENGE

Makar expressly reserves all rights to challenge any decision made by the Commission with respect to the Coastal Permit Applications for the Dos Pueblos Naples Development or any separate Non-Naples Applications, and may do so by filing an amended petition and complaint in this Action or in a separate lawsuit.

RESERVATION OF RIGHTS REGARDING GOLF COURSE COP AND DEVELOPMENT OF NAPLES LOTS

The parties agree that in entering into this Settlement and by Makar submitting Coastal Permit Applications for the Dos Pueblos Naples Development and/or the Non-Naples Applications for residential development of the Non-Naples lots, Makar does not waive any legal rights it may have with respect to (i) its application for a Coastal Development Permit for the Golf Course (Application No. A-4-STB-93-154 and all applications related thereto) and any approvals previously granted or issued in connection therewith, and (ii) development of each and all of its 25 Naples lots. Further, Makar shall retain any legal rights it may have even if the Settlement is terminated or the Coastal Permit and/or Non-Naples Applications are withdrawn.

10. **TERMINATION**

If the time limits established herein are not met, then the non-defaulting party, upon thirty

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(30) days prior written notice to the other parties, may terminate this Settlement and cease processing the Coastal Permit Applications or any separate Non-Naples Applications, whereupon such applications shall be deemed withdrawn and the terminating party shall be free to assert such rights as it may deem appropriate, including the continuation of or dismissal of the Action.

11. NO ADMISSION OF LIABILITY OR WRONGDOING

The Settlement is made without any admission of fault or liability of any kind, but instead to avoid costs and risks of litigation and to resolve the Action in a mutually satisfactory manner.

12. **COURT'S CONTINUING JURISDICTION**

To conclude in as timely a manner as possible any question or issue that may arise concerning interpretation of this Settlement, or approval of the Coastal Permit Applications for the Dos Pueblos Naples Development or any separate Non-Naples Applications, the parties request the Court to:

- (i) retain continuing jurisdiction over the terms of the Settlement for the purpose of resolving disputes concerning interpretation and implementation of the Settlement;
- (ii) retain Mediator Justice Steven Stone "for all purposes" to rule on any matter raised relating to the subject matter of the Settlement, and in the event Justice Stone retires, dies, becomes incapacitated or otherwise ceases to be the Mediator, appoint a replacement Mediator reasonably acceptable to the parties for all of the foregoing purposes;
- the parties waive any rights to contest the Court's continuing jurisdiction or the (iii) power of the Court to appoint a judge "for all purposes."

13. **SEVERABILITY**

The parties agree that if any terms, covenants, provisions or cancellation of this Settlement shall be illegal or unenforceable, such illegality or unenforceability shall not invalidate the whole, but the Settlement shall be construed as if the provision containing the illegal or unenforceable part were not a part hereof.

14. **AMENDMENT**

This Settlement may only be amended by a written document executed by all parties hereto.



15. NON-OPPOSITION TO STAY

Surfrider has represented to the parties hereto that it does not object to this Settlement to the extent that it provides for a stay of the Action.

IN WITNESS WHEREOF, Makar and the Commission have executed this Standstill and Settlement Agreement on the date set forth below.

Dated: April 20, 2005 CALIFORNIA COASTAL COMMISSION

Peter M. Douglas

Its: Executive Director

APPROVED AS TO FORM:

By Commission's Counsel

Dated: 4/5, 2005 CPH Does Pueblos Associates, LLC

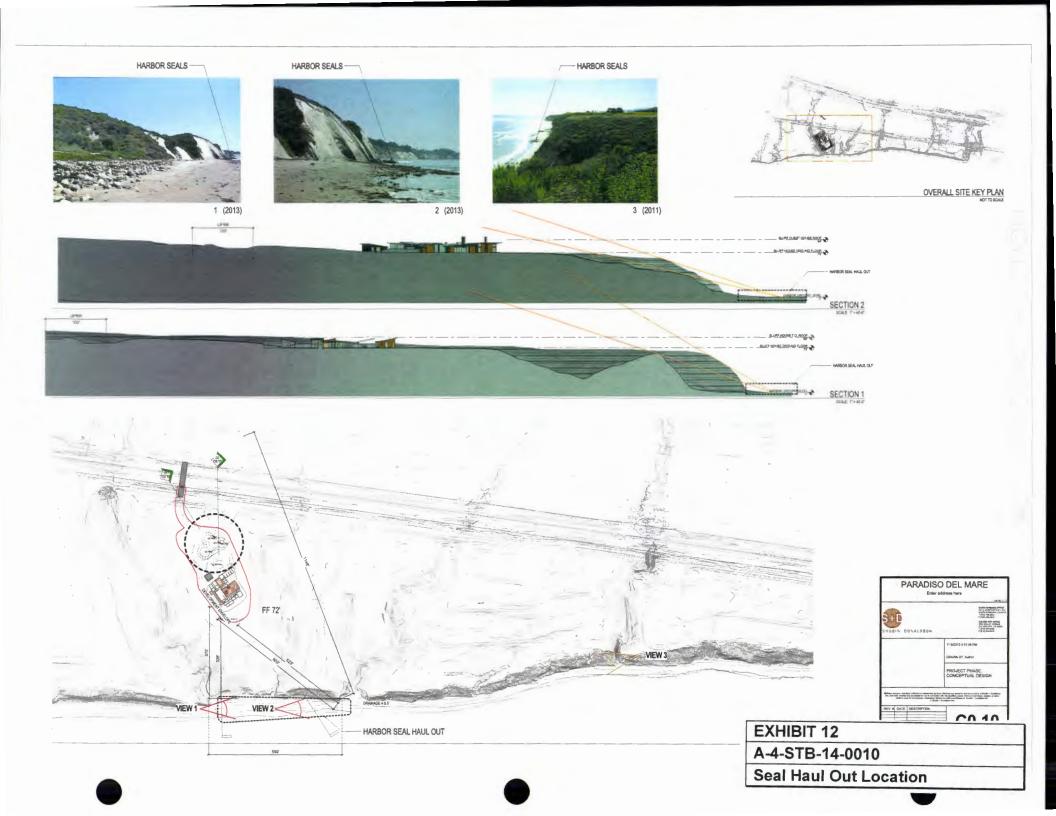
By: MAKALLON DOS PUEBLOS ASSOCIATES, LLC, its Manager

By: MAKALLON, LLC, its Manager

By: MAKAR PROPERTIES, LLC, its

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Samuel H. Weissbard Executive Vice President and General Counsel



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Howorth:	Comments on	Paradiso	del Mare	ΕIR

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AGENDA ITEMS

15 October 2013: Comments on Paradiso del Maré Project

'NOV 13 2013

Peter Howorth

ITEM #:_

S.B. COUNTY

PHANNING & DEVELOPMENT

Introduction Support

MEETING

DATE:

11-20-13

This letter is in response to the recirculated draft Final Environmental Impact Report for the Paradiso del Maré Ocean and Inland Estates project. I have no position, pro or con, on this project at this time. What my individual position ultimately may be will depend upon what is done in response to my comments perhaps as well as to those of others. I did send an earlier version of this letter prior to the originally scheduled May 1 2013 hearing for this project. That hearing was postponed, so I am resubmitting my comments with a few updates.

I will confine my comments to one particular area of expertise of mine: marine mammals. To explain, I began working with marine mammals in 1964 as a commercial collector. In 1976, I founded the nonprofit Santa Barbara Marine Mammal Center (SBMMC), which continues to serve Santa Barbara County to this day. The organization's goals are the rescue, rehabilitation and release of marine mammals in distress.

In 1992, I started a commercial company, the Marine Mammal Consulting Group, Inc., with other partners. This was in response to a growing need for environmental planning for coastal and offshore projects that had the potential for adverse impacts to marine mammals. This also involved mitigation planning and implementation. I have served as a consultant for local, county, state, and federal governments, the military, industry, and private concerns. I mention all this as background and also in the interests of full disclosure. (A publications list is attached.)

In making the following comments, I am acting as an informed citizen. I have not been retained by any entity for this purpose, nor do I choose to act as a representative of any group, business, or other entity, whether I am involved with them or not. I offer my comments purely in the spirit of constructive criticism based on my experience.

If the level of detail discussed below seems excessive, it is not. Numerous recent coastal, nearshore and offshore projects have covered in detail the same areas suggested below. These subjects have been analyzed in many EIRs, EISs, assessments, mitigation plans, technical reports, etc. This level of detail is essential when dealing with protected species and environmentally sensitive habitats. In the case of marine mammals, often large sections or even entire chapters are devoted to discussing the environmental setting, status and population trends, current threats to various stocks, and the potential impacts of project activities on marine mammals. Numerous such impacts usually are identified and numerous mitigation measures are proposed. Often, mitigation plans are included in such documents.

Background on the harbor seal rookeries of Santa Barbara County

The mainland coast of Santa Barbara County has a number of harbor seal (*Phoco vitulina richardsi*) rookeries. A few of these are on Vandenberg Air Force Base and are off-limits to the public and to base personnel. A small rookery exists in the lee of Pt. Conception. This is on private property and is not

EXHIBIT 13

A-4-STB-14-0010

Howorth Letter

accessible to the public. Recently, northern elephant seals (Mirounga angustirostris) have been encroaching on this rookery. Some of the harbor seals have been forced onto several rocky ledges to the southeast of the cove they formerly occupied exclusively.

The next rookery is at Naples, next to the seashore terminus of Tomate Canyon, within the project area. (More on this later.) Farther to the east (east of Goleta) is More Mesa. A few harbor seals occupy the offshore rocks at this site. Pups are born occasionally there, but the number is very limited and pups are not born there every year. Santa Barbara Harbor has a few resident harbor seals and pups are born there occasionally; again, not every year. Pups at both sites are inevitably abandoned because the habitat is not suitable for them. The incessant presence of humans and unleashed dogs on the beach makes the shore untenable for seal pups. (This statement is based upon 37 years of experience in dealing with stranded marine mammals in Santa Barbara County.)

The only other harbor seal rookery on the mainland coast of Santa Barbara County is in Carpinteria, southeast of Carpinteria Beach State Park and immediately adjacent to The Casitas Pier, used by oil companies to service offshore oil platforms. Since 1991, this rookery has been monitored by the Carpinteria Seal Watch, an ad hoc citizens' group devoted to protecting the seals. Their efforts have been successful. The population there has slowly increased, together with yearly pup counts.

The importance of harbor seal rookeries

Harbor seal rookeries occupy infinitesimally small parts of the mainland coast of Southern California. Under the Santa Barbara County Coastal Plan, pinniped (seal and sea lion) rookeries and haul-out areas are considered environmentally sensitive habitats. The Naples State Marine Conservation Area (SMCA), which covers the coast from mean high tide out to approximately one nautical mile offshore (seaward of Naples Reef), is also considered environmentally sensitive. This SMCA encompasses the mainland coast well to either side of the Naples harbor seal rookery. Since the shoreward boundary of the SMCA extends to mean high tide, the rookery is within the SMCA virtually all the time since the seals haul out during lower tides. Considering the rookery as part of the SMCA as well as an environmentally sensitive habitat under the coastal plan is essential.

South of Santa Barbara, only two harbor seal rookeries exist on the mainland coast. One is at the Mugu Lagoon, on the Naval Air Warfare Center at Point Mugu in Ventura County. This rookery is off-limits to the public. The only other harbor seal rookery is at the Children's Pool in La Jolla, which is in San Diego County. Of the six species of pinnipeds found off Southern California, no other species regularly hauls out or has any rookery on the mainland coast of Southern California—the harbor seal is the only one. Pinniped rookeries are clearly few and far between along this coast, especially those accessible to the public. As such, any impacts that could affect the Naples rookery deserve careful, thorough analysis and realistic, tangible mitigation measures that will ensure that this special resource endures.

Increased disturbances to the Naples rookery, as well as increased public access, can be disastrous and could easily result in the loss of a precious local resource. As such, this matter deserves a thorough analysis of this rookery's status, potential impacts to the rookery, and what can be done to reduce or eliminate such impacts.

Status of the Naples harbor seal rookery

The only mention in the EIR of harbor seal observations at Naples consists of anecdotal comments from beachgoers and general comments from Impact Sciences, Inc., including mention of one site visit in September 2011, at which time no seals were seen.

Considering that pinniped habitats are environmentally sensitive (please see above) and that harbor seals are protected under both federal and state laws, a thorough review of past censuses and studies at this site is essential. This has not been done.

The Naples rookery has been censused by California Department of Fish and Game (now California Department of Fish and Wildlife) biologists for many years. It's quite possible that it is also censused now during coastwide aerial surveys conducted by National Marine Fisheries Service (NMFS; now sometimes called NOAA Fisheries Service). No mention of any government censuses is made in the EIR.

In the 1970s, several studies were conducted of the Naples rookery by students at the University of California, Santa Barbara. These studies resulted in both senior and master theses for a number of students. Dr. Charles Woodhouse, Jr., curator of mammalogy at the Santa Barbara Museum of Natural History and a part-time professor at UCSB during this period, was the students' advisor. Dr. Woodhouse passed away some years ago, but his work on marine mammals and the extensive study collection continues to this day. No mention is made of any UCSB studies, nor is the Santa Barbara Museum of Natural History mentioned in the EIR even though Dr. Woodhouse visited the site many times. I accompanied him on several occasions during these visits.*

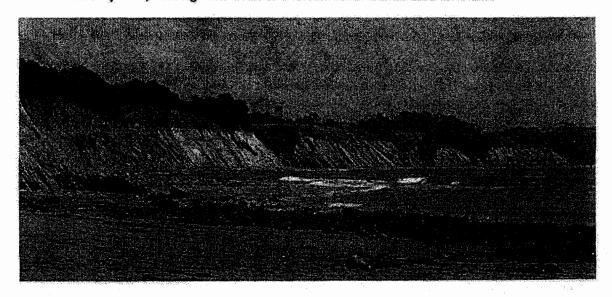
The UCSB-museum studies are important in assessing population trends at the Naples rookery, since among other things, they mention various types of disturbances to the rookery. One study came up with a high count of 208 animals. Using NMFS's current formula for calculating local populations, based on counts made while the seals are hauled out, results in a population estimate of 320 animals at the time, which is a sizable population. The studies are also important because they mention a shift to a nighttime haul-out pattern even in the 1970s. Nighttime haul-out patterns are characteristic of areas subject to chronic daytime disturbances. Thus, any disturbances that might occur at night could result in additional impacts to the rookery. This is not considered in the EIR (more on this later).

The Santa Barbara Marine Mammal Center (SBMMC) has rescued distressed marine mammals throughout Santa Barbara County since 1976. Records are kept of every animal rescued, including many over the years from the Naples rookery. As one example of the relevance of such records, pups are washed away from rookery beaches during unusually high tides or heavy surf. Often they drift so far

*I also regularly accessed the Naples property in the 1960s and 1970s to go spearfishing at Naples Reef. I was never accosted by any security forces, nor do I recall seeing any no trespassing signs. Our biggest fear came from the bulls that frequently inhabited one pasture, especially because one of my diving companions had a bright red paddleboard. To our relief, the bulls left us alone.

from the rookeries that they become abandoned. In Carpinteria, the number of pups born each year is recorded by the Carpinteria Seal Watch, mentioned earlier. Comparing the number of orphaned pups downcurrent from the Carpinteria seal rookery to the actual number born provides a ratio from which the number of pups born at other rookeries can be estimated.

SBMMC has visited the Naples area and immediately adjacent coastline literally thousands of times over the past 37 years to rescue animals, yet no attempt was made to contact SBMMC about the Naples rookery. I went to the Naples rookery in response to a call as recently as 18 April 2013 and observed nine adults and one pup hauled out, with many more in the nearshore waters. (This was in the daytime.) All the animals on the beach went into the water when someone walked toward them on the beach. On 6 May 2013, I was again in the area and counted 51 seals hauled out there.



Harbor Seals Hauled out on Beach at Naples, May 2013

The Carpinteria Seal Watch has amassed decades of data during their watches. The watches run from 7:00 a.m. to 5:00 p.m. from January 1 through May 31 of each year. Notes are kept on every disturbance to the rookery. This information would be invaluable in assessing and planning any mitigation measures designed to protect the Naples rookery, yet the Carpinteria Seal Watch was not consulted. Among other things, a review of its observations, coupled with marine mammal stranding records from SBMMC, would have revealed that the Carpinteria rookery beach is closed from December 1 through May 31 every year because pups are born as early as December, plus sudden disturbances can cause near-term females to abort their pups or to give birth prematurely. The City of Carpinteria's beach closure ordinance was actually changed to further protect the seals. The EIR mentions possibly closing the Naples rookery from February 1 through May 31 to protect the pups; this is inadequate and does not take advantage of the best available information.

In summary, the EIR makes no attempt to assess the past and current population trends and status of the Naples rookery. The severity of impacts from any further disturbances would thus have to be

assessed on a baseline of no knowledge whatsoever—an impossible task. To assess future impacts, it will be necessary not only to review past records but also to learn how many animals are present now at the rookery, how many pups are born there each year, whether the animals are now hauling out in greatest numbers at night, and the nature and frequency of present disturbances to the rookery. Qualitative and quantitative data are needed.

Legal aspects

As mentioned in the EIR, marine mammals are protected under the Marine Mammal Protection Act of 1972 (MMPA). What is not mentioned are amendments made after passage of the MMPA. These amendments define various levels of "take" involving marine mammals. Understanding what levels of take may result from project activities is essential in analyzing potential impacts and formulating mitigation measures to reduce or eliminate the possibility of takes.

Under the MMPA, the "taking" of any marine mammal is prohibited. "Take" is defined as "to harass, hunt, capture, or kill any marine mammal." In the 1994 amendments, "harassment" was divided into two levels: Level A harassment means "any act of pursuit, torment or annoyance which has the potential to injure a marine mammal or a marine mammal stock in the wild." Level B means any act that "has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering" (MMPA 1972, amended 1994, 16 U.S.C., § 1431 et seq.). Takes can be allowed under special conditions, such as the issuance of a marine mammal permit for possessing a marine mammal for research or display purposes, or a letter of authorization for incidental take or incidental harassment.

If a rigorous analysis reveals that a take is likely under project activities, then mitigation measures must be proposed to reduce or eliminate any takes. If this is not possible, then an application must be made to authorize a take or takes.

Under the MMPA, if an unauthorized take is made, the offender can face up to \$11,000 per violation in civil penalties. If the take is determined to be criminal, it is considered a Class "A" misdemeanor, punishable by up to \$100,000 and/or a jail sentence of up to one year per violation. These dollar amounts are current, but they have increased considerably since the passage of the MMPA and will likely continue to do so as years pass.

I do not feel that the impact analysis is adequate to make a determination as to whether a take authorization will be necessary under the MMPA. Also, under CEQA, it must be determined whether a project "may substantially diminish habitat," "substantially diminish diversity or abundance," or "substantially reduce species diversity or abundance." Does the EIR satisfactorily address potential take, changes in habitat, or diminishment of abundance as a result of project activities? I do not feel it does because of the complete lack of baseline information as well as because of other reasons which follow. Preparers of EIRs must make the use of the "best available" information, yet such information is totally lacking in the EIR.

The EIR also does not touch on the importance of a marine mammal rookery within the boundaries of a SMCA, nor the regulations designed to protect such resources within a SMCA. Further, the EIR fails to mention that marine mammals are also protected under the California Fish and Game Code and what these ordinances involve.

Construction phase

Mention is made in the EIR, plus a map is provided, showing that the staging area for the construction equipment is on the south end of the property closest to the seal rookery. Mention is also made that the site is within 350 feet of the rookery, yet it is not clear whether this is the closest point, the center of the property, or an average distance. Assuming a best-case scenario, in which the staging area begins 350 feet from the rookery, why have it there? Why not as far away from the rookery as possible to avoid possible disturbances? To put this another way, the beach at the Carpinteria seal rookery is closed 750 feet to either side of the rookery to prevent disturbance during the pupping season. Why site a construction staging area within 350 feet of the Naples rookery, or for that matter, why site the dwelling itself so close to the rookery? (More on this later.)

The construction equipment list is provided in the EIR, along with a statement about the noise that it may generate. Noise values are presented in A-weighted decibels (dBA). A-weighting is useful in assessing potential impacts to humans. The use of A-weighting in assessing potential impacts to marine mammals is highly questionable, however, because A-weighting does not take into account the hearing frequency range and sensitivities of marine mammals, which are quite different from those of humans.

No mention is made as to whether measurements have been made on the rookery beach during various conditions. Surf height, wind and other natural noises can vary considerably. Such measurements should be made in various frequency ranges to capture the hearing range of harbor seals (to say nothing of humans). Without baseline ambient sound measurements on the beach, how can an assessment be made of potential noise impacts on the beach from project activities?

No mitigation measure is proposed to monitor construction equipment sounds. While an estimate of noise levels is provided, this is only an estimate and does not provide for monitoring actual noise levels. It also does not take into account the hearing frequency range and sensitivities of not only harbor seals, but also of white-tailed kites, among numerous other sensitive wildlife receptors in the immediate area.

Ground-borne vibrations are also mentioned, yet no assessment is made of the potential impact of such vibrations of seals hauled out at the rookery. Since pinnipeds are known to be sensitive to ground-borne vibrations, the potential impacts from such a source should be analyzed, since heavy grading will reportedly take place within a short distance of the rookery.

How much of the construction equipment would be visible from the rookery is not discussed, although mention is made that the dwelling will be seen from various parts of the beach. Where these vantage points are, and where they are in relation to the rookery, is not specified. Moreover, no mention is made as to how visible the construction equipment (and later, the dwelling), will be from the ocean.

Harbor seals have good vision in air and frequently closely watch people on the beach from nearshore waters. Construction equipment, along with the dust it raises when operating, will present visual impacts that could affect haul-out patterns.

The construction phase is supposed to take 24 months and 25 people. No mention is made of any training of construction personnel to avoid impacts to the rookery. For example, the personnel might well go to the beach, which is immediately accessible from the construction site, to have lunch. They may also decide to have lunch on the bluffs. The presence of people silhouetted on the bluffs or walking along the beach will cause the seals to flee. No mention is made of monitoring the construction operation to ensure that the seals are not disturbed.

Ocean Estate Dwelling

Simulated views of the Ocean Estate and how it will appear from various vantage points along the bluff, from the UPRR tracks, from Highway 101, etc., are presented. While these may be useful, no information is provided as to the perspective of the lens used to take the photos used for the simulations. This may sound trivial, but a wide-angle perspective makes objects in the background (such as dwellings) look much smaller than they do to the human eye. Conversely, telephoto lenses make objects in the background appear larger. Only a so-called "normal" lens captures the true human perspective. The photos appear to have been made from a wider perspective lens than normal; the perspective actually used could be easily determine by returning to the sites where the photos were taken, zooming in and out with lens and noting what perspective lens matches the photos (e.g., 35 mm versus 50 mm). Based on the camera and lens used, the normal perspective can be easily determined.

No simulated views are presented from the various unspecified positions on the beach from which the dwelling could be seen. Showing this perspective is important both from a human aesthetics standpoint as well as from the concept of assessing potential visual impacts—as well as others—to the harbor seals. No simulated views were offered showing the perspective from the water, either. The beach and nearshore waters are very important to the public, hence all the rules and regulations at various levels of government concerning reducing or eliminating the impacts of coastal development. The view from the ocean is also very important to harbor seals, which closely scrutinize the coast before venturing ashore.

No mention is made of noise impacts from the Ocean Estate dwelling. It is not unreasonable to assume that parties will occasionally take place there, quite possibly with amplified music. The effects of such activities on humans and wildlife have not been assessed, nor are any mitigation measures proposed. Is it reasonable to assume that no audible sounds will emanate from the property?

Lighting

Given early research at the Naples rookery, as well as abundant literature documenting that chronic disturbances can cause harbor seals to switch to a nighttime haul-out pattern, it is likely that substantial numbers of seals haul out at night at Naples. Lighting of any kind, even when shielded and kept within various government standards, represents a drastic change to the site. How the harbor seals might

react to this change was not been analyzed or even mentioned in the EIR, nor how such lights would appear from the beach or offshore. Harbor seals are well adapted for seeing in dim light and would certainly be able to discern the glow of lights above the rookery.

Care is taken to reduce or eliminate windows facing the highway so that night lighting will not be visible from the road. The value of this measure is highly questionable in regard to wildlife receptors since no mention is made of lighting showing through windows onto the bluffs, where numerous sensitive wildlife receptors are found, nor of light visible from the beach or ocean, where harbor seals are found. The EIR does state that most windows will face the ocean, and simulated views show entire walls virtually covered with glass.

The mitigation measure designed to reduce potential lighting impacts consists of plan reviews and inspections; no effort will be made to ensure ongoing compliance.

Trails

Repetitive statements are made about a parking lot, trails, a beach overlook, and a beach access point. This public access system is contingent upon acceptance of this project. The description of this system covers the entire ocean side of the area, from the UPRR to the bluffs and to the western and eastern limits of the property. Somewhere in this area, a loop system trail will be constructed along with a parking lot. The "floating" vertical easement to the beach, whatever that means, is described as being anywhere from Drainage 5 to Eagle Canyon. From the maps, it is clear that Drainage 5 is closer to the harbor seal rookery than the dwelling itself, which is 350 feet from the rookery. Having vertical access to the beach within 200 feet or so from the rookery will result in constant, prolonged disturbances to the rookery, to say nothing of disturbances caused by building the vertical access. Moreover, Mitigation Measure BIO-12 (discussed later) states that access to the beach shall be closed 300 yards (900 feet) to either side of the rookery during pupping season (more on that later also). If the vertical beach easement is within 200 feet or so of the rookery, how will people access the rest of the beach during the closure?

As discussed, mention is made of closing the vertical beach access point during the beach closure. However, the EIR also mentions allowing access to the beach from the "ambulatory" mean high tide line to the base of the bluffs. This means that people can easily hike in from Bacara, as they do today, during medium to low tides. People also hike in from Dos Pueblos Canyon or from other trails leading to the beach west of the project site. No provision is made for closing this beach easement during the pupping season, nor for installing signs on the beach to either side of the rookery. Minimal research would have revealed that such signs have been in place for many years at Carpinteria.

Rather than analyze potential impacts from the vertical access point and propose realistic mitigation measures, the EIR vaguely states that the "County or other public agency or non-governmental organization constructing, operating, or maintaining the vertical coastal access point shall prepare and implement a harbor seal protection/restricted access plan." A few elements of the plan are then outlined. Essentially, the document says that "we don't know who will be responsible for the trail system and making sure the harbor seals are protected, but it won't be the applicant. The details will be

worked out later by an unidentified entity. Meanwhile, the project will begin." This is completely unsatisfactory. Mitigation with no clear means of implementation is not mitigation. What if the "County or other public agency or non-governmental organization" has no interest in such a project, or more realistically, lacks the funds to undertake such a project? What if no entity wants to tackle the liabilities?

Another detail that is not discussed in the EIR is that the homeowner at Ocean Estate and the guests will presumably be able to access to beach via the vertical easement, since no provision is made for beach access from the Ocean Estate.

Perhaps a more tangible and realistic approach would be to require the applicant to construct the trail system, subject to the approval of the regulatory agencies, and establish a fund for maintaining at least the first five years of operation. Whatever entity was to manage the trail system could be identified in advance, again subject to the approval of the regulatory agencies.

The beach overlook is mentioned briefly throughout the EIR, but its location is never revealed. People silhouetted on bluffs, either at overlooks or along trails, often frighten seals into the water. Even a cursory look at numerous mitigation documents concerning the Carpinteria seal rookery will confirm that fact. No mention of this impact is presented in the EIR, nor are means proposed to reduce or eliminate this impact. Again, the literature is replete with recommendations on how to accomplish just that.

Mitigation measures

Despite the high potential of numerous impacts from this project during the construction phase and after it is completed, only one mitigation measure is devoted exclusively to the protection of the harbor seal rookery. Implementing this measure is left up to an unidentified entity, as discussed above.

This mitigation measure (MM BIO-12) includes a requirement that access to the beach 300 yards in each direction of the harbor seal rookery shall be closed during the pupping season, listed in the EIR as from 1 February through 31 May. As explained earlier, this period is inadequate to ensure protection of harbor seal pups and pregnant mothers. Moreover, the "floating" vertical access to the beach may be as close as 200 feet to the rookery, as mentioned in the EIR and discussed earlier.

The posting of signs explaining the MMPA is another element of this measure. Prominently posted signs stating that the beach at the Carpinteria seal rookery is closed during the seal pupping season are completely ignored on almost a daily basis. This has been documented innumerable times over more than two decades, as even the most cursory examination of the reports will attest. Signs are informative for law-abiding citizens and completely useless against those who choose to ignore them.

The next element of the mitigation measure seems reasonable (presenting a plan), but only if the party responsible for carrying out the measure is identified. As it is, the entire mitigation measure is wishful thinking at this point.

"The agency or organization...shall be responsible for ensuring compliance with the approved harbor seal protection/restricted access implementation plan." How? Will the unidentified agency or organization have enforcement powers? The Carpinteria Seal Watch does a good job of protecting the Carpinteria rookery, but they have no way of ensuring compliance, even with state park rangers and police within less than a mile. Violations occur there on almost a daily basis. Such resources simply are not readily available in close proximity to the project site. This provision is completely unrealistic.

MM BIO-13 mentions that beach access is closed from March through July and that pets are not allowed on the trial or beach. "The purpose of the pet restriction and closure period is to minimize harassment and adverse effects to the harbor seal haul-out area...." From this, I gather that collectively, the beach will be closed from 1 February through 30 July rather than just from I February through 31 May.

The pet restriction is unrealistic and not enforceable. As an example, city and county animal control officers have told me many times that the leash law is a vehicle for prosecuting someone if a dog that is not on leash creates a problem resulting in a complaint. I see unleashed dogs on coastal bluffs and on beaches on a daily basis. Leashed dogs are the exception. Numerous signs at access points mentioning the leash law are almost completely ignored. Thus, assuming that signs will prevent dog owners from having their dogs on the bluffs or beach is completely unrealistic, just as is assuming that everyone will obey the leash law. Even in Carpinteria, with enforcement officers readily available, unleashed dogs are a constant problem.

"The area should be included, where feasible, on the route of law enforcement or other security personnel to enforce beach closure and no dog policies." Should be? So should the rest of Santa Barbara County. Was the Santa Barbara County Sheriff's Department consulted on this matter? Do they have the manpower and funding to patrol the area? Impact PF-3 states, "The proposed project would have less than significant impacts to police services." Given this, will adding the project area to the route of law enforcement indeed be feasible, yet have "less than significant impacts" on law enforcement?

Regarding the dog closure, does Santa Barbara County Animal Regulation have the manpower and funding to patrol the bluffs and beach? Were they consulted? Who are the unnamed "other security personnel?" This part of MM BIO-13 is wishful thinking rather than mitigation measure.

On Page ES-28 of the EIR, Impact AES-5 states, "The proposed project together with the adjacent Naples Townsite development and other development in the surrounding area would result in a cumulatively considerable aesthetic and visual impact." The proposed mitigation measure states, "Implement project mitigation measures as feasible." The significance *after* mitigation is listed as "significant and unavoidable."

I completely agree with this assessment, with an important caveat. The Naples Townsite development property begins immediately west of Tomate Canyon, the western boundary of the Paradiso del Maré project. Tomate Canyon leads directly to the harbor seal rookery. I submit that adding homes on up to ten lots on the Naples Townsite Project Site would most certainly add considerably to biological impacts on the harbor seal rookery, among other wildlife resources. In other words, the Naples Townsite is not

just a cumulative aesthetic impact; it is also a cumulative biological impact. Such a significant impact requires analysis in the EIR, which fails to acknowledge *any* cumulative biological impacts from the adjacent Naples Townsite project.

Interestingly, Page ES-42 repeats what was said on Page ES-28, except that the significance after mitigation for Impact AES-5 becomes "less than significant." This is incomprehensible, especially since the proposed mitigation measures are again described as "Implement project mitigation measures as feasible." What are these unnamed mitigation measures? What if no mitigation measures are "feasible?" This is not mitigation; this is smoke and mirrors.

In summary, I feel that the sections describing the environmental setting, population status and trends, and impacts and mitigation concerning the Naples harbor seal rookery in this EIR lack so much critical (and required) detail that they fail to meet the regulatory requirements for such documents and should be extensively revised.

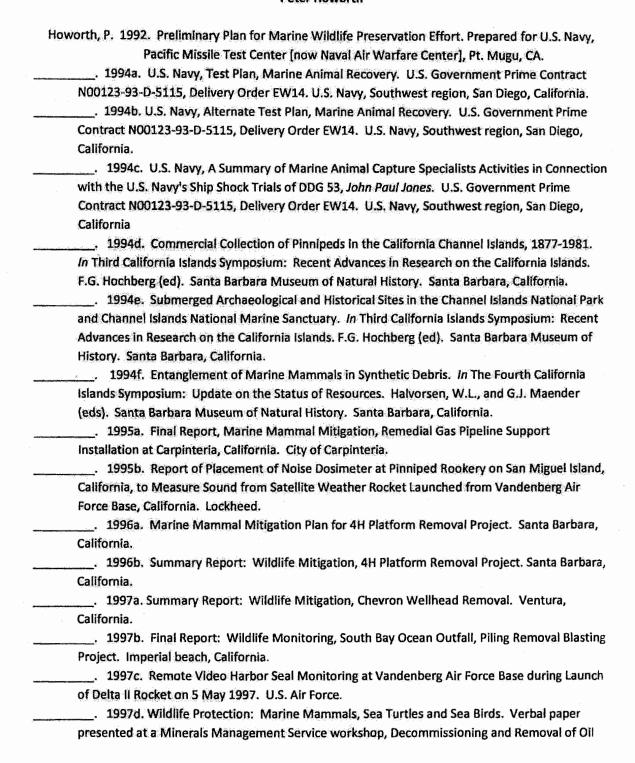
Respectively Submitted,

Peter Howorth 389 North Hope Avenue Santa Barbara, California 93110-1572

Coples:

Santa Barbara County Planning Commission California Coastal Commission National Marine Fisheries Service

Literature from Recent Projects Peter Howorth



and Gas Facilities Offshore California: Recent Experiences and Future Deepwater Challenges.	
Ventura, California.	
1998a. Acoustic Monitoring Plan for Mobil Seacliff Pier Decommissioning Project	
Northwest of Ventura, California. Plan to satisfy California Coastal Commission requirements.	
1998b. Wildlife Protection Plan for Mobil Seacliff Pier Decommissioning Project Northwes	t
of Ventura, California.	
1998c. Wildlife Protection Plan for Remedial Gas Pipeline Repairs at Carpinteria,	
California, March-May 1998.	
1998d. Final Report: Wildlife Monitoring, Geophysical Tests of Well HA-26, Exxon Platform	n
Harmony, Gaviota, California.	
1998e. Wildlife Protection Plan for Pacific Operators Offshore, Power Cable Repairs at	
Carpinteria, California.	
1998f. Final Report: Wildlife Monitoring, Chevron Remedial Gas and Oil Repairs,	
Carpinteria, California.	
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DUDEK

MEMORANDUM

To:

CPH Dos Pueblos Associates, Howard Zelefsky, Brooks Street

From:

DUDEK

Subject:

Response to the County of Santa Barbara Planning Commission Inquiries and

Peter Howorth's comments regarding Potential Disturbances to the Harbor

Seal Haul Out at Paradiso del Mare

Date:

October 4, 2013

This Memorandum has been prepared to address the County of Santa Barbara Planning Commission Inquiries and Peter Howorth's comments regarding Potential Disturbances to the Harbor Seal Haul Out at Paradiso del Mare.

The harbor seal (*Phoca vitulina*) is protected at haul outs onshore under the federal Marine Mammal Protection Act of 1972 and under the California Coastal Act and the Santa Barbara County CLUP (County 2009). The harbor seal is found along coastlines in temperate regions throughout the Northern Hemisphere. In California, it is fairly common along the length of the coast, as well as at offshore islands, such as the Channel Islands. It forages for fish, crustaceans, and mollusks in shallow waters along the shore and often seeks refuge in the same waters (Zeiner et al. 1990). However, harbor seals will also rest and seek warmth on shore at haul outs while not feeding. In addition, females rely on haul out sites for giving birth and for nursing and attending their pups (Seal Sitters 2008-2013, Zeiner et al. 1990). Females in southern California give birth from late February through April and nurse for three to four weeks before weaning and abandoning their pups. Harbor seals also spend considerable time at haul outs while molting, so that the number of seals at these sites peaks in late May to early June, when the molt schedules of adults and juveniles overlap (Stewart and Yochem 1994). Haul outs occur on sandy, gravelly, and cobbly beaches, as well as intertidal rock ledges and offshore rocks (Zeiner et al. 1990, Stewart and Yochem 1994).

The Santa Barbara County CLUP cites the Naples seal haul out as one of four "rookeries and hauling grounds" on the mainland coast of the county, along with haul outs at Carpinteria, Goleta, and Point Conception. It notes that the Naples haul out is approximately 0.6 kilometers (0.37 miles) east of Naples Point, that it is used during the day and night, and that as many as 165 seals have used the location. Policies pertaining to seal haul outs are as follows:

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EXHIBIT 14

A-4-STB-14-0010

Dudek Memorandum

- 9-24: Recreational activities near or on areas used for marine mammal hauling grounds shall be carefully monitored to ensure continued viability of these habitats.
- 9-25: Marine mammal rookeries shall not be altered or disturbed by recreational, industrial, or any other uses during the times of the year when such areas are in use for reproductive activities, i.e., mating, pupping, and pup care.

The CLUP also notes that harbor seals use rookeries from February through April (County 2009). In addition to provisions of the CLUP, seal haul outs are protected under the Marine Mammal Protection Act of 1972 (MMPA). The MMPA prohibits "take" of all marine mammals, and defines "take" as "to harass, hunt, capture, or kill any marine mammal." Under the 1994 amendment of the MMPA, the definition of "harassment" as defined as including any act that "has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." In relation to the Naples seal haul out, this definition would particularly apply to any disruptions of seal behavior during the pupping season.

The influence of human disturbance on the behavior of harbor seals at seal haul outs has been widely studied (e.g., Allen et al. 1984, Calambokidis and Jeffries 1991, Suryan and Harvey 1999, Acevedo-Gutierrez and Cendejas-Zarelli 2011). A variety of disturbances, including motor boats, kayaking, and pedestrian disturbances (including people attempting to view harbor seals at haul outs) have been identified as causing seals to depart haul outs, potentially depriving harbor seals of needed rest and warmth, and disturbing females and pups during their most vulnerable period (Allen et al. 1984, Calambokidis and Jeffries 1991, Suryan and Harvey 1999, Acevedo-Gutierrez and Cendejas-Zarelli 2011). Studies have focused on disturbance events at existing colonies rather than on the effects of existing developments on seals at haul outs. Several studies, for example, have suggested that when a subject in plain sight approached a haul out within 300 feet, on looking seals began to enter the water (Allen et al. 1984, Calambokidis and Jeffries 1991). Suryan and Harvey (1999) found that disturbance from power boats could occur at up to 900 feet.

Ocean Lot Development at Paradiso del Mare

Residential Development

The harbor seal haul out is located on the beach, south-southeast of the ocean and inland lot development envelopes, between Tomate Creek and Drainages 4 and 5, and immediately below the ocean bluff that is situated approximately 55 feet above the beach. The ocean terrace within and to the south of the ocean lot contains two breaks in the bluff slope, one above the other.

forming two abrupt "steps" to the beach. The first break in slope is approximately 180 feet south of the ocean lot development (see House/Bluff Relationship Diagram) and steeply descends to the east toward Drainage 6 and to the west towards Tomate Creek; however, the slope is more gradual to the south until the beginning of the second break in slope (which defines the bluff edge or "top of bluff"), which is an additional 86 feet south. The bluff edge is approximately 180 feet south of the ocean lot development (see House/Bluff Relationship Diagram), and becomes steeper, nearly vertical closer to the beach, where the haul out exist.

Although the bluff creates an obvious vertical barrier between the proposed ocean lot residence and haul out, the horizontal distance between the subject sites is also substantial. The footprint of the inland lot is approximately 1,148 feet north from the seal haul out. The nearest portion of the ocean lot residence to the haul out, western and eastern extent is 375 feet and 603 feet, respectively. The ocean lot development envelope is located 326 feet from the western extent of the haul out nearest Tomate Creek, which is its closet point when harbor seals occupy this area of the haul out (see Exhibit CO.10 – Seal Haul Out Diagram). The distance between the development envelope and eastern extent of the haul out is 523 feet. Given the footprints of the ocean lot residence and development envelope are setback a minimum of 375 and 326 feet, respectively, from the seal haul out and that views of the site and sounds emanating from the location are obstructed by the bluff, no direct impacts are expected from the proposed residential development.

Construction

Staging Area

The staging area for the ocean lot is at the southern end of the development envelope, approximately 326 feet from the beach at its closest point (directly south of the site) and approximately 603 feet from the seal haul out to the southeast. As the staging area is on the top of the bluff, at 70 feet elevation, the actual distance is greater, but only slightly (by approximately 5 feet). Although the staging and storage area is in the area of the development envelope closest to the seal haul out, activities within the staging area would result in a low disturbance compared with construction activities occurring elsewhere in the development envelope. Finally, as the staging area would be within the development envelope, it would not encroach within the 150-foot buffer of the top of the bluff. Activities occurring there would not be visible from the seal haul out, or from the beach in general. Noise from construction

¹ It should be noted that all bluff setbacks to proposed ocean lot development are based on the ocean lot residential redesign concept intended to accommodate Mitigation Measure BIO-9a requiring a 100-foot setback for all structural development from the the white-tailed kite nest tree observed on the site in 2013.

activities or human presence at the staging area would be reduced due to the acoustic shielding provided by the presence of the bluff between the development envelop and the adjacent beach areas (see noise discussion, below).

Noise

Noise can potentially influence harbor seal behavior at haul outs. Acevedo-Gutierrez and Cendejas-Zarelli (2011) studied the effects of noise disturbance on harbor seal haul outs in Bellingham, Washington, Contrary studies at other sites, Acevedo-Gutierrez and Cendejas-Zarelli (2011) found that harbor seals in the Bellingham sites used haul outs more at night, when decibel levels were much lower (averaging 62.5 and 59.4 dBA approximately 100 meters from the haul out at two different sites), compared to the day, when noise levels averaged 75.3 and 71.0 dBA at the two sites. The FEIR determined that heavy equipment used during construction is expected to produce noise levels up to 95 dB 50 feet from the point of source. This peak construction noise level is often sited to address generic construction activities; however, it is based upon a large fleet of heavy construction equipment operating simultaneously at a major construction site. A more accurate evaluation of the anticipated construction noise levels from a specific equipment fleet can be accomplished with the use of the Federal Highway Administration (FHWA) Roadway Noise Construction Model (RCNM). The model includes noise emissions levels for all common construction equipment, as well as the typical loading or use factor for that type of equipment. For the ocean lot construction, anticipated heavy construction equipment would include a dozer, a backhoe, a dump truck, and an air compressor. Based upon this equipment fleet, RCNM calculated an average construction noise level of 81 dBA at 50 feet from the construction activity (see the attached print-out from the RCNM program).

For "soft site" conditions, where vegetation or loose dirt comprises the ground cover, an attenuation rate of 7.5 dBA per doubling of distance from a point source (such as construction equipment) to a receiver is applicable. The undeveloped conditions on the subject property constitute a soft site. The average construction noise level of 81 dBA at 50 feet from the construction activity would therefore be attenuated to 60 dBA at 350 feet, and to 57 dBA at 450 feet from the construction activity. These distances represent the closest point of the adjacent beach area to the construction site within the staging area, and the closest point of the seal haul-out to the construction site within the staging area.

In addition to the distance attenuation described above, the sea cliff would interrupt the direct path of travel for noise between the construction site and the beach area, reducing the total noise exposure on the beach from construction activity. The top edge of the sea cliff represents a noise barrier between the noise source and the beach face below. The effect of

the sea cliff on noise reduction is evaluated with a standard barrier calculation, using the ground elevation of the noise source, the top elevation of the "barrier" (the sea cliff elevation) and the elevation of the beach, each with a relative distance specification. The attached barrier calculation worksheet provides the analysis of attenuation provided by the sea cliff; both at the closet beach location and at the closet point of the seal haul out. The elevation for the construction source was specified at 80 feet (10 feet above the ground elevation within the staging area, to account for the height of equipment exhaust, as a worst-case). The sea cliff was specified to have a height of 45 feet, to account for some lower elevation cliffs adjacent to the primary cliff face of 55 foot elevation (representing the minimum attenuation that would be provided by the cliff complex). As indicated on the attached worksheet, the average noise level from construction within the staging area (the closest distance of construction to the seal haulout) would be 37 dBA.

The Community Noise Equivalent Level (CNEL) is often used to describe the ambient noise environment. This 24-hour average includes weighting for the evening and overnight periods, when noise is more disruptive. The ambient noise level on the beach area adjacent to the site is assumed to be approximately 40 dBA CNEL, representative of a rural environment with few noise sources. Given construction activity only between 8 AM and 5 PM, the average construction level of 37 dBA at the closest point of the seal haul-out would equate to an ambient noise level of 33 dBA CNEL. Construction would therefore not cause an increase to the existing ambient (CNEL) noise level within the seal haul-out area. Therefore, sound levels during construction would be reduced to an acceptable level for harbor seal pupping and daily interaction and activities.

Ground Vibrations

Ground vibrations from grading could also potentially influence seals' willingness to use the haul out. In general, the variety of factors influencing the attenuation of ground vibrations makes it difficult to predict. The intensity of vibrations is influenced by geometric attenuation, or the gradual transfer of energy over a larger area as vibrations spread farther from the source, as well as hysteretic attenuation, or material damping. The latter involves how various factors within the soil, such as friction, soil layering, and voids in the soil, affect diminishing energy in ground vibrations. Therefore, no simple formula is available for determining how the intensity of ground vibrations will increase over distance (Caltrans 2002). Regardless, vibrations from grading will be relatively minor at the site. The analysis presented in the EIR predicted that vibrations from bulldozers, identified as the loudest source of ground vibrations due to the project, would result in a ground vibration level of 87 vibration decibels (VdB) at 25 feet. Regardless of their unpredictability, ground-borne vibrations are generally limited to areas within a few hundred feet of construction activities (USDOT 2006). Given the distance of

Paradiso del Mare Harbor Seal Haul-Out

several hundred feet from the point of source of vibrations, the effect of ground vibrations on seals using the hauf out would likely not be discernible.

Visual Impacts

As seals are considered to be sensitive to human presence, some potential exists for impacts to the seal haul out from construction, should it be visible from the haul out. Should construction take place during the pupping season, the activities of construction machinery and humans could cause seals to abandon the rookery, therefore endangering the lives of seal pups, or deter seals from using the haul out altogether. However, as the haul out is located at the foot of a steep 55-foot bluff, a 150-foot buffer has been established between the development envelope and the ocean bluff, and as the footprint of the ocean lot residence is located an additional 30 feet inland of the southern edge of the development envelope, construction activities will not be visible from the haul out.

Post-Construction

Noise

As noted above, noise can potentially influence harbor seal behavior at haul outs. However, long-term noise levels from residential activities occurring at the ocean lot residence are not likely to reach those occurring during construction and, therefore, are not expected to influence seal haul out behavior.

Visual

As mentioned above, seals are considered to be sensitive to human presence, and some potential exists for impacts to the seal haul out from the project. Should the ocean lot residence be visible from the haul out, the presence of man-made structures could cause seals to avoid use of the current haul out. However, as noted above, the haul out is located at the foot of a steep 55 foot bluff, a 150-foot buffer has been established between the development envelope and the ocean bluff, and the footprint of the ocean lot residence is located an additional 30 feet inland of the southern edge of the development envelope. Therefore, the residence will not be visible from the haul out.

Resident Beach Access

Based on experiences reported in scientific literature and by groups monitoring seal haul outs in populated areas, it appears that harbor seals are easily disturbed by human approach by boat or along the beach. Beach-going humans approaching the haul out may disturb harbor seals.

However, haul outs in populated areas, where people are allowed to approach within much less than 100 feet on bluff tops and sea walls, persist with the aid of seasonal beach closures. Future residents will not be permitted to access the beach from the Ocean Lot via Tomate Canyon, will be required to comply with all provisions of the seal protection/restricted access plan required pursuant to MM BIO-12, and will additionally be required to accept a "Notice to Property Owner" as presented below:

Prior to issuance of any Coastal Development Permit, the Applicant shall record a "Notice to Property Owner" (NTPO) to ensure residents are advised of the responsibilities associated with living near the sensitive habitats and special-status species documented on the project site. The NTPO shall include specific information related to the seal haul-out, white-tailed kite, and other sensitive species occurring on the property as identified in the FEIR for the project. The NTPO shall be reviewed and approved by the Planning and Development Department and County Counsel.

<u>Lighting</u>

Changes in lighting relating to the ocean lot residence have the potential to impact the seal haul out. Exterior lighting and light emanating from windows facing the ocean would potentially represent substantial changes that would deter seals currently using the haul out at night from continuing to do so. The FEIR requires that the applicant develop a lighting plan that will ensure that exterior lighting is of low intensity and directed downward, onto the ocean lot itself. The lighting plan will be subject to review by the Central County Board of Architectural Review (CBAR) and will ensure that exterior lighting:

- Conforms to standards of the International Dark-Sky Association and the Illuminating Engineering Society of America.
- Use fully shielded lamps so that the lamp image is not visible beyond the area illuminated.
- Avoid creating glare, light spillover, and upward illumination of the sky.
- Use low-intensity and low-glare designs.
- Use motion, light, and time sensors that limit the period of illumination.
- Include poles, fixtures, and hoods that do not reflect light.
- Do not include uplighting of landscaping or structures.

 Minimize the location of exterior lighting necessary for safety purposes along driveways, roads, and parking areas.

While the lighting plan will limit exterior lighting and contain lighting within the ocean lot, potential impacts from exterior lighting are further limited by natural barriers that would keep light from reaching the haul out. The presence of a steep 55-foot bluff adjacent to the haul out is likely to keep exterior light from reaching the haul out. In addition, as all residential uses will be contained within the development envelope, which will be located 150 feet north of the bluff, the ability of light from the home to reach the beach is further limited. These obstructions are also expected to limit the ability of light emanating from windows to reach the haul out.

Coastal Trail Easement and Beach Access

Beach Access

As noted above, beach-going humans approaching the haul out may disturb harbor seals; therefore, beach access shall be restricted during the pupping season. The Santa Barbara County CLUP (County 2009) identifies February through April as the period during which rookeries are used. Other sources note that some seals may be born as early as December or as late as May (Carpinteria Seal Watch 2013). To prevent disturbance to seals, beach access trails within 900 feet of the rookery should be closed from February through May every year. Surfers have frequently accessed the Naples Reef during winter and spring months for decades, including via a steep, unauthorized trail that crosses down the ocean lot bluff and outlets directly onto the seal heal out near Tomate Canyon. With the proposed project, surfers and other members of the public would be granted easement rights to enter and exit the beach and water near the Naples Reef; however, the point of entrance/exit should be considered with an appropriate buffer from the haul out during harbor seal breeding season. No dogs shall be allowed on the beach. To determine the details of appropriate measures to protect harbor seals through restricted access, the FEIR MM BIO-12 requires that the County, under consultation with the National Marine Fisheries Service (NMFS) and the California Department of Fish and Wildlife (CDFW), develop a harbor seal protection/restricted access plan. Compliance with closure provisions and enforcement of closures will be the responsibility of the County.

Ocean Overlook

While restricting access to the beach during the pupping season provides important protections for harbor seals using the haul out by restricting human approach along the beach itself, harbor seals still would potentially be impacted by human presence on the bluff. Specifically, the EIR

identifies bluff top trails and an ocean overlook that would provide access to and along the ocean bluff that would potentially cause seals to abandon the haul out because of human presence on the bluff. However, the bluff top lateral access trail would be located along the UPRR right-of-way, well inland of the haul-out, to avoid construction of crossings over the steeply incised drainages in this portion of the Ocean Lot, and the proposed overlook is located approximately 700 ft. east of the seal haul-out. Therefore users of the bluff lateral trail and overlook would not be highly visible or audible to harbor seals using the haul out.

Other Southern California Rookeries/Haul Outs

While the studies mentioned above have focused on episodic disturbance, they have not addressed the effect of consistent human presence on harbor seal haul outs. The location of the subject seal haul is relatively isolated. However, several harbor seal haul outs in Southern California occur much closer to development. Two Southern California case studies are provided below:

La Jolla

A harbor seal haul out at Children's Pool in La Jolla, San Diego County, California, persists in an area surrounded by development, including public streets (Coast Boulevard) and hotels. Protected during the pupping season, this haul out occurs on a sandy beach at Seal Point. A sea wall constructed in 1931 allows people to view the haul out from less than 100 feet during the pupping season (Seal Sitters 2008-2013). A parking lot is at the top of a bluff approximately 30 feet high and less than 150 feet from where most of the seals occupy the beach. A large hotel is less than 300 feet away. The presence of the seal haul out is a controversial issue in La Jolla, where beach-goers and seal proponents are at odds over restrictions on human use of the beach. However, harbor seals continue to occupy the site.

Carpinteria

Closer to the site, approximately 25 miles east of the Paradiso del Mare haul out, is a harbor seal haul out in Carpinteria, California. This haul out is located adjacent to an oil facility at the southeastern corner of town and below the Carpinteria Bluffs. The Venoco oil pier is approximately 360 feet west of the haul out. The bluff at this location is approximately 60 feet high. At the top of the bluff, above the haul out, is a public viewing area where volunteers for the Carpinteria Seal Watch program monitor activities in the seal rookery from December to May, conduct regular counts of the seals present, prevent disturbances of the seals by humans and dogs, and provide educational information to the public (Carpinteria Seal Watch 2013). From December to May, the beach is closed for 750 feet in either direction from the haul out.

The sealwatch carpinteria com site reported in early 2013 that 2,348 people had visited the site in a single weekend. A high count of 221 adult seals and 36 pups had been present at the haul out (Carpinteria Seal Watch 2013).

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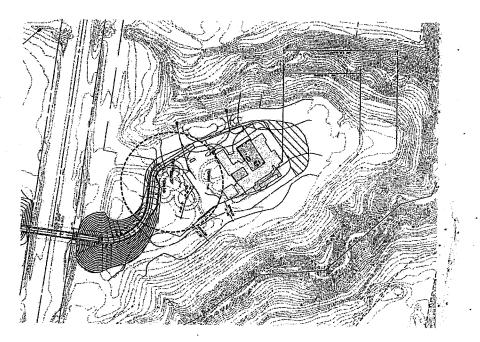
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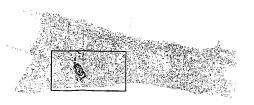
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HOUSE / BLUFF RELATIONSHIP DIAGRAM SCALE 1'- SO-O' SHEET NO. CALO #112 PARADISO DEL MARE

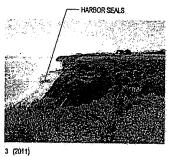


HARBOR SEALS

1 (2013)

2 (2013)

3 (2011)



FFTT VEW 2

HARBOR SEAL HAUL OUT



Roadway Construction Noise Model (RCNM), Version 1.1

Report date: Case Description:	8/22/20 Ocean Lot Cons						
				Rece	eptor #1		
		Baselines	(dBA)				
Description	Land Use	Daytime	Evening	Night			
Standard Reference Distance (50')	Residential	4	0 40)	40		
				Equipme	ent		
				Spec	Actual	Receptor	Estimated
		Impact		Lmax	Lmax	Distance	Shielding
Description		Device	Usage(%)	(dBA)	(dBA)	(feet)	(dBA)
Backhoe		No	40).	77.6	50	0
Dump Truck		No	40)	. 76.5	50	0
Compressor (air)		No	40)·	77.7	50	0
Dozer		No	40		81.7	50	
				Results			
		Calculated	i (dBA)				
Equipment		*Lmax	Leg				
Backhoe		77.0					
Dump Truck		76.	72.5				
Compressor (air)		77.	7 73.7				

81.7

81.7

Total

Dozer

77.7

80.9 *Calculated Lmax is the Loudest value. Paradiso Del Mar Ocean Lot Construction Noise

Distance Attenuation and Barrier Performance Evaluation

Average Noise Emissions Level from RCNM

Distance			Receiver	Resulting
Attenuation		Ref. Dist.	Distance	Noise Level
Calculation	Leq	(feet)	(feet)	(dBA Leq)
	81	50	350	60
	81	. 50	450	57

Distance to Beach Area Closest to Development Envelop
Distance to Seal Haul-Out (Closest Point to Development Envelop)

BARRIER (SEACLIFF) ANALYSIS:

Leq (h) at 50' (dBA) 81	Receiver Elevation (feet) 5	Source Elevation (feet) 80.0	Source to Receiver (feet) 350	Source to Barrier (feet) 300	Receiver to Barrier (feet) 50	Barrier (base) (feet) 0	Barrier Height (feet) 45.0	Fresnel No. at 500 Hz 7,25	Barrier Attenuation (dBA) 22	Leq w/o Barrier (dBA) 60	Leq w/Barrier (dBA) 40
81	5	80.0	450	400	50	٥	45.0	8.35	22	57	37

Construction CNEL at Beach - Closest Point to Development Envelop

36 dBA CNEL

Construction CNEL at Seal Haul-Out - Closest Point to Development Envelop

33 dBA CNEL

Response C2-1

Comment noted.

Response C2-2

The section has been updated to note "2013 site specific status" rather than overall status of kite presence on-site.

Response C2-3

Thank you. The dual reference has been removed.

Response C2-4

Comment noted. There have been numerous studies conducted on the subject property.

Response C2-5

Comment noted. The coastal site both supports the vast majority of trees in general and nest trees in specific.

Response C2-6

Correction made.

Response C2-7

Comment noted. Clarifying language has been added based on your comment.

Response C2-8

Correction made.

Response C2-9

Edit 1, Paragraph 1: "High" has been changed to "higher." Higher and more sustained, means that there are a limited number of vehicle trips typically associated with a single family residence whereas it is expected that residents would be present in/around the main residence and guesthouse on a 24 hour basis. Therefore, there would more frequently be noise, light and human activity at and directly around the homes than at the driveway, which would see a limited number of vehicle trips each day.

Edit 2, Paragraph 2: Partial text change made.

DUDEK

621 CHAPALA STREET SANTA BARBARA, CALIFORNIA 93101 T 805.963.0651 F 805.963.2074

October 24, 2013

To:

Nicole Lieu, Planner

Anne Almy, Supervising Planner

From:

Dudek

Subject: Comments on the Recirculated Biological Resources Section of the Draft Environmental Impact Report for the Proposed Paradiso de Mare Ocean and Inland Residential Development

On behalf of CPH Dos Pueblos Associates (CPH), Dudek is submitting comments on the Recirculated Biological Resources Section of the Draft Environmental Impact Report for the Proposed Paradiso de Mare Ocean and Inland Residential Development (Case #09EIR-00000-00003; SCH #2008031101). In addition to the specific comments provided on the Recirculated Biological Resources Section of the Draft Environmental Impact Report detailed below, we are providing the following attached technical memorandums in support of the analysis and findings of the Recirculated Biological Resources Section of the Draft Environmental Impact Report, and to address general comments and questions received from members of the public and Planning Commissioner relative to potential impacts to white-tailed kite and harbor seal haul-out habitat:

- 2013 Nest Survey Results for the White-Tailed Kite on the Paradiso del Mar Project Site and Recommended Revisions to the Paradiso del Mare Ocean and Inland Estates EIR, August 16, 2013 (Previously Submitted)
- White Tail Kite Buffer for Tree 184 Paradiso Del Mare Project, August 23, 2013 (Previously Submitted)
- Response to the County of Santa Barbara Planning Commission Inquiries and Peter Howorth's comments regarding Potential Disturbances to the Harbor Seal Haul Out at Paradiso del Mare

1. Page 3.4-1, line 24.

Site-specific status [of the white-tailed kite]

Comment: Dudek conducted focused white-tailed kite nest surveys in 2013 to document breeding behavior, nest location(s) and activities, and the ultimate outcome of white-tailed kite nesting in the spring of 2013. The site-specific "status" of the species changes year to year, meaning two nesting attempts on-site isn't typical. A comprehensive review of the kite observations on-site using data from 1998 to 2013 is best to determine site-specific status of the species. The 2013 was very focused on the nesting pairs of kites and their behaviors through the nesting season.

2. Page 3.4-2, line 5

WWW.DUDEK.COM

EXHIBIT 15

A-4-STB-14-0010

Dudek Kite Reports

1

Dudek & Associates, Purple Needlegrass Grassland evaluations and mapping Spring and Summer 2011.

Comment: This was part of the Dudek & Associates. "Biological Survey Report for the Paradiso del Mare Residential Project." As referenced on page 3.4-4, line 27.

3. Page 3.4-53. lines 1-3

Although long-term data on the regional white-tailed kite population have been collected (Holmgren unpublished), observations on the subject parcels are less consistent and relatively short-termed. The relationship between the project site and regional white-tailed kite population is unknown.

Comment: The project site has been examined for white-tailed kite use since 1998 and consistently or systematically since 2002 (line 12). Holmgren's data, although unpublished, is available. Dudek reviewed the status of the white-tailed kite on the project site as documented by 14 years of data collected on-site and, where possible, compared the on-site observations to available regional data collected by Holmgren. In 2011, the region's white-tailed kite nesting population was at a peak (43 nesting pairs), while the site did not have nesting kites. The EIR should reflect that more white-tailed data exists for the project site than most other areas in the County (beside More Mesa) including other areas undergoing development and/or the County's environmental review process.

From Dudek's (2011) Status of the White-Tailed Kite on the Paradiso del Mare Residential Project Site, County of Santa Barbara, California

Please refer specifically to the underline section below for further information regarding available regional white-tailed kite population data, which, when considered in context with the results of the systematic surveys conducted on-site over 14 years as described on pages 3.4-53 – 3.4-55 of the EIR, does provide comparative information regarding the relationship between the project site and regional white-tailed kite-population.

"The white-tailed kite is an uncommon resident near the coast and in interior valleys of Santa Barbara County. Although Waian (1973) found more kites in the Santa Ynez Valley in spring and summer compared to fall and winter during 1966-1968, the reverse is true along the coast, where kites are more common in fall and winter, especially in the vicinity of nocturnal roosts (Lehman 1994). As elsewhere, the white-tailed kite population in the County has fluctuated dramatically. Numbers peaked during the 1970s, when more than 100 individuals were recorded in the vicinity of Barka Slough, Vandenberg Air Force Base, and at More Mesa, bordering Santa Barbara and Goleta. A sharp decline in this species after 1977 is evident in Santa Barbara Christmas Bird Count data. From a high of 51 kites recorded on January 2, 1977, numbers dropped gradually until none were recorded during the counts for 1991-1992 and 1992-1993. However, 24 kites were recorded on January 1, 1994 (NAS 2011). During that winter, up to 25 kites were recorded roosting nightly in a lemon orchard in Goleta (Lehman 2011). Numbers continued to rise in subsequent years, to a high of 45 on January 2, 2000, before declining again to a low of 9 on January 5, 2008 (NAS 2011). Since

4

the 1990s, the kite population in the Goleta area has been closely monitored by local biologists and bird watchers. Larger communal roosts in the 1990s and early 2000s held up to 42 individuals. Nesting has been monitored from the vicinity of Gieneguitas Creek (near SR-154 and Foothill Road) westward to Winchester (Bell) Canyon (Holmgren 2011). A recent high of 14 pairs in this area was recorded in 1998 (Lehman 2011). A preliminary (midseason) total of 12 pairs were recorded in 2011, and more pairs may have been detected later in the season. Seven of these pairs were confirmed to have produced young, while the remaining four may have been breeding as well. At an additional site outside the study area in Santa Barbara, at the Santa Barbara Botanical Garden, a pair produced young. The overall number of nesting pairs and occupied foraging areas within the study area were up in 2011 compared to recent years (2009 and 2010) and comparable to the recent peak period in kite nesting activity in 1998-2000 (Holmgren 2011)."

4, Page 3.4-53. line 30

Supports the vast majority of trees on the site

Comment: Add "suitable nest" before trees.

5. Page 3.4-55. line 3

Edit: Replace "Birds" with "Kites"

6. Page 3.4-63. lines 10-11

Edit: The seal haul out is on the beach between the mouth of Tomate Canyon to the west and the mouth of Drainage 4/5 to the east. It is approximately 180 meters in length.

7. Page 3.4-102, BIO-9 Impact Analysis

Correction: Please correct the middle of first paragraph and bottom of third paragraph of this page which collectively state that the proposed project would remove the nest tree identified in 2013 and would place development directly beneath the canopy of adjacent trees.

As described in the Arborist Report prepared for the project (Dudek 2011), the 2013 Nest Survey Results for the White-Tailed Kite on the Paradiso del Mar Project Site and Recommended Revisions to the Paradiso del Mare Ocean and Inland Estates EIR (August 16, 2013, and the White Tail Kite Buffer for Tree 184 — Paradiso Del Mare Project (August 23, 2013), as proposed, the Ocean Lot residential development would not result in direct impacts (removal) to Tree 184, which had a successful white-tailed kite nest of six juveniles during the 2013 survey period. The Arborist Report prepared for the project (Dudek 2011), and the EIR analysis identify project impacts associated with removal of two previously documented perch trees within the Ocean Lot development envelope (tree numbers #406 and #187; tree #187 was previously identified for removal and replacement but fell down during the 2012/2013 winter season) and a single Eucalyptus tree located on the Inland Lot near the site entrance.

8. Page 3.4-103, BIO-9 Impact Analysis

Edit 1: First paragraph, seventh line. Remove or define "high" and "more sustained" activity level typically associated with a single family residential use.

Edit 2: First paragraph, tenth line. Change "...human activity than provided by the proposed project design" to "human activity associated with the single family residence proposed within the Ocean lot.

9. Page 3.4-103, BIO-9 Impact Analysis

Edit 1: Second paragraph, third line. Replace "high activity" use areas with "more sustained activity levels".

10. Page 3.4-105, MM BIO-9a.

The County-Identified mitigation measure to establish a 100-foot structural and 75 foot driveway buffer from the 2013 nest tree appropriately directs a minor redesign of the Ocean Lot development that would minimize impacts to not only the documented 2013 nest tree (Tree 184) but also to all clusters of potential, suitable nest trees on the Project site. In the case of the proposed residential development on the Ocean Lot, the determination of a sufficient buffer has considered current habitat conditions and the white-tailed kite's ecological requirements, nest selection tendencies, level of proposed disturbance, and other sensitive site constraints, in their entirety.

The Project Team has studied redesign options for the Ocean Lot and has determined that such a mitigation measure may be accommodated with minimal changes to the site plan (see attached conceptual Site Plan for the Ocean Lot redesign) that: 1) maintains all development within the originally proposed residential development envelope evaluated in the EIR and therefore does not create other impacts, 2) realigns the driveway to completely avoid all tree clusters and eliminates all previously identified impacts to potential perch/nest trees on the Ocean Lot; the realigned driveway would maintain a minimum 75' buffer from the nest tree, 3) clusters the main residence and guest house and slightly relocates the Ocean Lot residence south (approximately 10 feet) such that all habitable structures are setback 100 feet from the 2013 nest tree, and 4) eliminates the 1.7-acre agricultural envelope on the Ocean Lot to eliminate the potential for agricultural uses to occur within or near the foot nest tree buffer.

In addition, the conceptual redesign minimizes visibility of the driveway berm from Highway 101 and results in a slight reduction of grading when compared to the original proposal, and continues to provide an ample bluff setback (a minimum of 180 feet) to ensure the residential structures are not visible from the beach below the site.

11. Page 3.4-106, MM-BIO-9b.

10

Comment 1: A 300-foot buffer for a common migratory or resident bird is excessive, depending on the species and sensitivity to disturbance.

Comment 2: There should be provisions to reduce buffers depending on the type of construction activities or at least allow construction activities with less noise or disturbance to continue outside of an acceptable buffer, as determine by P&D in consultation with the Project Biologist, CDFW and/or USFWS, as applicable. This would apply to raptors and special-status species.

12. Page 3.4-107, MM-BIO-9b.

Edit: First sentence. Add ... and may be adjusted (reduce or increased) depending on construction activities.

13. Page 3.4-111-112, MM-BIO 10

Correction: Please change Conservation Easement acreage from 106.8 acre to 117 acres to reflect the proposed site plan with implementation of the mitigation measure.

Comment: Please clarify the Adaptive Management component of the mitigation measure such that the adaptive management plan is applicable to: 1) ensuring that performance criteria are achieved for the proposed 23.5-acre restoration area as detailed in the Conceptual Upland and Riparian Mitigation and Monitoring Plan and 2) ensuring fulfillment of the requirements of MM-BIO 10 Conservation Easement Maintenance relative to preventing the spread of black mustard and shrubby vegetation within the Conservation Easement, as applicable to maintaining adequate white-tailed kite foraging habitat.

14. Page 3.4-116, MM BIO-12

Edit: Bullet point 2, second sentence: Change "north and south" to "east and west."

15. Page 3.4-117, BIO-13 Impact Analysis

Edit: First paragraph under BIO-13, third line. Add "southwest and" before "south of..."

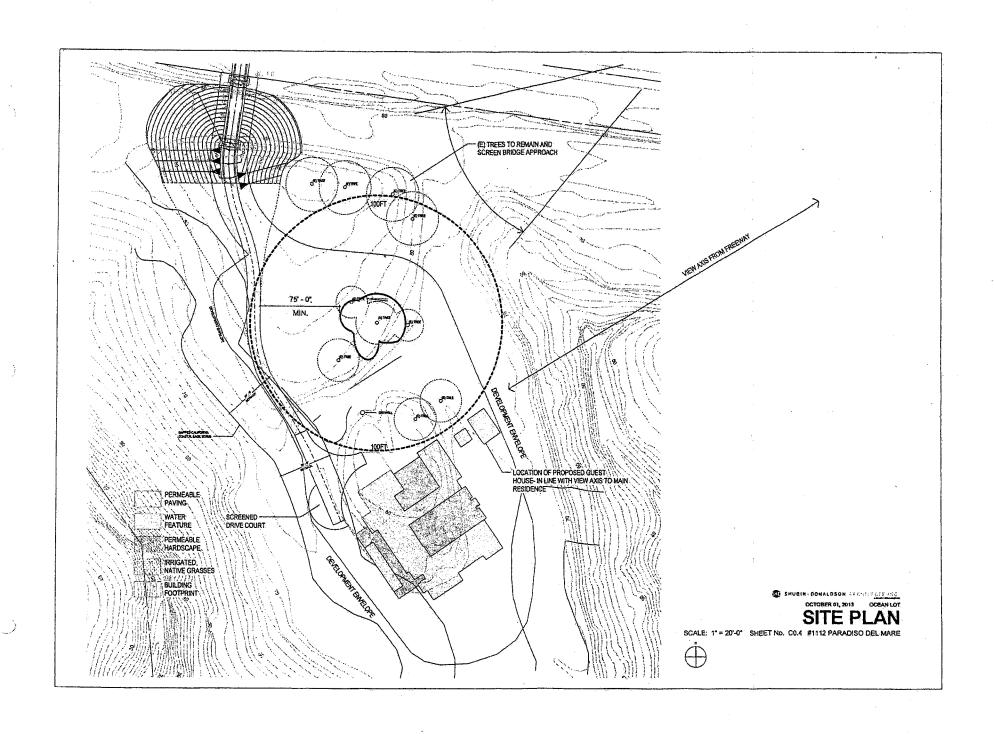
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August 16, 2013

Job No. 6981

CPH Dos Pueblos Associates C/O Howard Zelefsky Brooks Street 1300 Quail Street, Suite 100 Newport Beach, CA 92660

Subject:

2013 Nest Survey Results for the White-Tailed Kite on the Paradiso del Mar Project Site and Recommended Revisions to the Paradiso del Mare Ocean and Inland

Estates EIR

Dear Mr. Zelefsky:

Dudek has conducted focused white-tailed kite (Elanus leucurus) nest surveys on the Paradiso del Mare Residential Project site (Project Site), west of the City of Goleta, in unincorporated Santa Barbara County. The purpose of the surveys was to document breeding behavior, nest location(s) and activities, and the ultimate outcome of white-tailed kite nesting in the spring of 2013. Foraging or hunting (strikes, prey capture and exchange) was also noted for the breeding pair(s) of kites. Additionally, this letter report presents recommended revisions to the Paradiso del Mare Ocean and Inland Estates Environmental Impact Report (EIR) as it applies to the white-tailed kite nest findings disclosed herein. In order to remain focused on the 2013 white-tailed kite nest surveys and EIR errata, previously prepared technical documents are referenced. These reports provide extensive details on the historical and recent activities of the white-tailed kite (Dudek 2011a), a site-specific impact assessment for the white-tailed kite (Dudek 2012), and conceptual habitat restoration for prey and kite hunting habitat under a proposed conservation easement (Dudek 2011b). Each of the mentioned documents has been made available by the County of Santa Barbara (County) to the public as part of the EIR process.

SITE LOCATION

The approximately 142.9 acre Project Site is located south of US Route 101, approximately 0.4 miles west of the City of Goleta and is bordered by US Route 101 on the north and the Pacific Ocean on the south, and is surrounded by land zoned for a mix of rural residential and agricultural uses with a range of parcel sizes (Figure 1). Immediately adjacent properties are generally undeveloped or are used for agriculture (primarily livestock grazing) and support a mix of grassland, coastal sage or bluff scrub habitats. Intermittent and ephemeral streams (i.e., drainages) are vegetated with native riparian and/or scrub vegetation or non-native eucalyptus.

Large rural agricultural parcels and smaller lots on a portion of the historic Naples Townsite directly west of the Project Site and north of the highway are zoned Agriculture II with a minimum parcel size of 100 acres. To the east are two parcels of approximately 22 and 38 acres zoned Rural Residential (with a minimum parcel size of 40 acres). An access road, parking area, and pier used by Veneco, Inc. to service offshore oil facilities are located on the easterly adjacent 38-acre parcel.

METHODOLOGY

The Project Site was surveyed for nesting white-tailed kites a total of seven times between March 13 and June 13, 2013. Due to the open nature of the site and surrounding area, biologist(s) were able to observe kite movements well from the wooden bridge on-site and along the Union Pacific Rail Road (UPRR) right-of-way (ROW) that bisects the site east to west. Five of the seven surveys occurred over three to four hours. All surveys were completed in the morning, all initiated by 8 A.M., and ending prior to noon to allow for observations of the white-tailed kites when they are typically most active. Surveys were conducted approximately every three weeks; however, two shorter surveys were conducted as follow-up to the standard nest surveys to provide guidance to Brooks Street in preparation for site visits by the California Coastal Commission, County of Santa Barbara, and local stakeholders. The biologist(s) worked independently and carried high quality optical equipment (Table 1). During the surveys, special attention was given to breeding behaviors, nest building, observed or suspected nest behaviors and activities (incubation, prey delivery, etc.), foraging or hunting, territorial displays, and nest success (nestlings and fledglings), or failure.

Table 1. Optical Equipment used for White-tailed Kite Surveys

Biologist	Binocular	Scope	
John H. Davis IV	Pentax DCF SP 8x43	Nikon 80mm 20x – 60x	
Dave Compton	Swarovski EL 10 x 42	Vortex Razor 85mm 20x – 60x	
Randali McInvale	Nikon Prostaff 7 8 x 42	Zhumell 80mm 20x – 60x	
Paul Collins	Swarovski EL 8.5 x 42	Kowa ProMinar TSN-4 40x-60x	

All suitably sized trees within the Project Site were searched for white-tailed kite nests, especially if kite behavior indicated potential breeding or nest building. Each biologist located observation points allowing for the greatest possible viewshed, so that the entire Project Site would be covered. Once these locations were established, primarily the bridge and locations along the UPRR ROW near its junction with Tomate Canyon, the biologist would remain at the location for an appropriate amount of time while noting white-tailed kite observations. At the conclusion, the biologist would move to another location (if it was decided a better view was required) and repeat the process. This methodology continued during the survey until the entire site was thoroughly covered and visually inspected. A Trimble Geo XT Global Position System (GPS) unit, capable of sub-meter accuracy, was utilized in the field to map nest locations. The data was uploaded into ArcView 10.0 software. Foraging or hunting activities were noted in conjunction with the breeding and nest activities.

RESULTS

Two pairs of white-tailed kites displayed evidence of breeding on the Paradiso del Mare Residential Development Project Site during the 2013 survey period. One pair had a successful nest of six juveniles (counted as fledglings) in a Monterey pine tree within the Ocean Lot, while the second pair associate with Monterey cypress trees along the bluff near the mouth of Eagle Canyon appeared to have abandoned the nest, deeming it unsuccessful (*Table 2* and *Figure 2*). The Ocean Lot pair was first observed nest building and displaying other breeding behavior (leg dangling, calling, copulation, etc.) and nest building by Dudek on March 13. Typical breeding behaviors continued until May 13, when only one bird was evident. After observing the kite successfully harvest prey from an adjacent field west of the Ocean Lot, the kite was observed presenting the kill to the bird on the nest, presumably the female kite, which at that point, was assumed to be incubating eggs. On May 30, the first nestling was observed exercising its wings. Nearly two weeks later, on June 13, six fledglings were seen making short flights and perching on the nest tree. For a couple of the fledglings, perhaps their first flight was witnessed at the time of the June 13 survey. Continual foraging, at times successful, was observed over the area west of the Ocean Lot and Tomate Creek, north and south of the UPRR ROW, very similar to the areas previously observed and delineated by Dudek (2011).

The breeding behavior and nest building of the Eagle Creek pair was initiated in April and continued through much of the spring before dissipating in late May. A pair of kites was observed on April 4 in courtship flight (flutter-flight and leg dangling). Pair bonding was further confirmed as the kites were repeatedly observed perched together at the top of a Monterey cypress. No nest building was observed, however, the Monterey cypress trees were partially obstructed by eucalyptus trees from the bridge and biologists did not venture closer to the suspected nest site to avoid disturbing breeding and potential nest behavior. No nest building or nest structures were seen at this site during the first six surveys, although biologists checked in on the kite pair frequently from a safe distance (i.e. the

bridge). As mentioned, the view from the bridge of the potential nest area was obstructed by eucalyptus trees, thereby making it challenging to see the potential nest site, prey exchanges or other important behaviors. The kite pair continued their presence near Eagle Canyon for a total of four surveys (March 18, April 4, April 10, and May 18); however, on May 30 and June 13, only one adult bird was observed and it was seen west of the bridge, perched on a Monterey cypress near open grasslands. Since the typical time period for incubation had elapsed and only one bird was observed over six weeks, it was determined that the nest attempt was unsuccessful. On June 13, the biologists determined it was safe to enter the potential nest area to search for the nest and evidence of success or nest failure. White-tailed kite nests are difficult to detect from the ground, so actually finding one was not the highest priority. If an active or successful nest was present, the kites would have been alert, flushed from perches, and possibly displayed territory behaviors and emitted frequent calls. The Eagle Canyon kites primarily hunted near the access gate in the northeastern portion of the Project Site. The remainder of foraging activities took place in two locations north of the eastern portion of the site across from US Route 101, over the south-facing slope covered with annual grassland. The foraging activity was similar to the areas previously observed and delineated by Dudek (2011).

Table 2. Summary of Conditions and Survey Results for the 2013 White-Tailed Kite Nest Surveys at the Paradiso del Mare Residential Project Site

Survey	Date / Time	Biologists ¹	Site Conditions ²	WTKI Observations ¹				
No.				Eagle Canyon	Ocean Lot			
1	March 13, 2013 7:02–11:06 A.M	Dave Compton	Sunny to overcast (25% to 75% marine layer), 0 to 2 mph breeze. Temperatures during survey ranged from 6°C (43°F) to 11°C (52 °F).	No nesting observations noted	1. WTKI perched on Monterey cypress and pine trees near future nest site 2. Two WTKI south of UPRR, flutter flight, leg dangling, chipping, eventually land on Monterey cypress tree as in 1 3. Breeding behaviors noted 4. Nest building initiated, WTKI visits tamarisk windbreak north of UPRR and between Tomate Canyon and Drainage 6 and breaks off branch and returns to Monterey cypress to construct nest 5. Majority of activity near and around future nest site			
2	March 18, 2013 7:1511:00 A.M.	John Davis IV and Randall McInvale	Thick marine layer lifting with calm, slight offshore (155° SSE) breeze (0.0 to 3.9 mph). Temperatures during survey ranged from 11.5°C (52.7 °F) to 15.2°C (59.4°F).	Pair of WTKI perched near site entrance south of SR-101. WTKI perched south of UPRR in Monterey cypress near Drainage #2; later seen eating prey while perched WTKI perched on telephone wire north of SR-101 near surfer's parking at Santa Barbara Ranch entrance. WTKI pair foraging near sites entrance; kill observed just west of entrance in field.	WTKI pair perched together on Monterey pine, Ocean Lot. Branches of tamarisk broken off by WTKI and taken to Monterey pine tree. Nest building and pair perching continued Pair circling together above Hunting (hawking, kiting, strikes) over lands west of Tomate Creek and off-site, north of UPRR			
3	April 4, 2013 7:50–11:22 A.M.	Dave Compton	Overcast (65 to 100% cloud cover) with light to moderate winds (est. 1 to 10 mph). Temperatures during survey ranged from 11.1°C (52.0 °F) to 16.1°C (61.0 °F).	WTKI pair in eucalyptus and Monterey cypress near Pacific Ocean bluff immediately west of Eagle Creek. Clear pair bond evident from copulation attempt, flutter flight, and in close proximity, but no evidence of nesting.	WTKI adults perched on nest tree as well as other pines and famarisk near the N site. WTKI adults hunting west of site / Tomate Creek on both sides of UPRR. 1-2 prey captures, 1 prey exchange observed			

Table 2. Summary of Conditions and Survey Results for the 2013 White-Tailed Kite Nest Surveys at the Paradiso del Mare Residential Project Site

Survey	Date / Time	Biologists ¹	Site Conditions ²	WTKI Observations ²			
No.				Eagle Canyon	Ocean Lot		
					One WTKI not visible until prey exchange, probably hard been on nest. Likely in incubation stage (on eggs).		
4	April 10, 2013 7:40–10:00 A.M.	Dave Compton	Clear and calm to light winds from the NW. Temperature during survey was approximately 10.0°C (50.°F)	WTKI perched on Monterey Cypress just west of Eagle Canyon near bluff. WTKI foraging in field east of Drainage 1 and north of UPRR over grassland and open mustard fields as was observed in 2011 surveys. Prey captured in field, followed by an aerial exchange of prey between kites. Two WTKI obvious breeding pair (perching together, aerial exchange, e-krak vocals, etc.) No nest building observed	WTKI pair perched along Tamarisk WTKI female initially in nest tree, later perching on tamarisk		
5	May 13, 2013 6:45 –8:51 A.M.	John Davis IV	Sunny and clear, with slight breeze (0 to 0.9 mph) from 185° S to 200° SSW. Temperatures during survey ranged from 19.1°C (66.4 °F) to 23.5°C (74.3°F).	No observations made at Eagle Canyon nest site	WTKI hunting west of Project Site and south of UPRR over grassland habitat. Return to Monterey cypress perch WTKI adult perched between Monterey cypress cluster at/near nest site and along Temarisk windbreak along Tomate Creek. WTKI landed above nest with prey, penting (overheated), then disappeared to nest, slightly visible through branches. Assumed delivered prey to incubating WTKI		
6	May 30, 2011 7:10 — 10:24 A.M.	Dave Compton, Paul Collins, and John Storrer	Overcast from marine layer year, clearing late moming, with light SSE winds 0.6-2.7 mph with gusts to 8.3 mph. Temperatures ranged from 66.9°F to 68.1°F.	Adult WTKI, at three different perches in tamarisk windbreak adjacent to Tomate Canyon just north of the UPRR. Also foraging extensively on Naples Townsite west of Tomate Canyon and north of the UPRR. WTKI foraging in annual grassland north of UPRR and south of U.S. Highway 101 due west of the entrance road to the property.	Adult WTKI pair perched on tamarisk and Monterey pine-trees (including nest tree) in nest vicinity At least one WTKI nestling visible At least two prey captures observed WTKI adult hunting north of UPRR on both sides of Tomate Creek WTKI landed in the area of the nest on multiple occasions		

Table 2. Summary of Conditions and Survey Results for the 2013 White-Tailed Kite Nest Surveys at the Paradiso del Mare Residential Project Site

Survey Date/Tim	Date / Time	Biologists ¹	Site Conditions ²	WTKI Observations ³			
	1.1			Eagle Canyon	Ocean Lot		
7	June 13, 2013 7:23 – 11:10 A.M.	John Davis IV and Paul Collins	Dense matine layer, lifting, visibility good at low elevations, especially later in the morning, still to slight breeze winds (0 to 3.3 mph) 164° SSE. Temperatures ranged from 15.9°C (60.0°F) to 23.1°C (73.6°F).	Adult WTKI perched on Monterey cypress approximately 150 to 200 meters west of bridge away from potential nest near Eagle Canyon Foraging activity observed north of Monterey pine across UPRR in open field within 2011 foraging range Second WTKI not observed during survey Confirmed nest failure by walking through and under the Monterey cypress windbreak near and at the edge of the coastal terrace near Eagle Canyon where nest building was observed earlier from the bridge. No WTKI adults, nestlings, fledglings, or otherwise was observed	WTKI hunting over Ocean lot and off-site grassland areas to the west of Tomate Creek. WTKI adults perched between Monterey cypress cluster at/near nest site and along Tamarisk windbreak along Tomate Creek. Successful nest. Six fledgilings observed. Recent fledglings perched at Monterey cypress nest tree. Fledglings short flights between nest tree, adjacent cypress trees and tamarisk trees on north side of UPRR at Tomate Creek; One nestling/fledgling remained in the neswas only visible through the tree branches. WTKI adult lands on nest without prey; fledglings make hunger calls; adult leaves nest.		

¹ Dudek biologists are John Davis IV, Dave Compton, and Traci Caddy. Paul Collins is an Independent biologist contracted with Dudek; and John Storrer is an independent biologist representing the County of Santa Barbara

² Wind and temperature were measured using a SpeedTech Windmate WM-200 or estimated by biologists and compared to 2013 Weather Underground, inc.

³ WTKI = White-tailed Kite

DISCUSSION

White-Tailed Kite Nest Selection

The white-tailed kite most commonly nests in the upper third portion of a suitable tree (3 to 50 meters tall), which contains dense foliage and leaf canopy, allowing for cryptic placement of a twig nest. Nest trees appear to be selected on the basis of structure and security, and are often situated within a dense group of trees, such as riparian forest or oak woodland. Kites will occasionally use isolated trees, but this is relatively rare. Nest tree species have been documented in a variety of tree species (over 20 species), including cottonwood (*Populus* ssp.), willow (*Salix* spp.), oak (*Quercus* ssp.), boxelder (*Acer negundo*), ornamental trees including olive and pine, and occasionally in tall shrubs (Dixon et al 1957, Dunk 1995, Pickwell 1930, Wright 1978).

White-tailed kite typically construct new nests in a different tree than the previous nesting attempt. This occurs yearly, and even within the same year if a kite has a second a third brood. Dixon (1957) followed 130 nests in San Diego County. Of these, 128 were built exclusively by kites and 2 others were built on top of nests of other species. Dixon (2002) also noted that kites often, perhaps typically, do not return to the same tree to nest each year. Barlow (1897) and Wright (1978) concurred that nests are generally not reused in subsequent breeding attempts although reuse was reported in select instances. Additionally, in Santa Barbara County, Waian (1973) reported that alternate nests are commonly built and may be used in subsequent breeding attempts. "Dummy" nests may also be constructed that don't function as a receptacle for egg laying (Waian 1973). If a second brood is attempted in the same season, a kite may begin a second nest if first is destroyed, and may initiate a second nest in another tree while young from the first nest are still dependent (Hawbecker 1940, Stendell 1972, Wright 1978). More recently (2008 and 2009), Rincon observed seven successful nests from three different kites on More Mesa. All nests were in different trees, some in close proximity to each other while others were spaced at a distance, within riparian areas associated with the same tributary.

In Goleta Valley, white-tailed kite nests are well-documented. Holmgren (2009) confirmed a total of 158 nests for more than 30 locations within Goleta Valley where 47 (30 percent) of these nests were located on More Mesa (Holmgren 2009 and Rincon 2010). The remaining 111 nests (70 percent) were located in 22 different locations, including the Paradiso del Mare project site (4 times since 1966, including 2013) (Holmgren 2009 and Dudek 2013). Nests in the study area were located in coast live oak, cottonwood, Monterey pine, Monterey cypress, and eucalyptus trees within riparian woodland, eucalyptus groves, windbreaks, and isolated tree clusters, natural or planted (Dudek 2011 and 2013, Holmgren 2009, Rincon 2010, and Waian 1973). Consistent

with literature, white-tailed kites usually select a suitable nest tree that: 1) hasn't been previously used; 2) is located in areas that contain numerous mature, well-structured trees with dense canopies; and 3) is located in the vicinity of trees that were also utilized for nesting in subsequent years. More Mesa is perhaps the best example of this where kites have consistently nested in natural riparian corridors associated with tributaries to Atascadero Creek (Drainage A and B; Rincon 2010). All kite nests at More Mesa noted in 2008 and 2009 were located in coast live oak trees. Three kite pairs contributed to seven successful nests, all in different oak trees along the riparian corridor.

Consistent with the literature cited above, at the Paradiso del Mare project site nest selection has primarily been observed in the "windbreak" located in the central portion of the site between Drainage I and 5, south of the Union Pacific Railroad (UPRR), on the bluff overlooking the Pacific Ocean. The 0.75 mile windbreak consists of dense tree clusters loosely arranged near the coastal bluff and consists of numerous suitable nest trees, primarily Monterey pine and Monterey cypress, and less abundant eucalyptus trees. According to Holmgren (2009), white-tailed kites nested in this windbreak between 2000 and 2002. Both confirmed nesting events were singular in nature, although Dixon indicated that a second nest occurred within the windbreak in 2002. All nest trees were unique. There were no repetitive nest sites. In 2013, a pair of white-tailed kites was observed nesting in a Monterey pine tree, situated in a small but tight tree cluster and adjacent to two additional similar tree clusters located between Drainage 6 and Tomate Canyon at the extreme west portion of the Ocean Lot. This appears to be the first use of this cluster by the white-tailed kites for nesting since biologists started surveying the site frequently, beginning in 1998. Additionally in 2013 and 2011, two unsuccessful nesting attempts were observed, one near the mouth of Eagle Canyon (2013), and the other off-site along a eucalyptus windbreak that separates Santa Barbara Ranch from parcels to the east (2011). This on-site data supports the previously presented data that white-tailed kites do not use the same nest tree.

In conclusion, scientific based studies, local monitoring, and focused surveys on the Paradiso del Mare project site all provide overwhelming evidence that white-tailed kites do not typically use the same tree for subsequent nesting attempts.

Other Factors Affecting Nest Selection

Factors that influence nest site selection and nesting distribution include habitat structure (usually a dense canopy) and prey abundance and availability (primarily the association with meadow vole), while the association with specific vegetation types (e.g., riparian, oak woodland, etc.) seems to be less important (Erichsen 1995, Dunk 1995). An examination of white-tailed kite nest locations within Goleta Valley indicates that kites will nest within and along the fringes of

urban/suburban development as long as adequate open space is available relatively nearby for foraging. For example, one successful nest located in Isla Vista was essentially surrounded by structures (< 70 feet) (land use zoning of SR-M-18), but was located only about 300 feet from open space (Rincon 2010). This is also evident at U.C. Santa Barbara where white-tailed kites infrequently nested four times (1999, 2001, 2003, and 2009) in eucalyptus trees at the northern end of Harder Stadium, UCSB campus (Holmgren 2009 and Rincon 2010), Quality foraging habitats located at the Goleta Slough and Storke Wetland are within 700 feet of these nest sites. Another UCSB nest adjacent to the Goleta Slough was located less than 100 feet from Mesa Road and 150 feet from offices. In the Goleta Slough, Holmgren (2009) documented additional nest sites within the Santa Barbara Airport property. Kite nests on airport property are located approximately 1,400 feet from airport runways yet experience frequent overhead flights, takeoffs and landings. Notwithstanding, the quality of foraging habitat in the slough and suitable nest structure nearby collectively provide for successful nesting. In fact, quality foraging habitat is such a strong selection factor at the airport that white-tailed kites will forage within the modified habitat strips that separate the runways (personal observation). Obviously, these "infield" habitats provide at the very least supplemental hunting grounds for the kites. The high noise levels and planes overhead don't appear to dissuade the white-tailed kites from nesting and hunting on the Goleta Slough or the airport property. This is also the case between highway onramps and/or off-ramps where kites will harvest prey from open patches of vegetation. The highway areas are used by kites when these modified, but quality foraging habitat (i.e. grassland, ruderal, etc.), exist in the vicinity of suitable nesting habitat (personal observation and literature).

White-tailed kites also acclimate to recreational activities when this disturbance type establishes itself as the norm. The approximately 200 acre natural area of More Mesa is surrounded by high density residential development. The natural area is accessible open space to the neighboring residences and communities and contains excellent nesting and foraging habitat for the white-tailed kite. The mesa experiences constant levels of passive recreation (walking, biking, dogwalking, equestrian, etc.), yet kites have flourished at this location. Paradiso del Mare currently receives unauthorized passive use, and would support passive recreational uses similar to those of More Mesa with project implementation.

Elsewhere, more extreme recreation use in white-tailed kite nest habitat occurs at wildlife refuges that are open to waterfowl and upland hunting. Kites have been observed hunting midmorning over marshes shortly after the first couple flushes of waterfowl and following numerous rounds of shotgun fire (personal observation). White-tailed kite are successful nesters at Mendota, San Jacinto, Humboldt Bay, Grizzly Island (H. Mohan 2004), and other wildlife refuges and wildlife areas that experience seasonal hunting.

In conclusion, nest selection is driven not only by the presence of suitable trees, but also distance to quality hunting habitat. Although disturbance levels and types vary widely in white-tailed kite habitat, kites, once acclimated to a disturbance, appear to remain (in many situations), amongst the disturbance, if the primary elements of nesting are present: trees with dense canopy and open habitats with abundant prey.

Potential Impacts to White-Tailed Kite Nesting Habitat is Addressed in the EIR, Supporting Documentation and Project Design

Over a decade, the white-tailed kite has been thoroughly documented using the project site and surrounding areas for nesting, foraging, and perching. Focused surveys have recorded active nest sites (successful and unsuccessful) within Monterey pine, Monterey cypress, and eucalyptus trees in the southern portion of the site, south of Union Pacific Railroad tracks. These surveys have also identified perch trees used by kites throughout the site during the breeding and non-breeding time periods. Favored perching trees include Monterey cypress, Monterey pine and eucalyptus trees. Collins (2005) recorded kites perching most frequently on the above-mentioned species, but also noted perching on tamarisk, blue elderberry, and coyote brush. In 2011 and 2013 (Dudek), Monterey cypress, eucalyptus, and tamarisk trees were most often used.

Several prior studies of kite use on the site have noted individual nest trees in conjunction with perch trees when the subject trees contain elements of suitable nest trees (as described above). Such trees are important to the species because they are essential for performing courtshiprelated activities, providing sentinel perches, and because they are potential nest trees (Dixon 2002). Not all trees or perches are suitable for white-tailed kite nesting; however, on the project site the Monterey pine and cypress trees indicated in Froke (2002) and Dixon (2002) meet the definition of suitable nest trees. As indicated above, mature, well-structured trees with dense canopies that were used by kites as perches, especially when near a nest site, are potential nest sites for future nesting attempts. Accordingly, and as noted in prior studies of the site and reflected in the EIR Impact Analysis and Mitigation Measures, impacts to specific perch trees consisting of Monterey pine and Monterey cypress have a corollary impact to potential nesting habitat given that kites generally do not use the same nest tree from year-to-year (Froke 2002, Dixon 2002), as has been the case well documented at the project site, and because the large majority of observed perch trees on the site are of the same species as those identified for observed nest trees (Monterey pine and Monterey cypress). Since suitable nesting habitat will be maintained on-site in conjunction with enhanced, proximate foraging habitat, kites are expected to use the site for these activities in the future. For this reason, the EIR analysis, supporting documentation, and project design presume that previously identified perch trees consisting of Monterey pine, Monterey cypress and Eucalyptus have the potential to also serve as nest trees.

As such, the EIR and project design have addressed impacts to documented perch trees (i.e. suitable nest habitat) in the context of impacts to both known and potential nesting habitat.

The Arborist Report prepared for the project (Dudek 2011) and the EIR analysis identified project impacts associated with removal of two previously documented perch trees within the Ocean Lot development envelope (tree numbers #406 and #187) and a single Eucalyptus tree located near the site entrance. The Arborist Report and EIR recommend planting of six, 36-inch box native coast live oak trees within the proposed wetland and upland mitigation area in Drainage 4 and/or Drainage 5 for the specific purpose of addressing the temporal loss of potential perch/nest sites. The EIR analysis similarly addresses potential impacts to perching and nesting trees on the site by imposing Mitigation Measure BIO-14, Replacement trees for removal of non-native mature trees. The mitigation requires the applicant to plant six coast live oaks (Quercus agrifolia) to replace removal of three non-native trees from the project site to address the temporal loss of potential perch/nest sites, and requires that the replacement trees shall be 36-inch box trees with approximate overall heights of 12 to 14 feet. Planting locations shall be incorporated into the Conceptual Upland and Wetland Mitigation and Monitoring Plan for the Paradiso del Mare Residential Project, specifically within Drainage 4 and/or Drainage 5. The EIR goes on to disclose the Residual Impact as follows:

Residual Impact: The proposed removal of three trees that could function as white-tailed kite perch trees would be significant because they could impact foraging efficiency for white-tailed kite and remove potential nest trees. Mitigation Measure MM BIO-14 will require a 2:1 replacement ratio with native trees. Residual impacts would be significant but mitigated (Class II Impact).

While the EIR did not identify an impact to a previously documented nest tree, given the continual use of the site by the white-tailed kite, impacts to suitable trees with sufficient structure to potentially support nests (perch/nest trees) were appropriately analyzed and evaluated in the same manner that impacts to documented nest trees would be evaluated and mitigated. Therefore, the occurrence of a new nest site within the Ocean Lot development envelope in 2013 does not present a new impact, result in elevation of a previously identified impact, nor does it require additional mitigation to address an impact as disclosed in the EIR. In addition, as discussed further below, the project includes tree establishment, utilizing native coast live oaks, as an integral component of the proposed wetland and upland mitigation and monitoring plan for the express purpose of enhancing and expanding perching/nesting habitat on the project site by situating these oak trees within high quality hunting habitat. Because project impacts to perch/nest trees have been reduced to only two non-native trees (Tree #187 was previously identified for removal and replacement but fell down during the 2012/2013 winter season), the

proposed mitigation ratio of 3:1 now exceeds that identified in the EIR. In addition, the proposed project includes a minor revision to the Ocean Lot residential development (slight reconfiguration of the proposed guest house) to provide additional setbacks from suitable potential perch/nest trees within the Ocean Lot development envelope.

CONCLUSION

One successful nest at the Ocean Lot and an unsuccessful nest near Eagle Canyon were documented in the spring of 2013. The locations of these nests occur on the eastern and western periphery of the Project Site adjacent to suitable foraging habitat identified by Dudek (2011 and 2012). The 2011 unsuccessful kite nest was west of the Project site in eucalyptus, but hunted for prey over the same habitat and areas as the 2013 Ocean Lot pair, Generally, the 2013 hunting activities associated with nesting activities coincided with the extent of foraging patterns observed in the decade of surveys; however, more dramatic since 2005, when mustard thrived in many portions of the site. The majority of foraging for the 2013 Eagle Canyon pair was near the entrance of the Project site and off-site to the north and west. Implementation of the conceptual habitat restoration plan will return habitat in the core of the Project site to ideal conditions for prey and hunting opportunities and will likely entice white-tailed kites to nest along the Monterey cypress and pines that line the bluff in the heart of the site. The Project site contains approximately 329 suitable nest trees for the kites, as mentioned, many near the coastal bluff along the southern boundary of the site. Since kites often select different trees year-to-year, nesting opportunities are expected to increase with implementation of the Project and restoration plan.

The Project design remains the most feasible, least environmentally damaging alternative as it relates to white-tailed kite nesting habitat for two reasons: 1) The development is clustered at the west portion of the property preserving contiguous habitat that has been documented as the most intensely used white-tailed kite nesting habitat on-site, and 2) The clustered development provides the opportunity to restore and preserve contiguous foraging habitat (proximate to the most intensely used nesting habitat on-site) that has been degrading overtime and that is the critical habitat component necessary to support nesting activities in the future.

Should you have any questions regarding this technical memorandum, please do not hesitate to give me a call at 963-0651, ext. 3524 (office) or 252.7996 (cell). I may also be reached by email at <u>idavis@dudek.com</u>.

Sincerely, Dudek

John H. Davis IV, MS, CE

Senior Ecologist

April Winecki

Senior Coastal Planner

Att:

References

Figure 1: Site Location

Figure 2: 2013 White-Tailed Kite Nest Locations

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DUDEK

MEMORANDUM

To:

CPH Dos Pueblos Associates, Howard Zelefsky, Brooks Street

From:

DUDEK

Subject:

White Tail Kite Buffer for Tree 184 - Paradiso Del Mare Project

Date:

August 23, 2013

This Memorandum has been prepared to address the proposed buffer distance from Tree 184, a Monterey pine (Pinus radiata) on the Ocean Lot of the Paradiso del Mare Residential Project site (Project Site), which had a successful white-tailed kite nest of six juveniles during the 2013 survey period. The Memorandum incorporates by reference the following Technical Memoranda from Dudek:

- Status of White-Tailed Kite on the Paradiso del Mare Project Site, County of Santa Barbara,
 California, September 1, 2011;
- White-Tailed Kite Impact Assessment and Recommended Mitigation Measures for the Paradiso del Mare Residential Project Site, County of Santa Barbara, California, July 2, 2012;
- 2013 Nest Survey Results for the White-Tailed Kite on the Paradiso del Mare Project Site and Recommended Revisions to the Paradiso del Mare Ocean and Inland Estates EIR, August 16, 2013.

Background

The approximately 142.9 acre Project Site is located south of US Route 101, approximately 0.4 miles west of the City of Goleta and is bordered by US Route 101 on the north and the Pacific Ocean on the south, and is surrounded by land zoned for a mix of rural residential and agricultural uses with a range of parcel sizes. Immediately adjacent properties are generally undeveloped or are used for agriculture (primarily livestock grazing) and support a mix of grassland, coastal sage or bluff scrub habitats. Intermittent and ephemeral streams (i.e., drainages) are vegetated with native riparian and/or scrub vegetation or non-native eucalyptus. Large rural agricultural parcels and smaller lots on a portion of the historic Naples Townsite directly west of the Project Site and north of the highway are zoned Agriculture II with a minimum parcel size of 100 acres. To the east are two parcels of approximately 22 and 38 acres zoned Rural Residential (with a minimum parcel size of 40 acres). An access road,

parking area, and pier used by Veneco, Inc. to service offshore oil facilities are located on the easterly adjacent 38-acre parcel.

The proposal for the Project Site entails a request for development of one residential unit and limited agricultural uses on the Inland Lot and one residential unit and limited agricultural uses on the Ocean Lot. For purposes of this memo, the discussion will be solely focused on the Ocean Lot which is where Tree 184 is located. Specifically, as proposed, the Ocean Lot residential development would consist of a residence with attached garage, a detached guesthouse, pool, onsite wastewater disposal system and landscaping. Future structural development and earth disturbance associated with the proposed residential development would be limited to a 1.9-acre development envelope. The proposed Ocean Lot would also include designation of a 1.7-acre envelope which would allow agricultural activities such as orchards, row crops, and horse/livestock keeping. Except for fencing and utilities, no buildings, structures, or hardscape is permitted within the agricultural envelope. The maximum height of the proposed residence and garage is 20 feet and the maximum height of the proposed guest house is 21 feet.

Based on extensive white-tailed kite survey efforts and in conjunction with various other constraints analyses for the property, the location selected for the Ocean Lot's residential development has been sited to minimize impacts to environmentally sensitive habitat areas (ESHA) and white-tailed kite nesting and foraging area. As proposed, the Ocean Lot residential development would not result in direct impacts (removal) to Tree 184. However, due to the discovery of a successful white-tailed kite nest of six juveniles in Tree 184 during the 2013 survey period, we understand the County is considering a new mitigation measure that would require a slight redesign of the Ocean Lot residential development to accommodate a 75 foot buffer from Tree 184. We concur that minor changes to the Ocean Lot residential development site plan (described in more detail below) could comply with such a mitigation measure, and that, in this specific case, requiring a 75 foot buffer from Tree 184 is adequate to address potential impacts to white-tailed kite and to ensure project consistency with applicable policies of the County's certified Coastal Land Use Plan (CLUP).

LCP Policies Specific to the White-Tailed Kite

Santa Barbara County's CLUP has specific policies that incorporate protections for the white-tailed kite. Namely, Coastal Plan Policy 9-26 states that development including agricultural development, structures, and roads, shall be located away from an area used for roosting and nesting (emphasis added). Coastal Plan Policy 9-28 states that any

development around a roosting and nesting area shall be set back a sufficient distance to minimize impacts to white-tailed kite nesting areas (emphasis added).

These policies, however, contain no determination of what distance should be applied between development, including agricultural development, structures and roads nor is there a definition of "sufficient distance" in relation to development around roosting and nesting areas in order to minimize impacts. In such cases, we are compelled to carry out an analysis of the site on a case-specific basis which takes into account the following in order to determine policy consistency:

- The extensive and exhaustive white-tailed kite surveys that have been undertaken on the Project Site from 1998 to 2013;
- The abundance of suitable nesting habitat on-site (> 300 potential nest trees);
- The overwhelming scientific information on white-tailed kite nesting behavior, and in particular white-tailed kite nesting behavior in Santa Barbara County and at the Project Site, which clearly indicates that kites do not typically nest in the same tree twice. This is evidenced by the fact the March 13, 2013 nest observation in Tree 184 was the first time a nest was observed in this particular tree and on this portion of the site since 1998, and that all prior potential and confirmed nest sites have been observed in different trees on the site;
- Expansive foraging habitat that will be restored and preserved on the balance of the site in perpetuity; and,
- The low intensity use of the proposed development.

White-Tailed Kite and ESHA Buffers

Previous Coastal Commission actions addressing development on the site in proximity to kite nesting habitat have addressed the issue of ESHA determination and appropriate buffers from known nest sites. In the case of the Dos Pueblos Golf Links project, the Coastal Commission designated observed nest sites and "important use trees" as ESHA, and required buffers of 200 feet from observed nest trees and immediately adjacent trees (resulting in ESHA buffers around nest trees identified that year of 256 and 322 feet), and 100 foot buffers from "important use" trees (Dixon 2002) in the context of that project, which anticipated high intensity use of the site for 50,000 to 60,000 rounds of golf 360 days a year for an 18 hole course, and 20,000 rounds of golf a year for a 9 hole course. Of important note is the fact that the Coastal Commission acknowledged the difficulty of determining the ESHA footprint during its review of

the golf course project for the following reasons: I) trees potentially suitable for nesting and perching are scattered over much of the site and do not form discrete clumps or groves distant from other suitable tree habitat, 2) kites often, perhaps typically, do not return to the same tree to nest each year (although Dr. Dixon noted observations of kites using the same tree in three successive years at the U. C. Santa Barbara campus, and that kite use of the same or different trees may be a function of the relative availability of suitable nesting trees at a given site), and 3) at the time, there was no knowledge of which trees or groups of trees had been most used historically. In addition, the Coastal Commission noted that there was no analysis available at that time relative to the proportion of remaining trees that would be in suitable for nesting, Many of these factors influencing the white-tailed kite ESHA and buffer determination on the site in 2002 are no longer applicable. As noted previously, extensive site-specific survey results covering a significant time period (1998-2013) are now available which thoroughly document the location, extent and abundance of suitable nesting and foraging habitat on site, in conjunction with white-tailed kite use of the site for both foraging and nesting and the habitat conditions that are the limiting factor to sustaining kite use of the site into the future (i.e. degrading foraging habitat). These surveys demonstrate:

- I. There is an abundance of suitable nest habitat on-site (> 300 potential nest trees), the vast majority of which is located on the Ocean Lot, east of the proposed residential development between Drainage I and Drainage 5. The site area located between Drainage I and Drainage 5 contains the densest clusters of suitable nest trees, has been documented as the most intensely used portion of the site for kite nesting and perching and, until 2013, has supported all prior nest sites. This entire area is proposed to be preserved in perpetuity within an Open Space/Conservation Easement.
- 2. Consistent with most observations of the propensity for kites to use different trees for nesting year-to-year, there have been no observations of kites returning to or re-using any of the previously documented nest trees on the site for nesting. As such, the limited residential development proposed on the far west end of the Ocean Lot, which is located a significant distance (approximately 800 feet) from the majority of suitable nest habitat located between Drainage I and Drainage 5, would have no significant impact on kite use of the site for nesting, irrespective of the observed 2013 nest site in Tree 184.
- 3. Regardless of the insignificant project impacts to nest habitat on the site and the ensured availability of abundant suitable nest trees in perpetuity, the long term viability of the site to support kite use and reproduction is compromised by the

observed trend of degrading foraging habitat. The proposed project will maintain a 117-acre conservation easement of the balance of the property in which there are in excess of 300 suitable nest and perch trees that provide significant and sufficient habitat for the white-tailed kite. However, nesting success is largely dependent on the availability of suitable foraging habitat located in proximity to suitable nest habitat. Accordingly, to enhance the on-site habitat for the white-tailed kite, while mitigating project-related impacts, the project includes an Upland and Riparian Mitigation and Monitoring Plan that is designed to increase the hunting habitat value for the white-tailed kite and their primary prey, the California vole. This would be accomplished by creating a mosaic of natural vegetation communities, including native grasslands, in the central portion of the site near suitable nest and perch trees. The plan also includes planting of coast live oak trees within Drainage 4 and/or 5 to provide additional tree habitat of suitable height and structure for kite nesting/perching. The proposed tree plantings just north of the Union Pacific Railroad right-of-way, would further expand the primary nesting/perching habitat on the site from the Ocean Lot northerly to the Inland Lot, in an area physically buffered by both distance and the railroad corridor from the public access easement dedications proposed within the Ocean Lot, thereby providing new perching/nesting opportunities that would be insulated from potential impacts associated with recreational use of the site. To further facilitate the recovery of the site to an ecologically balanced condition, habitat restoration will be implemented concurrent with the removal and maintenance of adjacent mustard fields.

The documented site-specific conditions of the Project Site existing at this time, along with the extensive body of available information relative to kite use of the site and of other coastal resource constraints, and the limited residential development proposed warrant an independent determination of adequate buffers to address white tailed kite. The proposed residential project was identified by the Coastal Commission to be the preferred development alternative for the site given the adverse impacts to white-tailed kites anticipated with the golf course project, and in comparison to the Dos Pueblos Golf Links project, the proposed residential development is dramatically less intense than the previously reviewed golf course project, will utilize a much smaller portion of the site for the residential development, will result in minimal impacts to nesting habitat, and most importantly, will result in enhancement of on-site foraging habitat that would otherwise continue a trend of degradation in the foreseeable future. In addition to identifying a development location that protects the densest clusters of suitable white-tailed kite nest trees, the Ocean Lot contains several other environmental constraints protected by the proposed development location, including a number of deeply incised drainages that contain large stands of coastal sage scrub, coastal bluffs with associated

sensitive bluff habitat including cliff aster, wetlands, documented cultural resource sites, and areas supporting Southern tarplant and purple needlegrass grasslands. The proposed Ocean Lot development envelope has therefore been located in the westernmost portion of the property where a feasible building site has been identified that avoids all these sensitive resources and provides ample setbacks from the coastal bluff, wetland habitat, and coastal drainages.

When considering the totality of sensitive coastal resources on the site that will be avoided by the proposed project, the abundant amount of suitable nesting habitat available on the site that will be preserved and expanded in conjunction with the foraging habitat enhancement opportunities, and the opportunity to preserve a contiguous 117-acre area of integrated kite perching, nesting and foraging habitat associated with the proposed Open Space/Conservation Easement, the proposed placement of the Ocean Lot residential development envelope will not significantly impact kite perching/nesting habitat, and is the least environmentally damaging, feasible alternative for the project.

Additional Mitigation to Address White-Tailed Kite ESHA Buffers

Due to the discovery of a successful white-tailed kite nest of six juveniles in Tree 184 during the 2013 survey period, we understand the County is considering a new mitigation measure that would require a slight redesign of the Ocean Lot residential development to accommodate a 75 foot buffer from Tree 184 (as measured from the outermost limit of the tree canopy). Accordingly, the Project Team has studied redesign options for the Ocean Lot and has determined that such a mitigation measure may be accommodated with minimal changes to the site plan that: 1) maintains all development within the originally proposed residential development envelope evaluated in the EIR and therefore does not create other impacts, 2) realigns the driveway to completely avoid all tree clusters and eliminates all previously identified impacts to potential perch/nest trees on the Ocean Lot; the realigned driveway would maintain a minimum 75' buffer from the nest tree, 3) clusters the main residence and guest house and slightly relocates the Ocean Lot residence south (approximately 10 feet) such that all habitable structures are setback 100 feet from the 2013 nest tree, and 4) eliminates the 1.7-acre agricultural envelope on the Ocean Lot to eliminate the potential for agricultural uses to occur within or near the 75 foot nest tree buffer.

Conclusion

Applicable CLUP policies require that development be situated away from an area used for nesting and that a sufficient setback be imposed from a nest tree. As described above, the County-identified mitigation measure to establish a 75-foot buffer from the 2013 nest tree appropriately directs a minor redesign of the Ocean Lot development that would minimize

impacts to not only the documented 2013 nest tree (Tree 184) but also all clusters of potential, suitable nest trees on the Project site. In the case of the proposed residential development on the Ocean Lot, the determination of a sufficient buffer has considered current habitat conditions and the white-tailed kite's ecological requirements, nest selection tendencies, level of proposed disturbance, and other sensitive site constraints, in their entirety. The identified 75 foot buffer is warranted in the specific case of the Paradiso residential development given that the development would be located a substantial distance (approximately 800 feet) from the site area containing the densest clusters of suitable nest trees and documented as the most intensely used portion of the site for kite nesting and perching, and is the least environmentally damaging alternative when considering the totality of site's coastal resource constraints and the ESHA enhancement and preservation benefits inherent of the project design.

DUDEK

AGENDA ITEMS

ITEM #:____

MEETING

DATE: 11-20-13

November 15, 2013

Planning Commission County of Santa Barbara 123 East Anapamu Street Santa Barbara, CA 93101 MAY 15 2013

RECEIVED

S.B. COUNTY PLANNING & DEVELOPMENT HEARING SUPPORT

SUBJECT:

Paradiso del Mare Ocean and Inland Lot Residential Development

Hearing Date: November 20, 2013

Final Environmental Impact Report 09EIR-00000-00003 (SCH No. 2008031101)

Dear Chair Hartmann and Honorable Planning Commissioners:

On behalf of CPH Dos Pueblos Associates (CPH), I would like to thank you for your time and consideration of CPH's Paradiso del Mare Residential Project ("Project"). We have worked closely with County Planning and Development Staff to address the matters raised at the previous Planning Commission hearing held on the Project on March 20, 2013, issues raised subsequent to the hearing relating to biological resources, and to reach agreement on the recommended Conditions of Approval for the Project. We very much appreciate the time Staff has taken to prepare a comprehensive Staff Memorandum, Final Environmental Impact Report (FEIR) and associated EIR Revision Letter for the Project. We believe the County's analysis appropriately responds to the focused issue areas identified by the Planning Commission for further follow-up during the March hearing, as well as additional biological issues raised subsequent to that hearing. In addition, we would like to offer the following comments in response to specific comments/questions provided at the March hearing.

1. Offsite Alternatives Analysis

At the last Planning Commission hearing, the Gaviota Coast Conservancy and its counsel, the Law Offices of Mark Chytilo argued that the County should consider an "off-site alternative that "merges" the Inland and Ocean lots and relocates the ocean lot development on the inland lot.

The Inland and Ocean lots are zoned AG-II-100, which allows one single family dwelling unit per legal lot (Section 35-69.3.5 of the Coastal Zoning Ordinance). Because the UPRR owns in fee the parcel separating the Inland and Ocean lots, a lot line adjustment, resubdivision or lot merger to permit a second home site on the Inland lot is not legally possible.

In addition, the Gaviota Coast Conservancy and its counsel, the Law Offices of Mark Chytilo, argued the County should consider a further alternative: an off-site alternative that would locate the ocean lot development instead on one of the Naples lots. There are several reasons why this has no merit.

First, a leading CEQA treatise explains its view that "identification of suitable locations for particular types of uses is a planning concern that should be addressed when local and regional land use plans are adopted. Once the policy decision has been made on the appropriate uses for a site, and that policy is incorporated

in applicable land use plans, a specific development proposal should not trigger ad hoc reconsideration of plan policies." (Kostka & Zischke, Practice Under the California Environmental Quality Act (2nd Ed.) §15.25, p. 758.) The EIR explains "the subject parcels are zoned AG-II-100, which allows one single family dwelling unit per legal lot (Section 35- 69.3.5 of the Coastal Zoning Ordinance)." Because the project is consistent with the County's existing plans, policies and zoning, a review of alternative sites is not necessary. (Mira Mar Mobile Community v. City of Oceanside (2004) 119 Cal.App.4th 477.)

Second, CEQA requires that the County only consider a reasonable range of potentially feasible alternatives, which the EIR (Chapter 6) amply reflects was done here. (14 Cal. Code Regs., §15126.6(a).)

Third, an EIR need not consider an off-site alternative that is legally infeasible. (Pub. Res. Code, § 21061.1; 14 Cal. Code Regs., §15364.) The EIR here determined that an analysis of alternative off-site locations was considered infeasible, stating: "Irrespective of development on alternative parcels, these two existing legal parcels [the Inland and Ocean lots] would continue to be subject to development requests consistent with the allowable use of construction of a single-family home on each parcel." (EIR, p. 6.0-6.) The off-site alternative suggested contemplates that the County deny all reasonable use of the Ocean lot, which would constitute a "taking." The EIR therefore properly considered the off-site alternative to be legally infeasible.

Fourth, an EIR does not need to consider alternatives that do not offer significant environmental advantages. (14 Cal. Code Regs., §15126.6(b); Tracy First v. City of Tracy (2009) 177 Cal.App.4th 912, 929.) As noted, the EIR correctly explains that even if development were permitted on an alternative off-site parcel, the applicant would still be entitled to develop a residence as a permitted use on the Ocean lot, "creating a circumstance where the alternative would foster increased development." (EIR, p. 6.0-6.) The EIR therefore additionally concluded that the off-site alternative would be "unproductive" and would not offer a significant environmental advantage. (Id.)

Fifth, an alternative must also implement most basic project objectives. (14 Cal. Code Regs., § 15126.6(a).) The EIR explains that the major objectives of the project include (1) developing two high-quality coastal homes with supporting amenities on two existing legal parcels and (2) resolving pending litigation between the applicant and the Coastal Commission which, among other things, alleges that denial of a golf course use on the property resulted in an inverse condemnation. (EIR, § 6.2, p. 6.0-2.) An off-site alternative that would require denial of a residence on the Ocean lot would not implement fundamental project objectives, and therefore need not be considered.

Finally, the FEIR explains that CEQA requires a certain level of certainty for a project alternative to be considered feasible. (EIR, p. 11.0-292.) The FEIR further explained that "[t]here are a number of barriers and obstacles to the development of the applicant-owned Naples lots at this time, as demonstrated by the long and difficult review process experienced with the Santa Barbara Ranch Project . . . Because any future development on the applicant-owned Naples Townsite parcels would face similar hurdles, it is too speculative to presume the number of lots, location of lots, and technical characteristics of future development." (Id., pp. 11.0-292 and -293.) The suggested alternative is therefore additionally infeasible because of the legal and practical uncertainty about the ability to implement it. (Marin Mun. Water Dist. v.

KG Land Cal. Corp. (1991) 235 Cal.App.3d 1652, 1666 (legal uncertainty about ability to implement alternative justified determination of infeasibility.)

2. 2013 White-Tailed Kite Survey

As part of Dudek's October 24, 2013 Comments of the Recirculated Biological Resources Section of the Environmental Impact Report for the Project, two technical memoranda were attached:

- 2103 Next Survey Results for the White-Tailed Kite on the Paradiso del Mare Project Site and Recommended Revisions to the Paradiso del Mare Ocean and Inland Estates EIR, October, August 16, 2013
- White Tail Kite Buffer for Tree 184 Paradiso del Mare Project, August 23, 2013.

These memoranda summarize in detail the 2013 survey effort initiated by the Applicant in response to this year's observed kite activity on the property, and address the newly identified White-Tailed Kite nest confirmed on the Ocean Lot and associated foraging activities. In addition, the memoranda address and provided recommendations supporting the County-identified mitigation measure establishing a 100-foot structural and a 75-foot driveway buffer from the 2013 nest tree by implementing a minor redesign of the Ocean Lot residential development. The memoranda confirm that implementation of the minor redesign of the Ocean Lot residence to comply with the County-identified mitigation measure is feasible and maintains all development within the footprint evaluated in the EIR, therefore resulting in no new or unidentified project impacts.

In addition to the memoranda cited above, please find enclosed the Dudek Memorandum dated, November 15, 2013, prepared to address additional public comment letters submitted to the County for the Paradiso del Mare Ocean and Inland Estates Draft Environmental Impact Report (DEIR) recirculated Biological Resources Section, focusing primarily on issues raised on white-tailed kite nesting, ocean lot development setbacks, and habitat mitigation.

3. Harbor Seal Haul-Out

As part of Dudek's October 24, 2013 Comments of the Recirculated Biological Resources Section of the Environmental Impact Report for the Project, the following memorandum was attached:

 Technical Memorandum: Response to the County of Santa Barbara Planning Commission Inquires and Peter Howorth's comments regarding Potential Disturbances to the Harbor Seal Haul Out and Paradiso del Mare, October 2013

Mr. Peter Howorth as well as your Commission had questions regarding potential disturbances to the harbor seal haul out located on the beach, south of the project site. The seal haul out location is south-southeast of the Ocean and Inland lot development envelopes, between Tomate Creek and Drainages 4 and 5, and immediately below the ocean bluff that is situated approximately 55 feet above the beach. The bluff creates an obvious vertical barrier between the proposed Ocean Lot residence and haul out, the

horizontal distance between the subject sites is also substantial. The footprint of the Inland Lot is approximately 1,148 feet north from the seal haul out. The nearest portion of the Ocean Lot residence to the haul out, western and eastern extent, is 375 feet and 603 feet, respectively.

Noise can potentially influence harbor seal behavior at haul outs. For the Ocean Lot construction, anticipated heavy construction equipment would include a dozer, a backhoe, a dump truck, and an air compressor. Based upon this equipment fleet, an average construction noise level of 81 dBA at 50 feet from the construction activity has been calculated. The Community Noise Equivalent Level (CNEL) is often used to describe the ambient noise environment. This 24-hour average includes weighting for the evening and overnight periods, when noise is more disruptive. The ambient noise level on the beach area adjacent to the site is assumed to be approximately 40 dBA CNEL, representative of a rural environment with few noise sources (it should be noted that for wilderness areas, the Park Service typically references a background noise level of about 30-35 dBA CNEL). Given construction activity only between 8 AM and 5 PM, the average construction level of 37 dBA at the closest point of the seal haul-out would equate to an ambient noise level of 33 dBA CNEL. Construction would therefore not cause an increase to the existing ambient (CNEL) noise level within the seal haul-out area. Therefore, sound levels during construction would be an acceptable level for harbor seal pupping and daily interaction and activities.

Ground vibrations from grading was also discussed as a potential concern. Vibrations from grading will be relatively minor at the site. The analysis presented in the EIR predicted that vibrations from bulldozers, identified as the loudest source of ground vibrations due to the project, would result in a ground vibration level of 87 vibration decibels (VdB) at 25 feet. Ground-borne vibrations are generally limited to areas within a few hundred feet of construction activities (USDOT 2006). Given the distance of several hundred feet from the point of source of vibrations, the effect of ground vibrations on seals using the haul out would likely not be discernible at all.

Long-term noise levels or residential occupation and activities occurring at the Ocean Lot residence are not likely to reach those occurring during construction and, therefore, are not expected to influence seal haul out behavior at the haul-out near Naples Reef..

As such, the information and analysis provided in our October 2013 Technical Memorandum further substantiates the EIR conclusion that there would be no significant impact to the seal haul out from the proposed Project.

4. Private Utility Corridor Easement

The Gaviota Coast Conservancy and its counsel, the Law Offices of Mark Chytilo, erroneously claim "significant new information" based on the "Grant of Easement and Declaration of Covenants" made between CPH Dos Pueblos Associates, LLC and Gaviota Holdings, LLC. The easement document was identified by the County as an application submittal requirement many years ago (2007/2008), and was required to be submitted to the County prior to deeming the subject applications "complete" for processing. As such, the easement document has been available for public review for many years, is referenced in a number of public documents produced by the County for the subject applications, and therefore does

constitute significant new information. Additionally, the easement document permits the installation and maintenance of a utility line on the Gaviota Holdings property to serve the two residences proposed. It is not a regulatory document nor was it made for the benefit of the public. It is a private agreement entered into for the benefit of the two parties, enforceable only by those parties, and there was no intent to limit future development on the Naples lots.

5. Orchard Constraints and Viability

At the March hearing members of the Planning Commission had questions regarding potential limitations and overall viability of the proposed planted agricultural areas. In general, there are a variety of fruit and nut bearing trees that are best for cultivation on clay soils such as those that exist at the site, including apples and crabapples, and another category of trees that will tolerate clay soils, including black walnut. In addition to soils, the particular climate of an area must also be taken into consideration in order for a plant species to be successful. The project design has been attentive to the soils as well as the climatic conditions and thermal belts of the project area to make the determination of which types of fruit/nut bearing trees are most compatible with and best suited for the property.

In addition, the following conditions and presumptions have been considered:

- The orchard will provide fruit for the owners use and/or fruit may be sold at local farmers markets, but, given the environmental constraints of the site and the inherent limitations of the type, limited extent, and disjunct occurrence of agricultural soils, it is not the intent of the orchard to be a commercially viable agricultural orchard or provide supplemental income to the property owner.
- The orchard will provide an appropriate aesthetic for the area and landscape screening for the residential development.
- The orchard will be attended to by an experienced orchard manager.
- The orchard will be irrigated with reclaimed water.
- Organic soil amendments can and will be used on the limited areas of the property designated for planted agriculture at the discretion of the owner and the orchard manager.

The property where the orchard will be cultivated is underlain, in part, by diablo clay soils and lies within one of California's best horticultural climates. Although it is not traditional to cultivate apples along the central coast of California, certain varieties of apples and crabapples can be successfully cultivated in this climate. There is at least one other example of apples being cultivated along the Gaviota Coast. Further, apples and crab apples do well in clay soils and may not require any soils amendments. In the case of citrus, there are varieties of citrus that will thrive in the climate described and within clays soils, but a certain amount of organic soil amendment should be mixed into the underlying soils for maximum health and productivity. Given the limited areas of the property designated for planted agriculture, amending the soils in this manner is not considered a significant constraint to maintaining planted orchards in these small areas. Agricultural innovation allows for many crops to be successfully and without great effort cultivated in

many non-traditional settings, particularly on a small scale such as that proposed. In order to accommodate the needs of the orchard manager, the property owner and the landscape screening requirements, trees used for the orchard will be of the dwarf/semi-dwarf varieties.

Conclusion

We are in receipt of letters recently addressed to the Planning Commission raising issues of Project compliance with the California Environmental Quality Act and County policies, which we believe have been thoroughly vetted during the many years of development review for the subject properties including the County's and Coastal Commission's review of the previous Dos Pueblos Golf Links Project, and the six-year County review process culminating in the 2-home residential proposal now being presented for your consideration. As a result of a diligent environmental review process, close coordination with County and Coastal Commission Staff, and input provided by numerous stakeholders, the proposed Project carefully balances limited residential development and agricultural uses with protection of significant coastal resources, while provide public access and recreational opportunities of both regional and state-wide significance.

We thank the County Planning Commission and Staff again for your time and consideration and, based on substantial evidence in the record, we wholly support the Staff Recommendation to approve the Project finding that the Project complies with the California Environmental Quality Act and is consistent with all applicable provisions of the County's General Plan and certified Local Coastal Plan.

Sincerely,

April Winecki

Sulle

Senior Project Manager/Coastal Planner

Dudek

Enclosure

CC Via Email

Chris Yelich, Brooks Street
Howard Zelefsky, Brooks Street
Nicole Lieu, County Planning and Development
Steven H. Kaufmann, Esq., Richards, Watson & Gershon
Jane Gray, Dudek
John Davis, Dudek

DUDEK .

6



MEMORANDUM

To: CPH Dos Pueblos Associates, Howard Zelefsky, Brooks Street

From: DUDEK

Subject: Response to Public Comments on the Recirculated Biological Resources

Section of the Paradiso del Mare Ocean and Inland Estates DEIR

Date: November 15, 2013

This Memorandum has been prepared to address comment letters submitted by the public to the County of Santa Barbara (County) on or before October 28, 2013, for the Paradiso del Mare Ocean and Inland Estates Draft Environmental Impact Report (DEIR) recirculated Biological Resources section. The majority of responses to comments herein focus primarily on issues raised on white-tailed kite nesting, ocean lot development setbacks, and habitat mitigation. The letter submitted by the Santa Barbara Audubon Society, Inc. (Audubon) on October 28, 2012, titled Comments on the Recirculated draft EIR for Paradiso del Mare, was the most expansive comment letter on the subject, therefore, most, but not all, responses are directly addressing Audubon's concerns, while often indirectly addressing comments from several others members of the public including:

- · Bob Keats, Surfrider Foundation
- Joseph L. Cole, Counselor at Law
- Ana Citrin, Law Offices of Mark Chytilo
- Otis Chelaf, President, Santa Barbara Trails Council

Mr. Peter Howorth also submitted a comment letter specifically reflecting concerns related to the harbor seal haul out on the beach adjacent to Naples Reef. Dudek previously responded to his comments in a separate technical memorandum dated October 4, 2013 (Dudek 2013a). Therefore, this Memorandum does not address the harbor seal haul out.

Dudek has prepared several technical letters and memorandums for the Paradiso del Mare Ocean and Inland Lot residential project (project) that document biological resources on-site as well as provide scientifically peer and/or publically reviewed information. In our opinion, Dudek and has presented an objective and thorough assessment of potential impacts and practicable mitigation for any resources impacted, directly or indirectly by the proposed project. We understand that biological issues can be complex, and, therefore, we at Dudek/Habitat

Restoration Sciences, Inc. (HRS) have used qualified and knowledgeable biologists and habitat restoration practitioners in the preparation of our documents. For consistency and for his breadth of knowledge locally, we continued to employ Paul Collins, M.A. Curator of Vertebrate Zoology at the Santa Barbara Natural History Museum as a sub-consultant for white-tailed kite surveys and peer review of the survey reports.

A brief introduction of qualifications and relevant experience for the primary biologists and habitat restoration practitioners is provided below. Our response to comments directly follows our qualifications.

QUALIFICATIONS

Dudek/HRS

John H. Davis IV, MS, CE, Senior Ecologist

John Davis IV is a senior ecologist in the Santa Barbara office with over 15 years' experience, specializing in biological resource assessments; special-status plant and wildlife species surveys; habitat restoration; and environmental regulations, permitting, and compliance. Mr. Davis IV's expertise is in identification and risk management of potential biological constraints for a diversity of land use projects, including energy, infrastructure, residential, commercial, and restoration projects. He has effectively assisted clients with project design and agency negotiations, produced defensible biological technical reports, and managed and coordinated biological resources reporting for California Environmental Quality Act, National Environmental Policy Act, California Coastal Act, State and federal Endangered Species Acts, and the Clean Water Act.

Mr. Davis IV has extensive experience surveying for a number of special-status invertebrate, reptile, amphibian, and mammal species. He is permitted by the U.S. Fish and Wildlife Service (USFWS) to conduct surveys for listed vernal pool branchiopods (fairy and tadpole shrimp to handle the federally threatened California red-legged frog (Rana draytonii). In addition, he is California Department of Fish and Wildlife (CDFW)—qualified to conduct small mammal trapping and has conducted trapping on More Mesa in Santa Barbara County. Mr. Davis has experience with raptors and raptor surveys in the Santa Barbara region and in the coastal and interior portions of southern and central California. In addition to common raptor species, John has surveyed specifically for the fully-protected white-tailed kite on coastal projects in Orange and Santa Barbara Counties and state-threatened Swainson's hawk in the San Joaquin Valley. Mr. Davis IV has also conducted numerous focused floristic (rare plant) surveys, vegetation mapping, and wetland delineations in southern and central California.

Dave Compton, Ornithologist/Wildlife Biologist

Dave Compton has extensive experience with raptors and raptor surveys in the Santa Barbara region and in southern and central California, in general. His survey experience has exposed him to the habits of species breeding and wintering in the region, such as the white-tailed kite, Cooper's hawk, northern harrier, red-tailed hawk, red-shouldered hawk, golden eagle, peregrine falcon, and American kestrel. He has also performed focused surveys employing a variety of methodologies, including the CCC breeding and winter season raptor survey protocols, Swainson's hawk survey protocols for both the Central Valley and the Antelope Valley, and raptor survey guidelines of the Hawk Migration Association of North America. His Santa Barbara area experience with raptor surveys dates to weekly participation in volunteer monitoring of white-tailed kite nesting and winter roosting in Goleta, 1997-1999. He also has conducted general raptor surveys under CCC guidelines for several sites in southern Santa Barbara County, including winter and breeding season surveys of four separate survey areas for the University of California, Santa Barbara, Long Range Development Plan (LRDP); winter and breeding season surveys related to the Santa Barbara City College LRDP; and raptor and whitetailed kite surveys for several potential residential developments in southern Santa Barbara County, 2011-2013 (including Paradiso del Mare). He also participated in general raptor surveys following CCC guidelines for a proposed development in Orange County in 2012. Outside of CCC jurisdiction but along the southern California coast, he conducted a raptor habitat assessment for a small proposed residential development in Ventura, Ventura County, in 2011. Other raptor experience includes focused protocol Swainson's hawk surveys for various renewable energy projects, including two projects in Los Angeles and Kern counties in the Antelope Valley, 2010-2011, and seven projects covering six distinct survey areas in the San Joaquin Valley in Fresno and Madera counties, 2010-2012; golden eagle and general raptor surveys on a site in the Sierra Nevada foothills of Tulare County, 2012-2013; and breeding season raptor surveys at a site in the southern San Joaquin Valley, Kern County, 2013.

Traci Cady, Wildlife Biologist

Traci Cady has performed surveys for migrating and nesting raptors in various counties including Kern, Stanislaus, Merced, Stanislaus, Fresno, Tulare and Santa Barbara Counties. She has conducted general raptor surveys under CCC guidelines for southern Santa Barbara County, including breeding season surveys for the University of California, Santa Barbara, Long Range Development Plan (LRDP) in 2012; and breeding season raptor surveys for Bacara resort and Spa in 2010. She has performed focused surveys employing a variety of methodologies, including winter season raptor survey protocols, Swainson's hawk survey protocols, and raptor survey guidelines of the Hawk Migration Association of North America. Raptor experience includes focused surveys for Swainson's hawk in Fresno and Madera Counties in 2011;

Swainson's hawk and nesting raptor surveys at 48 sites in San Joaquin Valley in Merced, Stanislaus, and Fresno County in 2010-2012; golden eagle and general raptor surveys at a site in the Sierra Nevada foothills of Tulare County, 2012-2013; and breeding season raptor surveys at a site in the southern San Joaquin Valley, Kern County, 2013.

Mike Sweesy, Principal Habitat Restoration Specialist

Michael Sweesy is a registered landscape architect and habitat restoration specialist with 27 years' experience in landscape architecture and habitat restoration projects. Mr. Sweesy has designed restoration projects for wetlands creation and enhancement such as mulefat scrub, oak riparian forest, southern willow scrub, and vernal pools; sensitive upland habitats such as coastal sage scrub, chaparral, and native bunchgrass grassland; and mitigation projects for endangered species such as the Quino checkerspot butterfly (Euphydryas editha quino), Palos Verdes blue butterfly (Glaucopsyche lygdamus palosverdesensis), California gnatcatcher (Polioptila californica), least Bell's vireo (Vireo bellii pusillus), and San Diego ambrosia (Ambrosia pumila). Mr. Sweesy supervises the preparation of conceptual design, design development, and construction documents for environmental projects. Mr. Sweesy's landscape architecture professional training and project experience allows him to prepare construction drawings and technical specifications that incorporate modern, state-of-the-art construction techniques to habitat restoration projects. Mechanized site preparation, seed application, and weed control techniques provide cost savings while maintaining high project quality. Mr. Sweesy has assisted with permit processing on projects including U.S. Army Corps of Engineers (ACOE) Section 404 individual and nationwide permits, U.S. Fish and Wildlife Service (USFWS) Section 7 and 10a permits, California Department of Fish and Game (CDFG) 1601 and 1603 Streambed Alteration Agreements, and Regional Water Quality Control Board (RWQCB) 401 certifications. In most cases, Mr. Sweesy's involvement with permitting has been focused on project mitigation design and implementation.

Mr. Sweesy's coastal zone projects include The Crossings at Carlsbad Golf course coastal sage scrub and wetlands mitigation implementation, Trump National coastal sage scrub mitigation design and implementation, Talbert Nature Preserve riparian mitigation implementation, San Pedro Naval Housing conceptual design for a Palos Verdes Blue Butterfly preserve, and the El Cuervo Norte wetlands mitigation project on Peñasquitos Creek in San Diego County. Mr. Sweesy has wetlands restoration design experience at Newhall Ranch and at Dos Pueblos High School.

John Minchin, Senior Habitat Restoration Specialist

John Minchin has over 32 years' professional experience in the design, construction, and management of landscape architectural and habitat mitigation/restoration projects throughout California. He has specialized in native habitat restoration and mitigation services since 1989. Mr. Minchin has designed extensive mitigation and revegetation programs for various habitats throughout California, ranging from wetlands to uplands, and specific programs for sensitive/endangered species. His experience includes preparation of preliminary mitigation designs, conceptual mitigation/revegetation plans (i.e., reports), final revegetation construction documents (i.e., plans, details, and specifications), oversight of CADD-generated drawings and details, construction cost estimating and construction administration, and long-term biological monitoring.

Mr. Minchin's expertise includes landscape construction administration and field implementation of mitigation/revegetation projects. He has experience in construction monitoring and coordination with landscape contractors during installation, throughout maintenance, as well as management of long-term biological monitoring and reporting programs. His coastal zone project experience includes Dos Pueblos Golf Links Project, (currently known as the Paradiso del Mare project), Encinitas Highway 101 Emergency Slope Repair Project, El Cuervo Wetland Mitigation Project on Penasquitos Creek in San Diego County, and the Goleta to Las Flores Canyon 66-kilovolt (kV) Electrical Transmission Line Corridor Mitigation/Revegetation project.

Jayme Timberlake, Habitat Restoration Specialist

Jayme Timberlake is a habitat restoration specialist with over 7 years' professional experience working in the environmental field. She specializes in habitat restoration and environmental analysis. She brings diverse experience to the project team, including mitigation design and monitoring, permit acquisition related to wetland resources and threatened or endangered species, wetland delineation, due diligence property assessment, environmental impact assessment using geographic information systems (GIS) applications, and project management. She completed graduate research on the implications of the Solid Waste Agency of North Cook County (SWANCC) and Rapanos Supreme Court cases on California's wetland resources. Ms. Timberlake is work involves a variety of habitat restoration projects at all stages of development including conceptual design, construction design, and long term monitoring and reporting. Her experience includes freshwater marsh, salt marsh, riparian, chaparral, stream channel, and coastal sage scrub habitats on the following coastal zone projects: Crossings at Carlsbad Golf Course — Habitat Management, Newport-Banning Ranch conceptual wetlands and uplands mitigation design, and the conceptual restoration design for the Malibu Parks Public Access Enhancement Plan.

Mark Girard, President of Habitat Restoration Sciences, Inc.

Mark specializes in native habitat restoration installation and maintenance projects and has 20 years' experience installing and maintaining projects throughout California. He is trained as a heavy equipment operator with experience on all types of construction equipment. Mark is a licensed contractor for the state of California (C-27 #842661) and Nevada (C-10 #0078266) and maintains a California Qualified Applicator License (QAL #32047). Mark's notable projects include restoring 44 acres of coastal sage scrub habitat at The Crossings Golf Course in Carlsbad, coordinating a 26-acre habitat restoration site for the Rancho Water District, implementing a restoration maintenance project for The Nature Conservancy, restoring San Diego's historic Famosa Slough and managing the installation and maintenance of 1,200 LF of biotechnical habitat and water quality improvement treatments for the Lower Blackwood Creek Stream Habitat Restoration Project in the Tahoe area. He is affiliated with the California Landscape Contractors Association (CLCA), SERCAL, Cal IPC and the American Legion. Mark earned a bachelor's degree in wildlife biology from the University of Massachusetts and received an honorable discharge from the USMC.

Subconsultant

Paul Collins, M.A.

Paul is a generalist who has conducted research on a wide variety of vertebrates (birds, mammals, reptiles and amphibians) native to central and southern California. While his principal focus has been on the terrestrial vertebrate fauna of the California Channel Islands, he has also conducted focused field studies on the bats of central California, the endangered California Tiger Salamander, and on a variety of declining land birds found on Vandenberg AFB. He has studied the origin, evolution and diet of the island fox, the nesting season diet of Bald and Golden Eagles, the historic diet of the California Condor, the taxonomy of the Western Harvest Mouse, the paleoecology of the Island Scrub-Jay, and the conservation of declining endemic land birds of the Channel Islands. Paul is currently working on a book on the birds of the California Channel Islands.

RESPONSE TO COMMENTS

#I White-tailed Kite Data used in the Paradiso del Mare DEIR-rBR

Santa Barbara Audubon Society, Inc.

On Pages 3 and 4 of the letter, Audubon states, "Santa Barbara Audubon finds the record of Kite occupancy at as presented in the Recirculated dEIR (hereafter RdEIR) lacks reference to available and

relevant information. We have found several records that establish the Kites' use of the site in years other than those acknowledged in the RdEIR, regardless of whether or not breeding was successfully carried out. The RdEIR suggests known breeding in 2002 and 2013 and potential nesting in 2000 and 2004." and "Data introduced here indicate that breeding may have occurred also in 2001, 2003, 2009, and 2011. Without this additional information we cannot clearly see the established fact that Kites value this property and that their use is not occasional, but persistent."

Dudek Response

Dudek appreciates Audubon providing additional field notes and opinions on white-tailed kite use of the project site. Although the additional white-tailed kite notes were welcomed, we do not concur that the information adds further clarity to the DEIR-rBR analysis or conclusions, nor does the proposed "significance" of the data change our professional opinion of the white-tailed kite's use of the site, including nesting. As established in the DEIR-rBR and supporting documentation, kites have frequently used this site for hunting during the breeding season and post-breeding and for breeding/nesting, although intermittently and with mixed or uncertain results as in 2000 and 2004.

An example of where Audubon and Dudek opinion differs is for the year 2011, where Dudek conducted a series of seven focused white-tailed kite surveys (March 18 through August 30, 2011a) and conclusively and clearly documented a nest failure approximately 0.25 mile west of the site on Santa Barbara Ranch property. No white-tailed kite breeding or nest building were observed on the subject property in 2011. Audubon's conclusion that nesting may have also occurred in 2011 ignores the documented and publically reviewed data and thorough status review of white-tailed kites on-site (Dudek 2011b) made available by Dudek at the time of the Revised EIR preparation in September 2011. The County of Santa Barbara (County) later released the information as an appendix to the public draft EIR. Please refer to Dudek 2011a and 2011b for further information.

It should be noted that the data Mr. Holmgren has been collecting since 1986 was provided to the County in 2009 for the More Mesa Biological Resources Study. In this study, Rincon Consultants, Inc. reviewed Mr. Holmgren's and other sources of data and only recognized two nests on the Paradiso del Mare project site (then referred to as the Dos Pueblos Golf Links Project) between 1963 and 2009, one nest in 2000 and one 2002. The Rincon Consultants study included only confirmed nests or clear breeding evidence (persistent territoriality) from confident sources were, noting that conflicting or incomplete accounts were not included; please refer to the More Mesa Biological Resources Study, Table 3.1-9 (page 3-Vertebrates 51) available on the County of Santa Barbara's website. To our knowledge, the More Mesa study is the only other peer reviewed source of Mr. Holmgren's data conducted since 2002, and they,

Rincon Consultants, independently arrived at a similar conclusion as Dudek; however, siding with caution, Dudek has also considered two additional potential nest sites in its analysis, one observed onsite in 2002 and the 2004 observation by Holmgren as a possible nest, even though neither repetitive visitation, nor evidence of failure or success was conducted to conclusively determine their existence, status, or outcome. The result of a methodical review of all available survey data as detailed in Dudek's memoranda and the DEIR-rBR is that Dudek and the County have recognized two confirmed successful nest sites, in 2002 and 2013, and three possible nest sites in 2000, 2002 and 2004.

Audubon also states that in Oct 2009 during the non-breeding period for kites, "Based on these comments, Kites probably did not breed on the property this year, but I've not read the Collins reports." In this case, Audubon concludes that breeding probably did not occur, but then state later that it (i.e. breeding) may have occurred. Paul Collins has noted for years that breeding kites from neighboring properties and post-breeding kites have foraged over the project site, but did not nest on-site (2004, 2005a, 2005b, 2006, and 2007). In 2005, Collins concludes: "...it appears that adult kites were occasionally using the Makar/Arco Dos Pueblos (currently Paradiso del Mare) property for foraging during the breeding season (April – June) but did not appear to nest on the property in 2005. Rather it also appears that kites that nested on property north of Highway 101 brought their young to the site following fledging."

Mr. Collins also reports: "The 2007 raptor surveys confirmed that I-2 WTKI were present on the property through the 2007 breeding season. No kite nests were located on the property and no behaviors were observed that might suggest possible kite breeding. Kites continue to use areas south of the railroad along the coastal terrace for perching and foraging."

Additional information presented by Audubon includes field notes collected by one observer on occasion for an undisclosed amount of time. Even though we recognize value in all field notes and some are consistent with previously documented and publically reviewed reports, it is challenging to concur with the "significance" that Audubon places on such limited data, especially when the report speculates on kite usage of the site but where documentation exists describing kite use of the site through seasonally appropriate and repetitive field surveys by qualified biologists. Admittedly, early surveys (pre-2005), including Mr. Holmgren's 2004 surveys of the site, did not exercise uniform methodology during breeding season or non-breeding surveys to determine actual nest success and post-breeding use of the site. Instead, starting in 2005, Dudek employed Paul Collins to develop and execute a stronger more thorough field methodology to survey kite use of the project site. This included seven, 4-hour morning surveys spaced two to three weeks apart through the breeding season and was used in 2004, 2005, 2006, 2007, 2011, and 2013. Additionally, Paul Collins conducted a post-breeding survey

in 2005. As indicated in the survey reports, the entire site was covered during each and every survey.

In conclusion, it is Dudek's opinion that the County of Santa Barbara utilized an expansive data record for inclusion in their impact analysis for the white-tailed kite of the project site. Most projects or project sites do not have 15 years of available data to utilize for such an impact analysis.

#2 2013 Nest Survey Results

Santa Barbara Audubon

"Dudek's field results in 2013 provide no documentation for their claim of six fledglings produced by one broad."

Dudek's Response

We appreciate Audubon's interest in this particularly plentiful nest. Although we, Dudek and Paul Collins, also consider it a rare "event of nature," our job at-hand was to document the success or failure of the subject nest and use of the project site by the white-tailed kite. Two qualified biologists, Paul Collins and John Davis IV, spent nearly 4.0 hours on-site on June 13, 2013, and approximately 3.0 hours directly observing the 6 juvenile kites (i.e., nestlings/fledgling) and 2 adult kites at and nearby Tree 184, a Monterey pine, on the subject Ocean Lot. Documentation was presented in the report based on visual observations, from field notes taken at the time of the observations, and in photographs. Site conditions the morning of the observations consisted of grey overcast skies, which made for challenging photographic documentation, however, several photos were taken, one that captured all of the fledglings/nestlings in a photograph, although admittedly two birds are rather obscure. Please refer to the attached Photo Documentation.

Santa Barbara Audubon

Page 1, "Not one of several scientific studies has shown more than five Fledglings or nestlings for White-tailed Kite from a single brood." and on Page 8, "While Dixon (1957) noted only one of 124 nests containing 6 eggs, nowhere in the literature or in Holmgren's experience have as many as six eggs advanced to the nestling or fledgling stage."

Dudek's Response

It is true that the few scientifically peer reviewed papers don't describe nest success of nestlings/fledglings of six; however, per the Birds of North America Online, Cornell Lab of Ornithology (Dunk), brood egg numbers mean is 4.1 (75% of 38 nests contained 4 eggs), range 3–6 (Stendell 1972, Dixon et al. 1957). As indicated by Audubon, of 124 nests, one contained 6 eggs, 15 had 5, 106 had 4, and 2 had 3 (Dixon et al. 1957). Again, although we agree it rare, the potential of 6 eggs and 6 nestlings/fledglings is a possibility. Although fine scientific papers exist, please remember that there are large gaps in literature and geographical area covered by the literature, and even if extremely rare, it is unreasoned to deny the success of 6 fledglings from one brood. Speaking rationally, if one nest with 6 eggs was observed in 1957 (over 56 years ago), it is very probable that a similar event could occur again. It should be noted that Mr. Storrer observed five nestlings on-site in 2002, and as Audubon points out, many nests in the Goleta Valley in 2013 had 3 nestlings. Using Audubon's logic and Dixon's 1957 paper as a premise, three is almost as rare, for only two nests had 3 eggs. Even so, Dudek does not assert that Audubon's data is invalid; our biologists recognize the possibility exists.

Santa Barbara Audubon Society, Inc.

On Page 8, "This unique observation by Dudek requires further substantiation. But this observation also stands out for other reasons. By contrast, in the Goleta Valley the 2013 Kite nesting season showed very low productivity. First, we observed a high rate of territory abandonment (8 of 12 territories formed in mid-winter were abandoned by 20 May 2013). Second, of the five pairs that bred we noted fewer fledglings than in other years. Only one nest had as many as three fledglings, the remainder had two or one fledgling."

Page 8 (continued): "Finally, no second broods were attempted by any breeding pair. These facts indicate that prey populations were very low during the period when the need for food is most intense for Kites. By all indications this was not a favorable year for their prey, and, therefore for breeding Kites, along the South Coast. Yet we see quite the opposite breeding result observed by Dudek at PdM in 2013."

Dudek's Response

We regret that deeper attention wasn't paid to Dudek's 2013b report. At Paradiso del Mare, there were two nesting attempts on opposite sides of the project site, one on the far east side of the Ocean Lot near Eagle Canyon, and one on the far west side of the property near the Ocean Lot development envelope. The "Eagle Canyon" nest was unsuccessful, while the "Ocean Lot" nest was successful, an overall 50% success. This does not particularly equate to a

high success for a 143 acre site with numerous suitable nesting sites and expansive potential hunting grounds on and adjacent to the site. In 2011, when the Goleta Valley had excellent nesting success, 43 successful nests (Holmgren 2009 and John Storrer, personal communication), the project site did not have one pair of breeding kites; the closest attempt was 0.25 mile west of the site on the border of Santa Barbara Ranch, which was documented during Dudek's 2011 survey as an unsuccessful, a failed nesting attempt. No nests occurred on-site in 2011. While prey availability is an obvious limiting factor for kite success, the conflicting 2011 and 2013 data – between the Goleta Valley and Paradiso del Mare project site - suggest other factors may be at play.

Santa Barbara Audubon Society, Inc.

On Pages 8 and 9, Audubon had several direct questions about the fledglings observed at the 2013 ocean lot nest.

Dudek Responses

Please refer to Table 1 for Dudek's responses to Audubon's fledgling observation inquiries.

	Table 1. 2013	Fledgling Qu	uestionnaire
Question No.	Santa Barbara Audubon		Dudek
1	Did both members of the Dudek team observe the 6 fledglings?	Vertebrate Z Ecologist wi and viewing fledglings an	Collins, Independent Contractor and Curator of coology at the SBNHM, and John Davis IV, Senior th Dudek, both observed, standing side-by-side through scopes and binoculars, the six (6) at two (2) adult WTKIs. Over 3 hours of time was ring this nest and adult and fledgling behaviors.
2	At what distance were the observations made on 13 June?	Approximate	ly 70 meters at the closest point
3	Is there photographic evidence of the 6 fledglings?	using a Niko photographs (or were obv and from nei location, whe were visible	were taken from one of the viewing locations in D90 and 55-300mm zoom lens. In the in only (up to) 4 fledgling were captured at one time ious in the photo) due to consistent movement to ghboring trees, branches, and hidden nest ere two (2) fledging "hid out" as noted in report, but in the scope (not entirely at any one moment — d foliage blocking full view).

	Table 1. 2013	Fledgling Questionnaire
Question No.	Santa Barbara Audubon	Dudek
4	Did the observers note plumage differences among the fledglings?	Yes, based on observations, we considered that these birds were, on June 13, in the transition from nestlings to fledglings. Paul Collins thought that we may have witnessed their first flight, but from my perspective, that would be difficult to prove since we were there every other week, however, the birds were hesitant and only flew between the adjacent pines as noted in the report. A couple fledglings made an approximately 140 meter flight, the longest flight observed to the tamarisk along Tomate Canyon. Most flights observed were very short though. One bird, possibly two, did not fly during the time we were watching the kites.
5	Were any observations made from the Naples property where Kites have bred recently?	The entire project site was surveyed for kite nest and activity As mentioned in the report, one adult kite was observed in Monterey cypress 150 to 200 meters west of the bridge and was observed foraging north of the UPRR and the perch tree No other kites were observed.
6.a.	Did the Dudek team estimate the size of the 2013 foraging area as they did in 20116?	Dudek (2013) Page 3 "Continual foraging, at times successful was observed over the area west of the Ocean Lot an Tomate Creek, north and south of the UPRR ROW, ver similar to the areas previously observed and delineated by Dudek (2011)." And "The remainder of foraging activities too place in two locations north of the eastern portion of the sit across from US Route 101, over the south-facing slop covered with annual grassland. The foraging activity was similar to the areas previously observed and delineated by Dudek (2011)."
6.b.	And did they conduct any trapping for small mammals	No small mammal surveys were conducted; however, it reasonable to conclude that the presence of a successful newith six fledglings is evidence of sufficient small mamma presence and availability in proximity to the nest site. As note above, observed foraging patterns were similar to those observed and mapped in 2011.
7	Were there follow-up observations after 13 June to confirm this sighting?	No, since the nest was conclusively determined to be successful with the observation of six (6) fledglings, no oth

	Table 1. 201	13 Fledgling Questionnaire
Question No.	Santa Barbara Audubon	Dudek
		surveys followed.

Santa Barbara Audubon Society, Inc.

On Page 11, "First, Dudek does not acknowledge all of the nesting occurrences on the project site in the past 15 year. To the contrary, and as we show above, Dudek only acknowledges two nesting events in 15 years. It's not surprising that Dudek concludes that nesting in Tree 184 has never occurred previously."

Dudek's Response

True, Dudek recognizes two successful nests at the Paradiso del Mare project site, 2002 where 5 fledglings were documented at Tree 157 by John Storrer and in 2013, when Paul Collins and John Davis IV observed six fledglings at Tree 184. We also recognize the possibility of three other nests that were not surveyed repetitively through the breeding season and which we can't conclusively accept as successful (2000, 2002 and 2004). As mentioned, Rincon (2009) only recognized two nests at Paradiso del Mare, 2000 and 2002. Apparently, Holmgren (2009) and Kite Watch data is insufficient to conclude otherwise.

#3 Development Setback from 2013 Nest Site and Foraging Habitat

Santa Barbara Audubon Society, Inc.

Page 11: "A successful nest area is very likely to be one used again."

Page 11, Footnote 13: "Kites have used the same tree at UCSB 1999, 2000, and 2001; at Lake Los Carneros where 3 trees south of the dam have had 2 nests in them; also at Lake Los Carneros a tree on the peninsula on the north side of the lake was used in 2012 and 2013, both abandoned; at More Mesa, eastern territory, Kites have used the same platform (two successive nesting events in 1998)."

Dudek's Response

Dudek provides substantial documented evidence that white-tailed kite <u>typically</u> do not select the same nest tree in subsequent nesting attempts. We submit no absolutes, without reasonable possibilities, that they won't nest in the same tree more than once. Based on Holmgren's (2009) data consisting of 158 white-tailed kite nests only five trees were reused,

which equals about 3 percent re-use. As presented in Dudek (2013) many scientifically peer reviewed papers have experienced less evidence of re-use. Although we genuinely feel Holmgren's (2009) data and Kite Watch, in general, has local value, it should be recognized that Holmgren's data has not been scientifically reviewed or published in a peer reviewed scientific journal. As presented by Audubon, "Most of this material is in Holmgren's possession but may in time be archived at UCSB's Cheadle Center for Biodiversity and Ecological Restoration."

Dudek stands by our conclusion presented in Dudek 2013 that white-tailed kites do not typically use the same nest site and that the nest occurrence at the Ocean Lot is in fact unique for the site (in recent history), but not completely unexpected, since Monterey pines are suitable nest trees and quality hunting grounds with sufficient prey are located nearby.

#4 Mitigation Measures

Santa Barbara Audubon Society, Inc.

On Page 13, "Dudek states on p. 103 of the RdEIR:"

Dudek's Response

Please note that although Dudek has worked closely with the County and their consultants, Impact Sciences, Inc. and John Storrer of Storrer Environmental Services, the EIR was not prepared by Dudek.

Santa Barbara Audubon Society, Inc.

On Page 14, ". . . white-tailed kites would be expected to choose a nesting location proximate to suitable foraging habitat but further from human activity than provided by the proposed project design. Therefore, without mitigation, the proposed project would result in a significant impact to the white-tailed kite nest site identified in 2013."

Dudek's Response

As stated by Dudek (2011b): "The goals of the conceptual wetland and upland mitigation and monitoring plan (mitigation plan; Dudek 2011, in preparation) are to 1) mitigate project impacts to vegetation communities and 2) enhance hunting/foraging and perch habitat for the white-tailed kite. The location of the mitigation site is proposed north of UPRR between Drainage #5 and Drainage #3, an area previously observed as white-tailed kite foraging habitat. The site is also strategically positioned near historic nest and perch sites. It is proposed in the mitigation plan to form a mosaic of native vegetation communities of varying structure and composition.

This would be accomplished by installing multiple areas of purple needle grass grassland and coastal sage scrub habitats and six coast live oak (Quercus agrifolia) trees in areas currently dominated by mustard fields, while enhancing areas occupied by existing annual grassland and coastal scrub habitats in open areas and near the drainages. Enhancement of Drainage #5, which already provides structure and complexity to the site, is proposed via addition of arroyo willow (Salix lasiolepis) shrubs to mitigate impacts to riparian habitat. Lastly, since one of the most significant challenges to establishing native grasslands is competition with aggressive weeds, an exotics free buffer zone will be established around all restored native upland and wetland habitat areas to ensure the long-term success of these vegetation communities."

"To enhance the on-site habitat for the white-tailed kite, while mitigating project-related impacts, a conceptual wetland and upland mitigation and monitoring plan is proposed for the project. One of the primary goals of this plan is to increase the hunting habitat value for the white-tailed kite and their primary prey, the California vole. This would be accomplished by creating a mosaic of natural vegetation communities, including native grasslands, in the central portion of the site near suitable nest and perch trees. To further facilitate the recovery of the site to an ecologically balanced condition, habitat restoration will be implemented concurrently with the removal and maintenance of adjacent mustard fields. Additionally, six (6) large native coast live oak trees will be planted in appropriate locations in the restored native upland and wetland vegetation communities to provide perches and potentially nesting habitat north of UPRR. Finally, the proposed open space and conservation easement will ensure that 91-acres of habitat, including the mitigation site, will be preserved in perpetuity. The combination of these key plan components would significantly improve the conditions on-site for the white-tailed kite, and ensure existing and restored habitat supporting the white-tailed kite is permanently preserved for the species."

Santa Barbara Audubon Society, Inc.

Beginning on Page 14 and ending on Page 20, Audubon presents a table with the introduction "We examine each proposed mitigation and our sense of why several do not mitigate the impacts of the lost Kite breeding area."

<u>Dudek's Response</u>

Dudek addressees Audubon's comments in Table 2 below:

		Table 2. Discussion on Proposed Mitigation	
	Santa Barbara Audubon Society, Inc.	ubon Society, Inc.	
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
RdEIR and MM-BIO-9a	Relocation of Coastal Estate and use area 100 feet Relocate low-intensity uses 75 feet	Clearly, relocation is appropriate. Placing this house in already disturbed habitat on the N side of the property would protect the areas south of the tracks, which are less disturbed and better nesting habitat. However, maintaining the home and driveway near their current positions with set-backs of 100' and 75' will interfere with kite breeding. Furthermore, the position of the home rests within a continuum of suitable habitat on Naples and PdM.	Considerable attention has been given to all biological resources on-site when selecting this particular location. Data suggests that kites will nest near residences and structures when quality hunting grounds occur nearby. The location of the Ocean Lot residence is positioned to the far west of the site allowing for a larger continuous conservation easement that will include the existing bulk of suitable nest trees, foraging habitat and 23.57 acre habitat mitigation.
MM-BIO-9b	Nesting Season Restrictions. Requires pre-construction birdsurveys and the application of buffers or delay of construction activities in order to protect nests.	This mitigation contradicts other commitments in the RdEIR. This mitigation w construction and create a set-back to 300', y proposed buffer around the Kite nest would b 100'. We believe this mitigation is unrealistimore appropriately, should be consconditions attached just to the construction a residential structure setback.	buffer Per CDFG Code and Migratory Bird Treaty Act, ill stop native birds may not be "taken" during the nesting ret the season. The nesting season restriction is not contradictory. Construction activities often introduce c and, new noise and distractions that dissuade or disrupt idered nesting, which may occur on different potions of the site during the construction period. It would be for that particular nest at that time. Nesting near built residences or structures with established ambient noise and disturbance would not further reduce

		Table 2. Discussion on Proposed Mitigation	
	Santa Barbara Aud	a Audubon Society, Inc.	
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
			nesting potential.
	Habitat Restoration. Planting of both mature and sapling Coast Live Oak trees adjacent to the habitat restoration area to create additional potential nesting habitat on-site	The benefits would not be realized in the short- or mid-term, certainly not in the life span of the pair using this habitat area. There exists no evidence this kind of mitigation can recover habitat for Voles and other Kite prey species. The Upland and Riparian Mitigation and Monitoring Plan is not	Six 36-inch box coast live oak trees would be installed for purposes of enhancing already existing and ample perch and nest habitat on the site within and proximate to enhanced and restored foraging habitat. These are significant trees that would provide benefits in the short-term. On a nearby
MM-BIO-10		completed and has not been peer- reviewed by Non-Dudek ecologists or decision-makers. A Class I impact remains because this action does not replace foraging habitat and it does not demonstrate how it will make more Voles available on PdM.	property, similar oak within 15 feet of a residence was used at the end of the breeding season by two kites. Others, still in boxes, were used by red-tailed hawks to perch from and overlook quality hunting habitat. In addition, the plan addresses mitigation to native vegetation incorporated a mosaic of habitat, primarily grassland that is similar to More Mesa.
			Plan has been peer reviewed by Impacts Sciences and Mr. John Storrer, and will be reviewed by County decisions-makers during a public hearing on the project, and a final plan will be prepared, submitted and reviewed by the County to confirm full

		Table 2. Discussion on Proposed Mitigation	
	Santa Barbara Au	a Audubon Society, Inc.	
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
			compliance with all conditions of approval prior to permit issuance.
MM BIO-10	Restoration Area Maintenance	Maintenance of restoration designed to replace lost plant communities does not restore small mammals. The cumulative effect of persistent human presence through weeding, replanting, and use of herbicides retard small mammal and bird colonization and reproduction. The result after 5 or more years is that the habitat may or may not look suitable, but it does not function to support reproduction.	The goals of the conceptual wetland and upland mitigation and monitoring plan are to 1) mitigate project impacts to vegetation communities and 2) enhance hunting/foraging and perch habitat for the white-tailed kite. Consideration of said activities and potential disturbance(s) will be made during implementation and maintenance, consistent with accepted professional standards. Increased and enhanced foraging habitat and access to prey and perch locations will facilitate breeding in suitable trees along the bluff. Audubon and literature recognizes the importance of quality hunting grounds in proximity to suitable nest trees. All restoration activities and compliance with performance criteria and adaptive management conditions will ensure success of the proposed restoration design.

		Table 2. Discussion on Proposed Mitigation	
	Santa Barbara Aud	ra Audubon Society, Inc.	
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
MM BIO-10	Conservation Easement Maintenance. 106.8-acre conservation easement area shall be managed for the life of the project to prevent the spread of invasive black mustard and to prevent the transition of the existing mosaic of herbaceous plants to shrubby areas opaque to kites.	Preventing the spread of mustard is not mitigation for areas lost to development. Removing mustard to create situations viable for small mammal reproduction might serve as mitigation. But the engineers of the restoration need to know how each area currently functions for prey animals before creating a restoration plan. Focused surveys for small mammals and habitat assessment of small mammal habitat were not done for this study.	Please refer to the DEIR-rBR and the conceptual wetland and upland mitigation and monitoring plan. Mitigation is only required for 10.56 acres, the Applicant has agreed to maintain an additional 12.97 acres currently overgrown with mustard to ensure a greater amount of quality habitat for the white-tailed kites and other biological resources, well beyond what is required to mitigate for project impacts to non-native vegetation. Dudek/HRS employ highly qualified biologists and habitat restoration practitioners who all recognize the importance of habitat restoration design and implementation. No small mammal trapping is proposed nor required to ensure the proposed restoration design is successful in meeting performance criteria.
MM BIO-10	Adaptive Management	This would be a necessary component of a well-designed program that focused on small mammals.	A well designed Adaptive Management programs will be developed and included in the final conceptual wetland and upland mitigation and monitoring plan for review by the County.

		Table 2. Discussion on Proposed Mitigation	
	Santa Barbara Audubon Society, Inc.	ubon Society, Inc.	4
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
MM BIO-10	Upland and Riparian Mitigation and Monitoring Plan. 23.5 acres of onsite mitigation/revegetation (i.e., creation and enhancement) that includes 0.11 acre of new riparian, 4.56 acres of new California sagebrush scrub uplands, 5.92 acres of new grasslands, and 12.97 acres of enhanced exoticsfree buffer zone areas. loss of or encroachment on 58 nonnative trees potentially used for perching by white-tailed kites for the construction of the residential access road, driveway, and residential structure	We would support this plan if it removes mustard stands and areas where other exotic invasives dominate. But it does not mitigate Kite impacts and there is no evidence that it enhances the animal populations that support Kites and other birds-of-prey. In fact, it might displace existing habitat that is providing ecological services to the Kite population. Because there is no prior assessment of areas that support Voles, restoration can damage existing Vole habitat. RdEIR incorrectly defines these trees as perch trees. In fact, the pines and cypress, even the Eucalyptus could be used for nesting as well. The impact is incorrectly described.	As previously discussed on Page 14, white-tailed kite prey habitat has been considered in the design conceptual wetland and upland mitigation and monitoring plan. The proposed restoration area is located in an area dominated by expansive and invasive mustard fields which have been observed on this site to significantly compromise kite foraging habitat. Defer to the County's response.
MM-BIO-14	Plant 6 Coast Live Oak trees to replace 3 non- natives.	P - V C-	The planting of large CLO trees often leads to failure requiring replanting. With replanting comes breeding season utilizing a recently planted oak of additional maintenance and human presence.

		Table 2. Discussion on Proposed Mitigation	
*	Santa Barbara Audubon Society, Inc.	ubon Society, Inc.	
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
		These trees would not be usable by kites for nesting within the 5-year period following planting. The benefits of this action are weak and, in the cumulative sense, may be considered part of a suite of added impacts.	vicinity of the project site (personal observation). White it is unfortunate that Audubon considers this obvious benefit as "weak," Dudek appreciates the comment, but strongly disagrees with Audubon. It should be noted that the conceptual wetland and upland mitigation and monitoring plan and all its mitigation elements, including the planting of coast live oaks, have been considered during preparation of the environmental impacts analysis for the project.
BIO-17	project would result in indirect impacts to biological resources such as white-tailed kite from human endeavors associated with residential and agricultural activities (Class II). Residential development and associated agricultural land uses would result in indirect impacts to wildlife utilization of the project site	Among the effects of greatest concern are those relating to herbicides and pesticides.	Defer to the County response

		Table 2. Discussion on Proposed Mitigation	
	Santa Barbara Audubon Society, Inc.	ubon Society, Inc.	
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
	hired for management of rodents use methods specified under this condition.	reasonable and barely, if at all, enforceable. Therefore, it's mitigation without enforcement teeth.	
		The RdEIR states it correctly: "The human activities associated with residential and	
		agricultural development would be potentially	
		significant to foraging, perching, and nesting behaviors of white-tailed kite and other wildlife	
		species," SBAS feels that a Class I impact to kites	
		and other raptors remains, and also contributes to	
		Cumulative Impacts.	
	Night lighting limitations: requires	Light can be only partially contained. Lacking a	Defer to the County response
	that lighting along driveways be	statement of the county standards for light	
	be directed downward in order to	of the mitigation. But consider that residual light	
0	minimize lighting impacts to kites	that escapes to habitat probably displaces small	
MIMI-BIO-17D	and other wildlife due to night-	nocturnal animals because in lit areas, they are	
	lighting	vulnerable to predators that see well and smell at	
		night: foxes, raccoons, skunks. The residual impact	
		probably remains a contribution to Cumulative	
		impacts	

		Table 2. Discussion on Proposed Mitigation	
	Santa Barbara Audubon Society, Inc.	ıbon Society, Inc.	
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
MM BIO-18	posting of educational and informational signage describing the sensitive nature of the nesting habitat for white-tailed kite and identifying trail use limitations. Five years of surveys for white-tailed kite nesting. "explain why the public shall refrain from disturbing the avian breeding ecosystem." "would describe the importance of kite nesting success and would limit use of public access easements during the nesting season if nesting white-tailed kites are present."	Possibly effective depending upon: a) County's diligence, b) bonding for the cost of surveys, c) competency of the biologist, and d) whether CC&Rs and other conditions stay in effect.	Defer to the County response
Upland and Riparian Mitigation and Monitoring	With implementation of Mitigation Measure MM BIO-10, impacts to white- tailed kite foraging habitat would be significant but mitigable.	We support the restoration of 23.5 acres with some misgivings. Its benefit is that it will displace, hopefully for the long-term, expansive mustard fields. On the other hand, there is no evidence that planting of trees or habitat restoration creates	Please refer to Dudek's response on Page 14

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		Table 2. Discussion on Proposed Mitigation	
p	Santa Barbara Audubon Society, Inc.	ubon Society, Inc.	
Impact /Mitigation	Action Proposed	Effectiveness of mitigation	Dudek's Response
	type conversion, focused herbicide application (i.e. spot spray) or other manipulation of vegetation)		
p. 111	Adaptive Management Plan	Devil is in the details. We have not read this plan. The overall additions of intense management just considering the Ocean Estate site alone creates an impact that substantially reduces the viability of the surrounding habitat for kites. Construction, Restoration, Mowing, Monitoring, Maintenance, utilities, lighting, herbicides, coastal access, 20 spaces of public parking. All this involves a huge increase in presence and activity that works against kites and it's doubtful that it enhances the situation for voles.	Devil is in the details. We have not read this plan. The Adaptive Management Plan will be prepared considering the Ocean Estate site alone creates an impact that substantially reduces the viability of the situation, Mowing, Monitoring, Maintenance, spaces of public parking. All this involves a huge increase in presence and activity that works against kites and it's doubtful that it enhances the situation for voles.

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Paradiso del Mare Ocean and Inland Estates Photograph Documentation

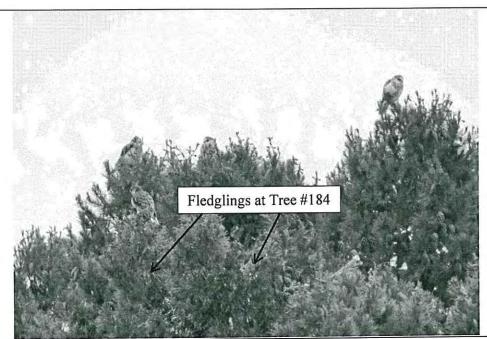


Photo 1. Six (6) fledglings observed within the Ocean Estate at Paradiso del Mare. Pointers identify the location of the two fledglings on or near the nest and partially hidden by tree foliage. June 13, 2013.

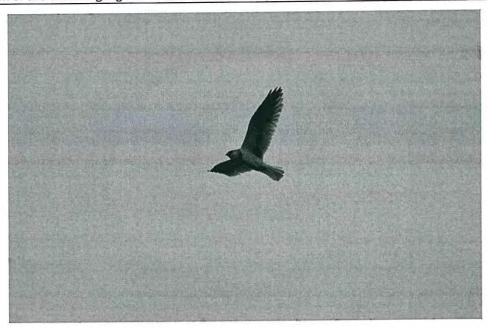


Photo 2. Fledgling in flight between nest tree and tamarisk windbreak along Tomate Canyon, Paradiso del Mare. June 13, 2013.

Paradiso del Mare Ocean and Inland Estates Photograph Documentation



Photo 3. Two (2) fledglings and two (2) adults perched on tamarisk tree. June 13, 2013.



Photo 4. Closer view of three (3) fledglings perched on the Ocean Estate nest tree, Tree #184. June 13, 2013.

Santa Barbara Audubon Society, Inc.







(805) 964-1468

Ms. Nicole Lieu, Planner Planning and Development Dept. County of Santa Barbara 123 E. Anapamu St. Santa Barbara, CA 93101

28 October 2013

Re: Comments on Recirculated draft EIR for Paradiso del Mare Case # 09EIR-00000-00003; SCH #2008031101

Please accept the following comments from Santa Barbara Audubon Society. These comments are joined by the Gaviota Coast Conservancy and the Santa Barbara Chapter of the Surfrider Foundation.

Summary of the Letter

The record of Kite occupancy at Paradiso del Mare as presented in the Recirculated draft EIR (hereafter RdEIR) is incomplete. We find that White-

tailed Kites were present in the breeding season in eight years between 2002 and the present, not just four years as suggested in the RdEIR.

Introduction
Augmenting the Record on Kite Presence
Critique of the 2013 Field Results
Foraging Areas and Set-backs for Kites
Assessment of Proposed Mitigations
New Opportunities for Small Mammal Restoration
Cumulative Impacts

Dudek's field results in 2013 provide no documentation for their claim of six fledglings produced by one brood. Not one of several scientific studies has shown more than five Fledglings or nestlings for White-tailed Kite from a single brood. Contra the RdEIR, White-tailed Kites do use the same nests and nesting areas. Therefore, this nest area is important to protect. The RdEIR does not justify the very small set-backs of 100 feet from the development and 75 feet from the driveway. We provide comparisons to larger set-backs recommended at Paradiso del Mare in 2002 and in other studies. The mitigations offered in the RdEIR fail to offset impacts to Kites because the restoration will not aid the

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Vole population. The cumulative human activity generated by this project and its mitigations contribute additional impacts not acknowledged in the RdEIR. Santa Barbara Audubon Society (hereafter SBAS) offers alternative mitigations focused on the prey of White-tailed Kite and protection of movement corridors among Vole habitats. We favor relocation of the Coastal Estate to the north of Union Pacific Railroad track and east of the current site.

Introduction

Santa Barbara Audubon Society (SBAS) is a chapter of the National Audubon Society. SBAS has over 1000 members in Santa Barbara County. The mission of SBAS is to help conserve and restore the earth's natural ecosystems and improve its biological diversity, principally in the Santa Barbara area, and to connect people with birds and nature through education, science-based projects and advocacy.

This letter seeks to share unique information on White-tailed Kites (referred to as Kites) that may improve the project and make it successful in all respects. We want to give the County and the CCC all the information they need to honor the protective policies established by the County to protect White-tailed Kite. The wisdom in this approach rests with the fact that if we protect Kites here we also protect the suite of birds-of-prey that cohabit Paradiso del Mare (also referred to herein as PdM).

Primary Author's Credentials

Mark Holmgren trained in Ecology and Evolution at the University of Colorado and the University of Kansas, specializing in Museum Studies at Kansas. In 1984, he moved to Santa Barbara where from 1984 to 2010 he managed the Vertebrate Collections at UCSB's Cheadle Center for Biodiversity and Ecological Restoration (formerly the Museum of Systematics and Ecology).

In 1986, soon after arriving at UCSB, Holmgren became aware that an important contribution to the literature on White-tailed Kites came from an early 1970s Ph.D. dissertation¹ and a Masters' study² from UCSB, he saw the opportunity to continue studies of the local Kite population begun by

¹ Waian, Lee B., 1973. The Behavioral Ecology of the North American White-tailed Kite (Elanus leucurus majusculus) of the Santa Barbara Coastal Plain. University of California Santa Barbara, Ph.D., Ecology, 117pp.

² Stendell, R.C. 1967. Food and Feeding Behavior of the White-tailed Kite near Santa Barbara, California. MS Thesis, University of California, Santa Barbara, 62pp.

researchers Lee Waian and Rey Stendell. In 1986, he began studying White-tailed Kites at the Los Carneros Wetlands, now partly consumed by the Willow Spring Apartments, and continued that effort to this day, expanding to monitor, catalogue and compile field observations regarding the local White-tailed Kite population.

In the last 27 years, the citizen-based Kite Watch has emerged periodically to augment Holmgren's ongoing data gathering on nesting, nocturnal roosting, and habitat use by Kites between western Santa Barbara and western Goleta—roughly the same area studied by Waian and Stendell. Approximately 18 large open spaces capable of supporting breeding Kites are checked multiple times during the breeding season. Known or likely nocturnal roosting areas are checked weekly throughout the breeding season and nocturnal communal roosting is monitored less often, especially in recent years because the communal roosting habit was lost in this population in the late 1990s.

In 2011, SBAS adopted the Kite Watch project and, in so doing, has supported volunteer coordinators and equipment. Kite Watch brings together from seven to 20 community members per year to one or two late winter training sessions and weekly observations through the breeding season followed by meetings when we share observations. Holmgren then compiles and archives the data.

Kite Watch was especially active from 1997 to 2004 and again from 2011 through 2013. In the intervening years Holmgren gathered information primarily during the breeding period with the informal assistance of local naturalists and bird watchers.

Though not in the Goleta Valley study area, the ARCO Dos Pueblos, later Makar and now the PdM property, garnered Holmgren's interest in about 1998. The information presented below comes from the Kite Watch effort, from other citizens trained to look at White-tailed Kites, or from Holmgren's field observations. Most of this material is in Holmgren's possession but may in time be archived at UCSB's Cheadle Center for Biodiversity and Ecological Restoration.

Holmgren advised the California Coastal Commission in 2002 regarding White-tailed Kite issues associated with the Arco Dos Pueblos Golf Links proposal and he conducted field surveys for White-tailed Kites on PdM in 2004 for Dudek.

Augmenting the Record on Kite Presence at Paradiso del Mare

Although the surveys done for White-tailed Kites on PdM have been termed "exhaustive"³, Santa Barbara Audubon finds the record of Kite occupancy at as

³ Dudek, August 23, 2013. White tail Kite Buffer for Tree 184—Paradiso del Mare Project.

presented in the Recirculated dEIR (hereafter RdEIR) lacks reference to available and relevant information. We have found several records that establish the Kites' use of the site in years other than those acknowledged in the RdEIR, regardless of whether or not breeding was successfully carried out. The RdEIR suggests known breeding in 2002 and 2013 and potential nesting in 2000 and 2004. Data introduced here indicate that breeding may have occurred also in 2001, 2003, 2009, and 2011. Without this additional information we cannot clearly see the established fact that Kites value this property and that their use is not occasional, but persistent.

The RdEIR omitted critical information that bears on the value of the site as a site of perennial, or nearly perennial, Kite nest building, nesting, or breeding support. At least one of these phases of reproduction has been witnessed in each year the effort has been made to assess Kite activity. Furthermore, the use of PdM extends outside of the breeding period as indicated by the observation of 18 birds together on 16 November 2003.

In Holmgren's opinion, this property may be exceedingly important to Whitetailed Kites along the South Coast. It is close to the western end of the Kite distribution along the South Coast; it is consistently used by Kites at nearly all times in which observers have looked for them there; based on 2013 observations by Dudek, it would seem to harbor a population of prey mammals buffered against dry conditions nearby; and it may have other extraordinary features that we wish to study to understand how to preserve Kites along the South Coast. For example, the sighting of 18 individuals in daytime (on 16 Nov 2003) indicates this property is capable of occasional explosive vole population surges that suggest a healthy population on the site. The RdEIR does not account for the importance of the site, which skews the impact analysis toward the conclusion that impacts can be mitigated. The available information regarding the existing baseline conditions, described in this letter, demonstrate the importance of the site, and the significant impacts to Kites that are likely to result from the proposed development on the PdM site.

Blue = Information presented by Dudek

Black = Additional new information on Kite presence from Holmgren notes.

Year	Information	Significance	Observer. Source of Documentation
		Indicates late	
		breeding season	
		or post-breeding	
		presence on the	
	Observations by L. Hunt on	site, but too late	
	15 September 1998 and J.	to ascertain	
	Storrer on 5 and 6	whether nesting	L.E. Hunt, J. Storrer.
1998	September 1998	occurred.	Kite Histories 1998.doc

Eastern half of property: Kite pair north of UPRR tracks and south of Hwy 101. Halfway across property: A different pair of Kites south of the UPRR tracks. A 5 th 2000 Kite seen. Potential and actual nests present 1-Aug-01 Eastern half of property: pair of Kites. Western half of property: 2 juvs with 1 or 2 adults foraging independently and mostly S of Hwy 101 Potential and successful nests present, 2 nd nesting attempted 28-Feb-03 Kite pair as one lone kite came in from N of Hwy 101. Aggression towards lone kite. Flitter flight seen. Roost flight to the WNW seen. 30-Apr-03 2 kites seen on property- 2003 O kites seen. 11-June-03 2 juvenile Kites seen. 2003 O kites gathered on the bluff edge at Naples immediately adjacent to 2 pairs in breeding season indicates an intent to breed, Suggests breeding or the intent to breed, Neark Holmgren, Keith Zandona. Arco Dos Pueblos 23Mar 00.doc Fig. 3.4-5 Nest locations.pdf (Dudek) Raft Holmgren, Keith Zandona. Arco Dos Pueblos 23Mar 00.doc Mark Holmgren, Keith Zandona. Arco Dos Pueblos 23Mar 00.doc Fig. 3.4-5 Nest locations.pdf (Dudek) Rdelissa Kelly, Tom Phillips. Arco DP 1 Aug 01.doc Suggests Fig. 3.4-5 Nest locations.pdf (Dudek) Suggested territorial pair present possibly intending to breeding occurred. PdM provided post- breeding occurred. PdM provi				
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1		18 Kites gathered on the	PdM, this	
		bluff edge at Naples	observation	Daniel Wilson. Naples
	2003	immediately adjacent to	underscores the	Kites 16 Nov 03.pdf

	PdM, seen from a surfboard	importance of	
İ	offshore then confirmed on	the area for Kites	
	land.		
}	land.	at other times of	
		year.	
		Though paired	
	·	and roosting at	·
	·	night on the east	
		end, breeding	
		was not detected	
		there. Juv on the	
		west end	Mark Holmgren, Kathy
	7 Aug-04	suggests	Rindlaub. Kite Final
	1 pair of adults on the E	breeding	report 15 Oct 04 sl
	end; juvenile Kite on the	occurred in the	amended.doc
2004	west end.	vicinity.	submitted to Dudek.
2007	west ciiu.	vicinity.	Fig. 3.4-5 Nest
2004	Potential nest building		
2004	Potential, nest building 9-Jun-07		locations.pdf (Dudek)
			·
	2.64km W Winchester (Calle		
	Real N of Makar or Arco-Dos		26 1 77-1
	Pueblos property), (near lone		Mark Holmgren.
	Sycamore on N side of Hwy		Meadowlark search W
	101): White-tailed Kite adult	Kite near	of Goleta 9 June
2007	N of hwy 101	property.	2007.doc
	In e-mail dated 27 Oct 09		
	John Storrer wrote: "I also		
	saw (2) juvenile kites on the		
	Arco Dos Pueblos (Makar)		
	property in July of this year.		
	This is consistent with Paul		
	Collins' observations of post-		}
	breeding use of the site in	Based on these	
	2007 and 2008. Based on	comments, Kites	
	limited reconnaissance	probably did not	
	(maybe 3 or 4 "general"	breed on the	
	visits) I don't think kites	property this	
	nested at DP this year - I	year, but I've not	
	did not see kites at any	read the Collins	
2009	rate."	reports.	Kite Histories 2009.doc
	8 May 2011 10:18 to10:25am		
	Kite foraging over the		Morgan Ball
	western portion of the PdM	Presence on the	Kite Histories 2011
	property then perched on a	west end of the	back-up dated 6 Nov
	tamarisk tree on the N-S	property in	11.doc
2011	wind row.	breeding season.	
	11114 1011.	DICCULLE GOLDOII.	

	14-Feb-2012 9:50 – 10:04am We saw a pair of Kites 90- 100m N of Calle Real at approx. N 34.44104 W 119.93861. One of the pair dropped to 2 dead trees where it tried to bust off branches. She got one and took it to the Monterey Cypress that is between 9 and 12 trees N of Calle Real.	This pair initiated nesting a short distance N of Hwy 101.	
2012	Bird worked material into the nest. Other adult Kite nearby all the time.	later that nesting was successful on the east side.	M. Holmgren, Adrian O'Loghlen. <i>Today</i> 2012.doc
2013	4-Jun-2013 Pair present near Eagle Creek (E end) and near Tomate Cyn (W end).	Territorial and aggressively foraging adults bringing food to nest.	Morgan Ball. Kite Summary 2 July 2013.doc
2013	4-Jun-2013 Dead Kite found along Hwy 101 at N 34.43931 W 119.93370	This suggests that other kites are floating around or other pairs breeding.	Morgan Ball. <i>Kite</i> Summary 2 July 2013.doc
2013	13-Jun-13 Dudek biologists report 6 fledglings at west end (at N 34.43732 W 119.94447)	Breeding occurred at the west end in the proposed development envelope.	2013 Nest Survey Results. Fig. 3.4-5 Nest locations.pdf (Dudek)

Critique of the 2013 Field Results

Dudek's claim of six fledgling White-tailed Kites observed on 13 June 2013 at and near their nest in a Monterey Pine is outside of the known capabilities of the species and require further documentation. The White-tailed Kite Survey (Dudek 2013)⁴ is not credible. If true, the observation probably indicates a second brood breeding nearby that joined the brood on PdM. Whether one brood or two, the observation demands a more careful examination of the buffer used to protect the high reproductive output in this territory.

⁴ 2013 Nest Survey Results for the White-Tailed Kite on the Paradiso del Mar Project Site and Recommended Revisions to the Paradiso del Mare Ocean and Inland Estates EIR. Dudek, Job # 6981, 16 August 2013.

While Dixon (1957)⁵ noted only one of 124 nests containing 6 eggs, nowhere in the literature or in Holmgren's experience have as many as six eggs advanced to the nestling or fledgling stage. This unique observation by Dudek requires further substantiation. But this observation also stands out for other reasons. By contrast, in the Goleta Valley the 2013 Kite nesting season showed very low productivity. First, we observed a high rate of territory abandonment (8 of 12 territories formed in mid-winter were abandoned by 20 May 2013). Second, of the five pairs that bred we noted fewer fledglings than in other years. Only one nest had as many as three fledglings, the remainder had two or one fledgling. Finally, no second broods were attempted by any breeding pair. These facts indicate that prey populations were very low during the period when the need for food is most intense for Kites. By all indications this was not a favorable year for their prey, and, therefore for breeding Kites, along the South Coast. Yet we see quite the opposite breeding result observed by Dudek at PdM in 2013.

One of the principle drivers of Kite clutch size and breeding success is rainfall in the late winter period prior to the breeding season. Rainfall supports the growth of grasses and herbaceous plants that are the food resources of California Voles and House Mice, and which allows an additional cycle of reproduction. This extra growth also provides additional ground cover for refuge. In turn, these small mammals and their offspring are the food that supports nesting kites and their young. The same lack of late winter or spring rain conditions prevailed three miles to the west of Goleta at PdM. The unique conclusion reached in the Dudek study--that this pair raised six nestlings to fledging stage-- is unprecedented, out of sync with the Goleta population, and requires further documentation before it could be considered credible.

The outstanding questions concerning this observation are:

- 1. Did both members of the Dudek team observe the 6 fledglings?
- 2. At what distance were the observations made on 13 June?
- 3. Is there photographic evidence of the 6 fledglings?
- 4. Did the observers note plumage differences among the fledglings? If the amount and distribution of bronze juvenal feathers were identical, this would support the interpretation that the young birds were the same age and, therefore, perhaps from the same brood.
- 5. Were any observations made from the Naples property where Kites have bred recently?
- 6. Did the Dudek team estimate the size of the 2013 foraging area as they did in 20116? And did they conduct any trapping for small mammals

⁵ Dixon, J. B., R. E. Dixon, and J. E. Dixon. 1957. Natural history of the White-tailed Kite in San Diego County, California. *Condor* 59:156-165.

⁶ Dudek & Associates. Biological Survey Report for the Paradiso del Mare Residential Project. Prepared for CPH Dos Pueblos Associates. September 1, 2011.

that would tell inform the County on prey density? Taken together, these two pieces of information would offer insight on prey abundance and prey availability that would explain the ability of the adults to feed a brood of six nestlings for more than a month⁷.

7. Were there follow-up observations after 13 June to confirm this sighting?

Lacking this kind of documentation, the Dudek conclusion is not believable and open to other interpretation.

Having observed and studied Kites for 26 years, Holmgren knows that this is a difficult species to study. Even if one spends several hours at a site, one may only see part of the story. Often it's tempting to rely on one quick observation to buttress a broad conclusion. In the field, one should try to assemble information based on as many observations as time will allow, and put forth one or more hypotheses, rather than a firm conclusion, when interpreting Kite behavior. Failure to do this may be the source of Dudek's error.

What are the possible scenarios that could account for an observation of six fledgling Kites, some capable of flying, in or near the nest on 13 June 2013?

- 1. The observers simply miscounted. This is not likely.
- 2. One of the adults was counted as one of the fledglings. This is an easy error to make because one often sees only one adult with a brood of fledglings. (By this time in the breeding season the second adult is often preparing her second nest.) The observer may not have expected seeing a second adult and could have mistaken it for a fledgling.
- 3. Another brood of Kites was raised simultaneously on Naples or somewhere west of Naples and the two groups merged. Several times in the Goleta Valley Holmgren has seen broods of kites from nearby breeding pairs join in a kind of nursery-like situation where the larger group of fledglings is overseen by one or more adults. Family groups can merge even when young birds are novice flyers. Observers in the Goleta Kite Watch program have often seen as many as 11 Kites together. For example, on 28 July 1987, 2 adults accompanied 9 young Kites at Coal Oil Point Reserve⁸. On 16 July 2002, 7 or 8 juvenile Kites were with 2 or 3 adult Kites at Goleta Slough⁶. These are not nocturnal roosting situations, but daytime observations involving group parental care.

⁷ Timing of reproductive phases during the Kite breeding season: **Incubation** = 30 days -- **Nestling period** = 35-40 days -- **Fledging** -- **Parental Care after fledging**: 20-30 days

⁸ Kite Data 22 May 2009 CORRECTED FINAL.xls This file was part of Holmgren's submission to Santa Barbara County Planning and Development as part of the Rincon Report on More Mesa in 2009.

and therefore, protecting the area where kites have successfully nested on site requires an appropriate set-back using data based on habitats able to produce Voles, predator pressure, and human activity.

Therefore, the focus on this site as worthy of protection is appropriate.

Establishing the set-back

The wording in the County's LCP pertaining to Kites requires:

- a) development around the nesting area shall be set back sufficiently far as to minimize impacts on the habitat area, and
- b) the maximum feasible area shall be retained in grassland to provide feeding area for the kites.

Consistency with these two concepts requires we incorporate the habitat that supports nesting as much as we protect the nest.

Establishing a set-back requires information concerning small mammal habitat (including productivity, refugia from predators, and food supply for the small mammals), the total area occupied by small mammals, and connections to other similar small mammal habitat. As mentioned previously, information is also needed on Kite predators and competitors within the foraging territory.

How are we to designate a set-back without this information? One way is to look at Kite territory sizes in published studies. Place those territories as though they were a circle with a Kite nest in the center. Then calculate the radius of the circle. This radius would be an approximate set-back needed to maintain the integrity of the habitat needed by a Kite breeding pair.

Several studies offer territory sizes for nesting Kites. Dunk and Cooper (1994)¹⁵ report that territory size ranged from 19.6 to 21.5 ha in northern California. In Santa Barbara, territory sizes at five sites ranged from 17.8-51 ha (Waian 1973)¹⁶. Six sites in San Diego ranged from 17-88 ha (Henry 1983)¹⁷. Let's look at this using square footage and then calculate the radius.

		Radius (in feet) if	
Hectare	Feet ²	this was a circle	Radius in Meters
19.6 to 21.5	2,109,726.4 to 2,314,240.7	819 to 858	249 to 261
17.8-51	1,915,976.0 to 5,489,594.3	781 to 1,322	238 to 402
17-88	1,829,864.7 to 9,472,241.1	763 to 1,736	232 to 529

¹⁵ Dunk, J.R. and R.J. Cooper. 1994. Territory size regulation in Black-shouldered Kites. Auk 111:588-595.

Waian, L.B. 1973. The behavioral ecology of the North American white-tailed kite (Elanus leucurus majusculus) of the Santa Barbara coastal plain. Ph.D. Dissertation, University of California, Santa Barbara. 111pp.

¹⁷ Henry, M.E. 1983. Home range and territoriality in breeding white-tailed kites. MS Thesis, San Diego State University. 132pp.

Therefore, we might suggest that to protect the habitat area a minimal set-back would be 763 feet in a small territory of 17 hectares. However, lacking any objective estimates, and no studies to defend their set-back, the County proposes a 100-foot set back from the home and a 75-foot setback from the driveway.

After receiving input from two biologists in 2002 and conducting his own investigations, California Coastal Commission (CCC) Biologist John Dixon proposed a 100 meters (=328-foot) set-back be established to protect nesting and that no human be allowed in the buffer created by the set-back during the nesting season¹⁸. The final conditions from the CCC settled on a 300-foot buffer from disturbance¹⁹. Dixon also recommended that no construction activities take place on the site until after fledging has occurred.

On More Mesa, where Kites are accustomed to recreation activities, Rincon (2010)²⁰ reported the following with regard to a Public Trail Plan:

"... kites were observed flushing due to human presence within 150 feet, foraging kites were rarely observed attempting to capture prey when humans were within 150 feet, and a female was observed flushing from the nest twice due to a human within less than 150 feet of the nest." p. 213

On this basis, Rincon recommended a trail set-back of up to 125 feet during the nesting season. A setback from construction and from the constant human occupation and disturbance that will result from building residences on the property should be much greater than 100 feet.

SBAS cannot understand how Dudek can recommend such a tiny set-back from the nest trees near Tomate Creek, and offer no justification to support it. Based on the available evidence, it is our conclusion that the project will result in significant and unmitigated impacts to Kites. Discussed below, a much larger buffer and additional mitigation is necessary to reduce impacts below significant levels.

Assessment of Proposed Mitigations

Dudek states on p. 103 of the RdEIR:

¹⁸ Memorandum from John Dixon to Melanie Hale, CCC Staff, June 7, 2002. Subject: Review of White-tailed Kites at Dos Pueblos.

¹⁹ Arco Dos Pueblos Golf Links Staff Report, CCC Appl. #A-4-STB-93-154-CC, and -A2. 10 June 2002.

More Mesa Biological Resource Study. Prepared for Santa Barbara County Planning and Development, Rincon Consultants, Inc, draft December 2010. http://www.sbcountyplanning.org/projects/07CNS-

^{00116/}Documents/More%20Mesa%20Biological%20Resource%20Study%20Dec2010.pdf

"... white-tailed kites would be expected to choose a nesting location proximate to suitable foraging habitat but further from human activity than provided by the proposed project design. Therefore, without mitigation, the proposed project would result in a significant impact to the white-tailed kite nest site identified in 2013."

This correctly states the case. The challenge with the RdEIR is that the mitigations are not properly focused. Only one mitigation may possibly offset impacts to the Kite nesting pair by clearing out invasive exotic weeds. Specifically, none of the proposed mitigations:

- a) Solve the problem of loss of a successful Kite nesting area.
- b) Several mitigation measures introduce new impacts to the site.
- c) Remedies that might increase Vole productivity will come only after this Kite nesting area is lost and after assessment of their long-term success can be evaluated.

We examine each proposed mitigation and our sense of why several do not mitigate the impacts of the lost Kite breeding area.

Impact /			
Mitigation	Action Proposed	Effec	ctiveness of mitigation
RdEIR and	Relocation of	Clear	ly, relocation is appropriate. Placing
MM-BIO-9a	Coastal Estate and	this l	nouse in already disturbed habitat on
	use area 100 feet	the N	I side of the UPRR tracks and on the
	Relocate low-	east	side of the property would protect the
	intensity uses 75	areas	s south of the tracks, which are less
	feet	distu	rbed and better nesting habitat.
		Howe	ever, maintaining the home and
		drive	way near their current positions with
		set-b	acks of 100' and 75' will interfere with
		kite l	preeding. Furthermore, the position of
			ome rests within a continuum of
		suita	ble habitat on Naples and PdM.
MM-BIO-9b	Nesting Season		This mitigation contradicts other
	Restrictions.		buffer commitments in the RdEIR. This
	Requires pre-constru	ction	mitigation will stop construction and
J	bird-surveys and the		create a set-back to 300', yet the
	application of buffers	or	proposed buffer around the Kite nest
	delay of construction		would be only 100'. We believe this
	activities in order to		mitigation is unrealistic and, more
	protect nests.		appropriately, should be considered
			conditions attached just to the
			construction and the residential
			structure setback.
Bio-10	The proposed project	:t	

	would result in loss of foraging habitat for white-tailed kites (Class II).	
MM-BIO-10	Habitat Restoration. Planting of both mature and sapling Coast Live Oak trees adjacent to the habitat restoration area to create additional potential nesting habitat on-site	The benefits would not be realized in the short- or mid-term, certainly not in the life span of the pair using this habitat area. There exists no evidence this kind of mitigation can recover habitat for Voles and other Kite prey species. The Upland and Riparian Mitigation and Monitoring Plan is not completed and has not been peerreviewed by Non-Dudek ecologists or decision-makers. A Class I impact remains because this action does not replace foraging habitat and it does not demonstrate how it will make more Voles available on PdM.
MM BIO-10	Restoration Area Maintenance	Maintenance of restoration designed to replace lost plant communities does not restore small mammals. The cumulative effect of persistent human presence through weeding, replanting, and use of herbicides retard small mammal and bird colonization and reproduction. The result after 5 or
		more years is that the habitat may or may not look suitable, but it does not function to support reproduction.
MM BIO-10	Conservation Easement Maintenance. 106.8-acre conservation easement area shall be managed for the life of the project to prevent the spread of invasive black mustard and to prevent the transition of the existing mosaic of herbaceous plants to shrubby areas opaque to kites.	Preventing the spread of mustard is not mitigation for areas lost to development. Removing mustard to create situations viable for small mammal reproduction might serve as mitigation. But the engineers of the restoration need to know how each area currently functions for prey animals before creating a restoration plan. Focused surveys for small mammals and habitat assessment of small mammal habitat were not done for this study.
MM BIO-10	Adaptive Management	This would be a necessary component of a well-designed program that focused on small mammals.
MM BIO-10	Upland and Riparian	We would support this plan if it

	Mitigation and Monitoring Plan. 23.5 acres of on-site mitigation/revegetation (i.e., creation and enhancement) that includes 0.11 acre of new riparian, 4.56 acres of new California sagebrush scrub uplands, 5.92 acres of new grasslands, and 12.97 acres of enhanced exotics-free buffer zone areas.	removes mustard stands and areas where other exotic invasives dominate. But it does not mitigate Kite impacts and there is no evidence that it enhances the animal populations that support Kites and other birds-of-prey. In fact, it might displace existing habitat that is providing ecological services to the Kite population. Because there is no prior assessment of areas that support Voles, restoration can damage existing Vole habitat.
BIO-14	loss of or encroachment on 58 non-native trees potentially used for perching by white-tailed kites for the construction of the residential access road, driveway, and residential structure	RdEIR incorrectly defines these trees as perch trees. In fact, the pines and cypress, even the Eucalyptus could be used for nesting as well. The impact is incorrectly described.
MM- BIO-14	Plant 6 Coast Live Oak trees to replace 3 non- natives.	The planting of large CLO trees often leads to failure requiring replanting. With replanting comes additional maintenance and human presence. These trees would not be usable by kites for nesting within the 5-year period following planting. The benefits of this action are weak and, in the cumulative sense, may be considered part of a suite of added impacts.
BIO-17	project would result in indirect impacts to biological resources such as white-tailed kite from human endeavors associated with residential and agricultural activities (Class II). Residential development and associated agricultural land uses would result in indirect impacts to wildlife utilization of the project site undeveloped areas.	Among the effects of greatest concern are those relating to herbicides and pesticides.
	Indirect impacts on	

	biological resources may include increased lighting and glare on wildlife species; potential use of pesticides, herbicides and pollutants as a result of landscaping irrigation and stormwater runoff; increased human activity and domestic animal presence that disturb natural habitat areas and displace wildlife	
	populations and fire safety mandated fuel modification. New residential uses may also introduce new noise sources that could interfere with white-tailed kite activities.	
MM-BIO- 17a:	No rodenticides. Property owners shall keep records from extermination contractors demonstrating that the contractors hired for management of rodents use methods specified under this condition.	These two actions are best considered project conditions. The use of rodenticides cannot be limited to the site and can be detected only with great difficulty. Requiring record keeping is not reasonable and barely, if at all, enforceable. Therefore, it's mitigation without enforcement teeth. The RdEIR states it correctly: "The human activities associated with residential and agricultural development would be potentially significant to foraging, perching, and nesting behaviors of white-tailed kite and other wildlife species." SBAS feels that a Class I impact to kites and other raptors remains, and also contributes to Cumulative Impacts.
MM-BIO-17b	Night lighting limitations: requires that lighting along driveways be minimized, be of low intensity, and be directed downward in order to minimize lighting impacts to kites and other wildlife	Light can be only partially contained. Lacking a statement of the County standards for light restriction, it's difficult to evaluate the effectiveness of the mitigation. But consider that residual light that escapes to habitat probably displaces small nocturnal animals because in lit areas, they are

	desarta mialat liabeta	
,	due to night-lighting	vulnerable to predators that see well and smell at night: foxes, raccoons, skunks. The residual impact probably remains a contribution to Cumulative impacts.
BIO-18	Recreational use of the future Coastal Trail would result in the disturbance to nesting birds, including white-tailed kite, during construction of the trail and the public use of the trail (Class II).	
MM BIO-18	posting of educational and informational signage describing the sensitive nature of the nesting habitat for white-tailed kite and identifying trail use limitations. Five years of surveys for white-tailed kite nesting. "explain why the public shall refrain from disturbing the avian breeding ecosystem." "would describe the importance of kite nesting success and would limit use of public access easements during the nesting season if nesting white-tailed kites are present."	Possibly effective depending upon: a) County's diligence, b) bonding for the cost of surveys, c) competency of the biologist, and d) whether CC&Rs and other conditions stay in effect.
Upland and Riparian Mitigation and Monitoring Plan	With implementation of Mitigation Measure MM BIO-10, impacts to white-tailed kite foraging habitat would be significant but mitigable.	We support the restoration of 23.5 acres with some misgivings. Its benefit is that it will displace, hopefully for the long-term, expansive mustard fields. On the other hand, there is no evidence that planting of trees or habitat restoration creates habitat that Voles will thrive in. And there are other ways to do this, as we describe later in this document. Because so much of

		the mitigation package depends upon this being successful, we should have some examples where we know Kites or other birds-of-prey have benefited from typical habitat restoration. On the other hand, there are examples of focused restoration for animals that have restored those populations. (See section on New Mitigation Opportunities.)
p. 111	The proposed 23.5-acre restoration area shall be managed in a manner that sustains high to moderate quality kite foraging habitat to provide for long-term maintenance of restoration acreages identified in item 1, above, and in order to prevent a reduction in grassland foraging habitat due to succession to other habitat types (e.g., scrub habitat). (e.g. seasonal mowing, type conversion, focused herbicide application (i.e. spot spray) or other manipulation of vegetation)	This is not feasible if we expect habitat to be viable for small mammals. The persistent maintenance presence alone will obviate colonization by voles. There is no demonstration that this kind of restoration can recover habitat that functions effectively for small mammals and their predators. The RdEIR does not identify, analyze or seek to mitigate the impact that management of the restoration area will have on voles and other species present on the site.
Conservation Easement Management (p. 111)		Mowing is useful to catch mustard as it begins to grow early in the restoration process, but mowing dates should be shifted one month earlier to Feb-March, same with second mowing April-May. This only partially avoids conflicts with mowing during the bird nesting season. No disking should occur.
p. 111	Adaptive Management Plan	Devil is in the details. We have not read this plan. The overall additions of intense management just considering the Ocean Estate site alone creates an impact that substantially reduces the

	viability of the surrounding habitat for
	kites. Construction, Restoration,
	Mowing, Monitoring, Maintenance,
	utilities, lighting, herbicides, coastal
	access, 20 spaces of public parking.
	All this involves a huge increase in
	presence and activity that works
	against kites and it's doubtful that it
	enhances the situation for voles.
Cumulative	Mitigations, as much as they are in
Impacts	some instances helpful, actually
	introduce a suite of additional impacts.
	See later section of our letter.

In our opinion, impacts not fully mitigated are:

- a) Loss of rodent populations (prey for kites),
- b) Loss of rodent habitat,
- c) Disruption of the rodent population,
- d) Increased focus by predators on small mammals along property perimeter,
- e) Introduction of new predators to the small mammal population (cats),
- f) Loss of habitat for kite foraging,
- g) Loss of nest site,
- h) Increase in night lighting,
- i) Ineffectiveness and additional impacts of the proposed restoration with intense maintenance.

Some of these impacts are not articulated in the RdEIR yet they are at the heart of the policies that designate this site as ESH and that conflict with the County's White-tailed Kite protection policies.

New Opportunities for Small Mammal Restoration on PdM

The RdEIR mentions actions that benefit California Voles only once. This characterizes the principle shortcoming of the RdEIR's proposed mitigations; few of them contribute to a solution to the problem—how do we keep the Kites in the western nesting area during and after the home construction? SBAS favors a new approach to ecological restoration that secures the Vole population.

This project provides the impetus to push ecological restoration to evolve in a direction it must routinely go. In fact, there are examples of successful programs such as the one we describe below. The methods put forth are ones used to restore Black-footed Ferrets in Wyoming, and Island Foxes on the Channel Islands. Both are considered successful programs. Here we offer a framework that combines actions on behalf of Kites' preferred prey and refocused restoration of plant communities.

Framework of the Vole Restoration Program

Inventory

First, it's important to establish to what extent Voles exist in the area of the 2013 Kite nest. We want to preserve and secure areas where Voles are already established and where they are able to reproduce. An inventory will clarify the small mammal species that exist and their movement patterns among the areas they use (i.e., their movement corridors). Where on the site are they breeding and where are they feeding? What proportion of the habitat serves as a refuge vs. that which is accessible to predators?

Second, we want to determine the other predators that might compete for Voles in the area.

Choose a Reference Site

Third, we choose a reference site near to PdM where inventories show an active vole population. Use the reference to assist in the design of the habitat restoration (as a model) and to measure success on the PdM site. A different nearby site may serve as the donor site for the captive propagation component.

Choosing a Restoration Site

The choice of sites to restore on PdM will be close to the Kite foraging area, have compromised Vole productivity, but otherwise have most of the elements needed for successful Vole use. From the tool chest of restoration approaches habitat enhancement of existing but compromised habitat would be the proper tool. Restoration involving moderate or extensive soil disturbance will not work.

We propose a two-pronged approach involving:

- a) Habitat enhancement designed to increase rates of population growth and seasonally favoring Vole productivity over accessibility to predators,
- b) Population enhancement through captive propagation.

Habitat Restoration Success Criteria.

Restoration to benefit animal communities requires important shifts in the way we do measure the results. As already mentioned, restoration targeting plant communities involves a degree of intrusion for maintenance, watering, and weeding that obviates colonization and reproduction for small mammals, especially if the need is for a short-term response such as at PdM. Here we want to minimize intrusion and restrict maintenance to the season when Kites are not breeding. Thus, we need new success criteria from regulatory agencies based not on plant success, which encourages overplanting and excessive maintenance, but rather based on feedback from the animal occupants and from the predatory animals.

Long-term Support for Kites

Finally, we need a landscape level understanding of habitat connectivity among small mammal populations. From that comes restoration where needed and setbacks to ensure movement among populations. This movement is critical to

facilitate prey population recovery following inevitable droughts, floods, diseases, and periods of overhunting by predators.

The objective is to enhance prey productivity from a muted population cycle to a healthy cycle.

Benefits of This Approach of Two-pronged Ecological Restoration

We can install a program here that solves several problems:

- 1. It reduces intrusions from maintenance to make restored areas functional for predators and prey,
- 2. It provides a benefit to Kites within a few months of the effort because voles have short generation times with an output of 5 to 10 broods per year,
- 3. Other predators will benefit from the additional prey.
- 4. It provides long-term as well as short-term solutions by identifying and securing corridors among site productive to small mammals.
- 5. With experience in studying the correct parameters where development is proposed, the County of Santa Barbara could determine by inventory alone the degree of threat to White-tailed Kite and their prey and determine more accurately the risk to Kites early in a project.

Once the program is installed and refined at PdM, it can become a model where other Kite populations are diminished only because the site has lost its capacity to recover from catastrophe. Santa Barbara County will have a feasible tool to protect Kite populations and uphold the Kite protection policy.

Captive propagation models

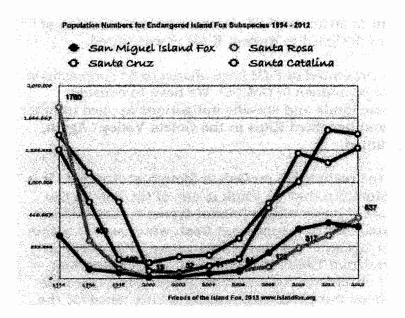
Captive propagation is being applied more often to solve problems with endangered species, threatened or unique gene pools, genetic augmentation, and loss of habitat. Often it is used for education purposes when taking animals from the wild is not legal or ethical. Zoos are frequent practitioners of captive propagation. And of course, small mammals have been bred in captivity as food for snakes and other captive predators for years. The techniques are available and, with some exceptions notably with larger animals, they are becoming more successful.

We choose two models here mostly to demonstrate that captive propagation has been successful rather than to advance specific techniques. Having said that, captive propagation is the extreme form of recovery for PdM. Perhaps it's only necessary where habitats have lost their entire population of Voles. More appropriate for PdM may be modest forms of population assistance that may involve Vole protection (to increase areas where breeding can occur but predation cannot) or habitat augmentation for Voles (providing specific elements of the ecosystem necessary to achieve rapid reproduction) rather than captive propagation. While our examples illustrate the feasibility of captive propagation with predators such as the ferrets and fox, we're even more confident that it can be established for small mammals.

Black-footed Ferret²¹

From a single remaining population of 18 individuals found in Wyoming in 1981, many hundred healthy individuals have been placed in 5 or so prairies in Mexico and the western US.

Island Fox



A program involving captive propagation and treatment for canine distemper has resulted in these population changes in the four races of Island Fox 22 .

In sum, there are additional feasible mitigation measures to restore small mammal populations onsite, that are necessary (but not alone sufficient) to reduce impacts to Kites from the Project to less than significant levels. These additional mitigations should be included in the final EIR.

Cumulative Impacts

Impacts on the Local Population of White-tailed Kite

Does the loss of Kites at PDM affect the Goleta Valley Population? The answer is, it's not clear. We don't know of any data that tell us whether Kites at PdM are part of the Goleta Valley population. One indicator would be evidence that these birds roost together. Observations would have to be made during the non-breeding periods of birds flying in the late afternoon toward Goleta or birds from a roost near Goleta flying in the very early morning towards PdM. We

²¹ Black-footed Ferret Recovery, SCIENCE Vol. 288, 12 MAY 2000. www.sciencemag.org.

²² http://www1.islandfox.org/

know of no such observations. We've only heard of kites roosting behavior during the breeding season when birds seem to stay near to the PdM property.

Is the local Goleta Valley population increasing or decreasing? That also is not clear primarily because Kites defy the usual indices used to assess population health. However, there are clear indications that the population is more vulnerable now than in the 1970s. We will not present that information here because it may not be relevant to issues at PdM. A separate investigation of the effectiveness of the policies designed to protect Kites is warranted.

Have the mitigation measures presented at PdM been shown to be successful in protecting the White-tailed Kite population in Goleta? We have to consider whether or to what degree these kinds and specific mitigations applied in other projects have offset impacts and benefited Kites in the Goleta Valley. Again, another investigation is warranted.

One comparable situation is the restoration on Goleta Slough at Area I²³. It is an approximately 40-acre restoration that we think is one of the best in the County. It's a good job because it has multiple habitat types; it mixes dense with open habitats appropriately; it has a persistent fresh water source within it; and maintenance has been vigilant. This is an area where Kites bred, or attempted to breed many years from 1982 to 2004²⁴. Once restoration was initiated in 2006, Kites have not returned to nest here. Nesting is impossible here *because of* the conscientious but persistent project maintenance for the plant community. Restoration designed for plant communities generally does not work for animal communities. A completely different approach and set of tools are needed when mitigating impacts to habitats that support birds-of-prey.

In other restoration efforts, planting is so dense that it excludes prey and access to the prey that predators require. Not only small mammals are unable to colonize, but lizards, snakes, and even insects are excluded.

SBAS believes the Cumulative Impacts Analysis in the RdEIR acknowledges the following impacts:

- (1) direct impacts from degradation or alteration of riparian habitat;
- (2) indirect impacts to water quality resulting from an increase in impervious surfaces and pollutant runoff into nearby water bodies;
- (3) increased human and domestic animal presence in close proximity to riparian habitats; and
- (4) fragmentation of upland habitat used for wildlife movement.

²³ Area I is located here: N 34.41917 W 119.84426.

²⁴ Kite Nesting data in care of M. Holmgren.

SBAS Audubon remains concerned about loss of habitat and fragmentation of that which remains. Our concerns are that Dudek has failed to focus on the processes that support White-tailed Kites. As a result, they have:

- a) designed mitigation in the form of restoration that does not work and does not address the impacts,
- b) failed to present information on fragmentation and loss of habitat connectivity.

If this project is implemented with the current proposed mitigations, long-term degradation of the vitality of the small mammal community and of White-tailed Kite is a likely result. In our opinion, the evidence demonstrates that this will result in a significant impact.

Habitat restoration will not be effective in the short- or mid-term, and it is not reasonable to assume that habitat restoration will be effective in the long term, except where gross impediments to habitats prevail (i.e., in ruderal habitat). Even where dense mustard stands are restored, with the project limited to only 5 years of maintenance, it is very likely mustard and dominant exotics will return.

Information	Significance	SBAS Comment
BIO-19	The proposed project	The RdEIR simply suggests that
	would result in	mitigation is sufficient.
	cumulative impacts to	
	sensitive species and	
	loss of wildlife habitat	
	(Class II).	·
	SBAS sees additional	
	impacts not	
	acknowledged in the	
	RdEIR:	
	Those include:	
	1. The addition of	
	numerous workers,	·
	heavy equipment, and	
	utilities needed to	
	service the mitigation	
	and maintenance.	
	2. Equipment used in	The RdEIR omits impacts to biological
	the Agricultural	resources associated with the new
	operation.	agricultural operation.
	3. Herbicides and	The RdEIR applies conditions on the
	pesticides	use of pesticides and herbicides, but the
		impacts are not mitigated.

We believe the RdEIR introduces new impacts under the guise of mitigation. The principle impact is project maintenance that accompanies restoration.

In our letter, we present a feasible alternative to the proposed restoration—captive propagation combined with habitat restoration designed to be compatible with small mammal colonization and recruitment.

Conclusion

We're asking whether the significant impact to Kites from the proposed agricultural operations, two housing and guest housing sites, Construction, Restoration, Mowing, Monitoring, Maintenance, utilities, lighting, herbicides, coastal access, 20 spaces of public parking, expanded public access can be mitigated. All this involves a huge increase in presence and activity that works against Kites and coordination of these activities is not considered with regard to the protection of habitats used by Voles. As such, the impacts to these proposed mitigations are, in fact, not assessed.

When examined individually, some of these impacts might be Class II. But collectively, the loss of space, the human presence, the new agricultural use, and the restoration and maintenance amount to significant, unmitigated impacts not acknowledged in the RdEIR.

Santa Barbara Audubon Society appreciates the opportunity to provide comments on the Recirculated dEIR for Paradiso del Mare. We hope that our comments are beneficial to the County.

Yours truly,

Stephen J. Ferry

Co-President

Mark Holmgren, Conservation Committee

Primary Author

Member

Conservation Committee

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Nicole Lieu County of Santa Barbara Planning & Development Department Development Review Division 123 East Anapamu Street Santa Barbara, CA 93101

July 22, 2013

Re: Review and Comment on Status of White-tailed Kite (Elanus leucurus) in Relation to Paradiso Del Mare Environmental Impact Report (EIR)

Dear Ms. Lieu:

This correspondence summarizes my review of various documents and correspondence concerning the status of white-tailed kites on the former Arco Dos Pueblos property. I was asked to assist with clarification of planning and policy issues in light of recently documented nesting by white-tailed kites within the proposed "Ocean Estate" development envelope. I have offered comment in that regard and have attempted to answer specific questions that you posed on the subject of white-tailed kite breeding behavior.

You asked the following questions in your e-mail transmittal of July 2, 2013. Much of what I've offered is opinion, based on experience with this particular species. I have provided references to written reports, where relevant.

Question: Do kites return to nests year after year? Are there studies or surveys that document this and, if so, can you cite the studies?

White-tailed kites tend to be more loyal to nesting <u>territories</u>, rather than specific nest trees. Kite nests are not of sturdy construction (as compared to eagle nests for example) and they don't last through the non-breeding season. It's possible that kites could use a nesting platform from a previous year. But it's more likely they would construct a nest in another tree. In a long-term study of white-tailed kite biology in coastal Santa Barbara County in the late 1960s and early 1970s, Waian (1973) observed no instance in which

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kites used a nest structure more than once. Kites prefer to conceal their nests in the tree canopy (as compared to an osprey, eagle, or even a red-tailed hawk), which changes in character from year-to-year. It's my belief that they select nest sites that are hidden, in a location that is proximate to good foraging habitat.

Question: What is a "sufficient distance" for occupied structures?

This is a very good question. And I don't know that there is a definitive answer. Adequacy of a development setback would depend on several factors including:

- 1. Type of land use or structure (e.g. agriculture vs. residence).
- 2. Size and nature of the structure and associated activity.
- 3. Context of nest site (e.g. individual tree or copse of trees).

Question: What is a "sufficient distance" for roads?

This would depend almost entirely on the type of road and level of use. In the context of two residences on a parcel (or two parcels) of this size, I think that kites would not be especially averse to roads (or driveways).

Question: What is a "sufficient distance" for public trails to be located in proximity to a known kite nesting tree and a potential kite nesting tree?

With respect to public trails, I can offer two examples: More Mesa and West Ellwood Mesa. As recently as spring of 2013, white-tailed kites successfully nested (two young were fledged) in a live oak tree within 50 feet of a public trail on More Mesa. The frail is designated the "Central Trail" the Management Plan that was adopted by the County Parks and Recreation Department for the "County Parcel" (Storrer and Semonsen 1992). White-tailed kites successfully nested within 100 feet of the "Atascadero Creek Trail" (designated in same document) in 2011 on More Mesa. I can think of at least two other nest sites on More Mesa where kites successfully nested within 100 feet of well-used trails. At least two of these were documented and mapped in 2008 and 2009 as part of the "More Mesa Biological Resource Study" (Rincon Consultants 2010). In that study, the biologists reported the following:

"In general, biologists did not regularly observe direct disturbance to kites via human activities. This was attributed to the fact that most activities were limited to the main trails and throughways within the study area, especially the grassland trails, which are generally some distance from where kites were observed to nest and their primary perch locations. The notable exceptions to this are the 2008 and 2009 nests located in the coast live oak along Drainage A, which has a main trail ["Atascadero Creek Trail"] that receives medium use underneath these trees, and the unused nest that was built in 2009 over the bike path north of the County parcel. Biologists noted that kites exhibited similar levels of sensitivity throughout the year, with only slightly elevated levels seen in nesting individuals. Levels of sensitivity varied considerably between adults and juveniles, and between adult individuals and/or pairs. Juvenile kites were observed to be more sensitive

to human disturbances of all types than adults, often showing signs of concerns (e.g. increased calls, restlessness, etc.) and moving away sooner than adults would. In both 2008 and 2009, the kite pairs nesting on the east side of the mesa (the East Pairs) were notably less sensitive than the other pairs (the West Pairs and the Central Pair in 2009).

Nesting. Few observations were made of humans approaching the area used by the East and Central Pairs in Drainage B, as compared to the West Pair in Drainage A due to their greater distance from regularly used main trails (refer to Figure 3.1-4). Table 3.1-8 lists the distance of active nests to nearby trails. The closest trail to the East Pair nest area was a light to medium use trail approximately 175 feet from the 2008 nest and in 2009, 85 feet from the N1 nest and 160 feet from the N2 nest. The closest heavy use trails to these nests were to the north and east between approximately 400-635 feet away. The closest trails to the Central Pair nest area were light use trails to the north and south, and light to medium use trail to the south-southeast. The southern light use trail was approximately 160 feet from the NI nest while the northern light trail was 130 feet from the N2 nest. The light to medium use trail to the south-southeast was approximately 300 feet and 375 feet from the N1 and N2 nests, respectively. The closest heavy use trail to these nests was to the north between approximately 555-630 feet away. Conversely, the closest trail to the West Pair nest area was a medium to heavy use trail located almost directly underneath the 2008 and 2009 nests. The next nearest trails were also medium to heavy use trails in the grasslands to the north and south. The 2008 nest approximately 360-390 feet away from these trails, respectively, while the 2009 active nest was approximately 135 feet away from the nearest trail to the south. It is also notable that the other trees the 2009 West Pair kite were seen nest building in were very clase to heavily used trails, including an active bike path north of the County parcel (refer to Figure 3.1-4). These western trails are all medium to heavy use trails that were observed to have a greater intensity of activity occurring on them (e.g. BMX bikes).

Females (assumed) were only observed to flush directly from a nest on two occasions, both in 2008 and as a result of a biologist walking along the edge of the riparian zone pausing briefly to observe the newly discovered nest. Males (assumed) perching in close proximity to these nests were observed to have varying responses. While humans rarely elicited a response from the East Pair males in 2008 and 2009, the Central Pair male in 2009 would typically always call and flush to a more distant perch at a human's approach. Despite the proximity of the 2008 and 2009 West Pair nests to several main trails, few direct disturbance observations were made during either year. The 2008 and 2009 West Pair males exhibited a similar response as described above for the Central Pair male for humans approaching in the grassland areas. Biologists noted these males were generally less disturbed by humans traveling on the main trail underneath the coast live oaks in Drainage A (along the old railroad cut) than by those approaching through the exposed grasslands. It is notable that one of the 2008 West Pair male's primary nearnest perch locations was < 50 feet from this main trail. The male was rarely observed to flush from this perch as long as humans traveling on the trail below kept moving."

Besides More Mesa, one of the most consistently used nesting territories on the South Coast is in a large grove of eucalyptus trees on West Ellwood Mesa, southeast of the public parking lot across from Hollister School. Nesting by white-tailed kites has been documented here since at least 2005 (Althouse and Meade 2006, 2008, 2012). There is a well-used trail within 200 feet (the exact nest location changes from year-to-year). The trail has been tentatively identified as part of the trail system for the Sperling Preserve, but I don't believe that the City of Goleta has formally adopted this yet. I can think of other examples on both More Mesa and Ellwood Mesa where kite nesting has occurred within 100 feet of established trails.

The type of recreational use is an important consideration. More Mesa and Ellwood Mesa are similar in that the primary users are pedestrians (often with dogs), equestrians, and bicyclists. These activities are relatively non-intrusive compared to motorized vehicle use, for example.

I would almost not venture to identify or define "potential kite nesting tree". A few general characteristics would include size (a height of 30 feet or greater would be preferred), canopy density (how easily the nest can be concealed), and context. The last of these is probably the most important. Kites are not especially particular about tree species. Locally, I have seen nests in coast live oak, Monterey Pine, Monterey cypress, western elderberry, and (most often) bluegum eucalyptus.

<u>Ouestion</u>; How does the "sufficient distance" relate to how much human activity kites have been acclimated to?

I think the concept of "acclimation" should be clarified. It's safe to say that white-tailed kites as a species are more tolerant of human activity than other raptors. But a species really doesn't "acclimate" except in an evolutionary sense. The term "acclimation" would be best used when a particular bird or pair of birds is presented with new or changed circumstances. Assuming that the same birds use the Paradiso site from year-to-year (which is a fair assumption, if only in the short- or near-term), would they return to the same breeding and foraging territories under the current development scenario? A second question might be would "new" birds accept the site for those same purposes if it were developed as proposed. The second question I think is the most important because it speaks to long-term use of the property by kites.

In terms of what level of human activity kites might tolerate in reference the current site plan, I can offer the following.

It's unlikely that kites would return to the "new" (2013) nest tree given the current development proposal. Distances of 50 feet (guest house), 35 feet (guest house garage), 30 feet (driveway), and 95 feet (main house) are simply too close. Considering the combined effects of lighting, dogs, vehicles and general human activity between all those features and I don't see why kites would choose to nest there. They would be much more likely to select a more distant location, providing they can find a suitable nest tree within a reasonable distance from good foraging habitat.

<u>Ouestion</u>: Between your review of the draft kite survey and the attached plan, we would appreciate your professional assistance/opinion on a number of items:

Question: Do you have recommendations for how the proposed development (shown on the attached site plan) can be designed/located to avoid impacts to kites to the maximum extent feasible? Do you have other recommendations for mitigating potential effects (perhaps planting additional mature trees)? The project currently includes the planting of six 36-inch-box coast live oak trees.

I think that planting trees should be an integral part of the open space management plan. The existing trees (primarily Monterey cypress and Monterey pine) have a relatively short life span and they are showing signs of senescence. I support planting native trees (live oaks are great). Six, 36-inch box coast live oaks is a good start, but I think a longer-term restoration/management approach to the open space is what's needed. Essential elements (those relating to white-tailed kites, anyway) would include planting trees in a location near foraging habitat and further from the residential development. A second and equally important component to the management plan would be improving habitat for rodents, in particular meadow voles (the kite's primary food resource). That may involve mowing, attempting type conversion from mustard to grassland or grassland/scrub, and an active management oversight that would include periodic assessment.

Since it appears that a number of environmental, engineering, and economic considerations point to the current location of the Ocean Estate development envelope, I suggest "sacrificing" that area as a resource for kites and looking to another part of the property that meets kite habitat requirements for preservation and improvement (i.e. management). I don't think that the proposed development envelope can be adjusted (reduced, reconfigured) to ensure compatible use by kites and people.

Question: In general, what peer review comments do you have on the draft kite survey prepared by Dudek?

The survey method and write-up on the kite nesting activity observed this past spring are excellent. The management recommendations are all sound and have merit. I think the recommended revisions to the text of the EIR could be improved. Specifically, I think the basis for concluding that impacts to white-tailed kites will be less than significant but mitigable, despite the obvious policy contradictions could be better framed or crafted. I agree with the basic premise and conclusion that situating the ocean parcel development envelope as currently proposed will not result in kites abandoning the site forever.

I think that historic use of the property by kites could be better characterized. And here I will admit to a certain bias in that I wrote the Biological Resources Section for the previous EIR, so I have an established perspective on the subject. I evaluated a somewhat (though not entirely) different project design, without the benefit or surveys performed in 2010, 2011 and 2013. I can offer some examples, which may be relatively

minor points. Areas in the central portion of the ocean parcel are described as "most intensively used" by kites for nesting. Considering that we have less than a handful of nesting records for the property over a period of 13 years and it is difficult to claim that a pattern of nesting has been established. On the general topic of historic kite use of the property, I think it should be emphasized that nesting has been intermittent. Admittedly, long-term data are lacking, but the point is that the site doesn't compare to other traditional nesting territories such as More Mesa or Ellwood Mesa in terms of regular or sustained occupancy.

Much is made of the changed conditions onsite with respect to vegetation, primarily dense stands of wild mustard on the northern parcel. I've been visiting the site on an intermittent basis for 15 years or so and I don't really see those changes as being that dramatic. It doesn't appear to me that the extent or density of wild mustard has increased appreciably. One big difference is that annual mowing was suspended as a general practice a few years ago. Paul Collins believes that this has significantly changed the habitat for rodents, which of course in turn has substantial implications with respect to kites. In any case, prescriptive treatment of vegetation to improve and sustain foraging habitat will be an integral part of any meaningful management plan for kites. I consider maintenance of foraging habitat to be equally, or perhaps more important than the preservation of nesting sites to ensure future use of the property by kites.

I think that management of the open space portion the property, which would include measures to improve the prey base and ensure that nest trees are available in the long-term, will continue to make the site attractive to kites. Whether or not they nest there again under any future land use scenario, nobody can say for sure.

Policy

Question: There are a number of Coastal Land Use Plan Policies that relate to kite habitat areas. We are interested in your thoughts on some of the terms contained within the policies, as follows:

a. CLUP Policy 9-26: There shall be no development including agricultural development, i.e., structures, roads, within the area used for roosting and nesting. In this context, how would you define "the area used for roosting and nesting." Would you define this as the nest tree itself or some other larger zone?

I think "roosting" was intended to address <u>communal</u> roosting, which has not been documented on this property. I suppose the definition of "roosting" could be extended to individuals or pairs of birds. Roost sites tend to be even more mutable (itinerant?) and harder to predict than nest sites.

I would use the term "nesting territory", which in itself could be defined in several different ways. It could be limited to the area defended from other kites or raptor species or it could be extended to include foraging habitat. In any case, it's difficult

to define, much less map. That's why there's been so much emphasis on "nest trees" – because they are easily mapped.

b. CLUP Policy 9-28: Any development around the nesting and roosting area shall be set back sufficiently far as to minimize impacts on the habitat area.

Question: What would you consider "sufficiently far to minimize impacts on the habitat area," in general. Based upon what you know of the specific site, would you recommend a larger or smaller setback?

I would always recommend a larger setback. On this specific site, the development setback is less than 100 feet for the Ocean Estate development envelope, which in any serious discussion would be indefensible, in my opinion.

c. CLUP Policy 9-27: Recreational use of the roosting and nesting areas shall be minimal, i.e., walking, bird watching. Protective measures for this area should include fencing and posting so as to restrict, but not exclude use by people.

Question: During kite nesting, is it your opinion that trails should be closed within a certain distance of potential future nests? If so, what distance?

I think the discussion of temporary trail closure should begin with how feasible this is as a mitigation measure – probably not very. I would not consider trail closure for "potential future nests" because that is too vaguely defined as a basis for such a recommendation. The only way I see seasonal trail closure as a feasible option would be to survey previously occupied kite territories in early spring to determine if and where nesting activity might be taking place. Depending on where that occurring, a recommendation for a setback or temporary closure might be justified (if not enforceable). This is essentially what Dudek (2013) recommended in their report and is embodied in MM BIO-18.

d. Note: in the CLUP, these policies are specifically directed at the More Mesa area, but they were included in our staff report as a result of the known presence of kifes and kite habitat on the subject property.

Question: We have been working to refine mitigation measure MM-BIO-18 to better reflect known and expected kite activities. We would appreciate your review of the existing measure and your recommendations for how best to structure the measure:

Setting aside the issue of practicality and feasibility, MM BIO-18 has some merit. Recommended timing of surveys and "adaptive management" approach are sound. Again the term "acclimation" and what that means is important. Given what we know

about public trail use of other open space properties, in particular Ellwood Mesa and More Mesa, I think kites will select nest sites based on a number of factors, most of which don't have to do with people (at least not directly). In my experience, kites take their time in establishing (or re-establishing) pair bonds and selecting nest sites. Kites are known to build or at least begin to construct multiple nests, eventually settling on one location for egg laying and rearing young. One consideration is almost certainly the level of disturbance from human and non-human presence (as in potential predators). Specific kite pairs determine what they like and what level of disturbance they can tolerate. It's generally accepted that kites are most "sensitive" to disturbance and most prone to abandoning nest sites during the early stages of nest site selection and construction. It's difficult for me to envision a situation where trail use suddenly exceeds that level of tolerance to where kites would abandon a nesting attempt once initiated. But it's possible.

23. MM BIO-18. Post-construction Coastal Trail Use. The post-construction efforts to protect white-tailed kite nesting habitat will include the posting of educational and informational signage describing the sensitive nature of the nesting habitat for white-tailed kite and identifying trail use limitations. The signage will be located outside of the nesting area and explain why the public shall refrain from disturbing the avian breeding ecosystem. The design and signage content shall be submitted to P&D for review and approval prior to construction activities associated with the public access trail. Use of the Coastal Trail will be from dawn to dusk only. Alternate trail connection around the documented, successful kite nest sites of 500 feet or greater shall be used if available. If the alternate trail connection is not available, the use of public access easements (during the nesting season if nesting white tailed kites are present) would be limited.

Yearly surveys shall occur for white-tailed kite nesting. Surveys will be the responsibility of the implementing entity (e.g. County, non-profit organization) and shall be completed by a County-qualified biologist. Surveys shall occur between mid-February to early March as determined by the surveying biologist. If active nests are found, trails shall be closed by the implementing entity (e.g. County, non-profit organization) as necessary to protect nests. Alternate trail connections around documented, successful kite nest sites shall be used if available. If alternate trail connections are not available, the use of trails (during the nesting season if nesting white-tailed kites are present) would be limited.

Closure requirements shall be determined by the County-qualified surveying biologist in consultation with the County. Because white-tailed kite human tolerance varies and because kites are known to become acclimated to human activity over time, trail closures in proximity to identified nests will be based upon yearly recommendations provided by the surveying biologist. Typical trail closure recommendations are expected to range between 150 and 300 feet from documented active nests; all trails within 500 feet of the nest(s) shall be

elosed to public. Depending upon the date any nests are determined to be active, and at the discretion of the biologist, an end-of-season nesting survey shall be conducted to determine when the trail may be reopened to the public. Plan Requirements and Timing. The plans depicting the coastal trail alignment and the design for the educational signage shall be submitted to P&D for review and approval prior to issuance of grading permit. Monitoring. P&D shall review and approve the design for open trail fencing and educational signage prior to opening of the public access trail.

In summary, I think that the main issue is one of policy inconsistency, specifically CLUP Policy 9-26 which prohibits development in "areas used for roosting and nesting". If the open space proposed as mitigation contains sufficient nesting and foraging habitat and that habitat is managed at least in part to improve and sustain those resources, then I think white-tailed kites will continue to use the property for foraging and occasional nesting.

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I hope these comments are helpful. Please let me know if I can provide further information and/or comment.

Sincerely,

John Storrer

Storrer Environmental Services

cc:

Alice McCurdy, SBCo P&D Anne Almy, SBCo P&D

Response C3-1

Comment acknowledged.

Response C3-2

White-tailed kite use of the site was thoroughly researched given the best available information. The research included a comprehensive literature review and field surveys. The EIR states that nesting activity (e.g. courtship, kites carrying sticks) has been documented in four separate years. Kites may have been present during the breeding season in other years, but nesting was not observed or documented in those instances (no citation is offered for corroboration).

Response C3-3

Observations of six (6) young having been fledged were made by reputable biologists and are presumed accurate. Regardless of the number of young fledged, the important point is that nesting was successful. The number of fledglings has no bearing on the EIR analysis.

Response C3-4

The literature (e.g. Waian 1973) and numerous anecdotal accounts suggest that repeated use of the same nest structure or tree is very uncommon. The development envelope was reconfigured in order to preserve the tree used for nesting in 2013.

Response C3-5

The Ocean Estate development envelope was sited in consideration of several physical and environmental resource constraints, including biological (wetlands), geological (bluff setback), and archaeological. Suitable nest trees in proximity to preferred foraging territories are not limited on the subject property. Kite nests have been documented as close as 100 feet to structures on the UCSB campus (Harder Stadium facilities) and as close as 50-70 feet to residential structures (Storrer, personal communication, October 23, 2013; Holmgren data – Isla Vista). The 2002 recommendations (although not cited by the commenter) would likely have been for the Arco dos Pueblos Golf Course, a much more intense use (commercial golf course) that would have removed numerous trees, including nest trees, and would have converted the entire property to a non-native sod covered site.

Response C3-6

Restoration, consisting of converting ruderal vegetation to grassland and coastal scrub will improve habitat value for California vole.

Response C3-7

Comment acknowledged.

Response C3-8

Comment acknowledged.

Response C3-9

Reviewer's qualifications and experience are acknowledged.

History and role of "Kite Watch" in monitoring the white-tailed kite population on the coastal plain in the Goleta area is acknowledged.

Response C3-10

The EIR states that breeding occurred in 2002 and 2103. Successful breeding, as determined by fledging young, was documented in both years. The EIR suggests that nesting may have occurred in 2000 and 2004 in light of observations of kites carrying nesting material.

The conclusion that "breeding may have occurred" in 2001, 2003, 2009 and 2011 is not supported by the information provided. Single or few (three or less) observations of (apparently) paired kites on the property in 2003 and 2009 are not indicative of active, or even attempted breeding. No evidence is provided that kites nested on the property in 2009. Systematic surveys for breeding kites were conducted in 2011 by Dudek biologists (need frequency and number). The observations suggested one failed nesting attempt on the adjacent property.

There are several records of kites using the property during the non-breeding season, in addition to the November, 2003 record for the adjacent property. That is not in dispute.

Response C3-11

The site is important to kites, if not exceedingly so in the context of the regional population. Kites are observed with some level of regularity from West Goleta to Point Conception. Whether the Paradiso site is "...close to the western end of Kite distribution along the South Coast..." is debatable.

A single observation of (18) kites on the adjacent property in November of 2003 in no way supports the assertion that the Paradiso property is "...capable of occasional explosive vole population surges..."

The EIR offers the following summation of kite activity on the Paradiso site:

"The resulting information indicates that the site has been used for foraging on a year-round basis in most, if not all years and that nesting has occurred in some, but not all years. Observations also suggest that the site is used for foraging post-breeding, by adult and juvenile kites that may have nested on adjacent properties."

This characterization is both accurate and supported by the best available evidence.

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This characterization is both accurate and supported by the best available evidence.

Response C3-12

The summary of kite observations, although incomplete, is useful in understanding historical use of the property by this species.

Response C3-13

See response to Comment Response C3-3.

Not only was the observation made by highly qualified biologists, it was recorded in the context of systematic surveys to determine kite breeding status. This is in marked contrast to most of the other information available on kite use of the property (including those presented in the comment letter), which consist of relatively few opportunistic, intermittent observations made over short duration.

The assertion that this observation "...probably indicates a second brood breeding nearby..." is speculative, particularly in consideration of the context in which the observation was made and by whom.

Fledging of (6) young from a single nest is unusual (if not unprecedented) in any case. It is interesting in a regional context since reproductive success in the "Goleta Valley" was reported as relatively low for 2013.

Response C3-14

The theory that rainfall promotes herbaceous growth that increases vole populations that benefit kites is commonly held, if not scientifically demonstrated. But that in no way undermines the credibility of the observation of (6) young being fledged from the Paradiso nest in 2013.

Response C3-15

Two observers, Paul Collins, Curator of Vertebrate Zoology at the Santa Barbara Museum of Natural History, and John Davis IV, Senior Ecologist with Dudek were stationed side-by-side while viewing the nest site through spotting scopes and binoculars. Observations of the nest site were made over a three-hour period while recording behavior of fledglings and adult birds. Presence of six (6) fledglings and two (2) adult white-tailed kites was thoroughly documented.

Response C3-16

The two observers were stationed approximately 70 meters from the nest site at the closest point from which data were recorded.

Response C3-17

Photographs were taken from the observation station using a Nikon D90 and 55-300mm zoom. In the photographs only (up to) 5 fledglings were captured at one time (or were obvious in the photo) due to consistent movement to and from neighboring trees, branches, and hidden nest location, where one (1) fledging "hid out" as noted in the Dudek report. However that individual was visible in the field of view of the spotting scope, although not entirely at any one moment; branches and foliage of the tree canopy obscured full view.

Response C3-18

Differences between adult and juvenile plumage were noted. Based on plumage characteristics, the observers considered that the young birds were, on June 13, in the transition from nestlings to fledglings. Plumage differences among juvenile birds was not noted.

Response C3-19

The entire Paradiso property was surveyed for white-tailed kite nesting activity during each of the seven (7) visits to the site during the late winter and spring of 2013. Observations of kite activity on adjacent, private properties were made only from the Paradiso site.

Response C3-20

Foraging behavior was recorded and foraging territory mapped during 2013 surveys. Foraging territory was very similar to that mapped in 2011, as noted in the Dudek report (see below).

Dudek (2013) Page 3: "Continual foraging, at times successful, was observed over the area west of the Ocean Lot and Tomate Creek, north and south of the UPRR ROW, very similar to the areas previously observed and delineated by Dudek (2011)." And: "The remainder of foraging activities took place in two locations north of the eastern portion of the site across from US Route 101, over the south-facing slope covered with annual grassland. The foraging activity was similar to the areas previously observed and delineated by Dudek (2011)."

Small mammal trapping was not conducted during the 2013 white-tailed kite surveys. Value of foraging habitat was inferred from several hours of observing kite behavior and mapping preferred foraging territories. Similarity in foraging territories as mapped during 2011 and 2013 field surveys supports this inference. It is reasonable to conclude that the presence of a successful nest with six fledglings is evidence of sufficient small mammal presence and availability.

Response C3-21

Follow-up surveys were not conducted. The goal of the 2013 nesting survey was to monitor nest activity (success/failure) on the site. Once nest failure (Eagle Canyon) and success (Ocean Estate lot) was confirmed by the presence of fledglings, surveys were discontinued.

Response C3-25

Documentation has been provided. See response to Comment #15 through #20.

Response C3-26

Difficulty in studying and interpreting kite biology and behavior is acknowledged.

Reference to "error" in the Dudek study is unfounded. The surveys were done by highly qualified, reputable biologists according to accepted protocols.

Response C3-27

See responses to Comments #3 and #13.

Response C3-28

The fledging of (6) kites from a single nest on the Paradiso property is unusual and interesting, but not as compelling as is suggested by the reviewers. More conclusions are drawn and questions raised by the reviewer than are scientifically possible based on this single incident. And the observation is argued from both sides: first its credibility is questioned, then it's used as a basis for suggesting that some unique and complex set of factors are at play.

Prey populations, if that directly correlates with reproductive output, can be highly variable from site to site. The fact that reproductive success was high for this single nest in a local, if not regional context may be due to other factors as well. These might include individual fitness of the parent birds, less competition for food resources, or any number of factors. Observations made over more than a decade, including those presented in the comment letter, enable a reasonable characterization of kite use of the project site. The characterization made in the EIR (see response to Comment #11) is accurate and provides sufficient basis for the impact analysis.

Response C3-29

White-tailed kites tend to be more loyal to nesting <u>territories</u>, rather than specific nest trees. Kite nests are not of sturdy construction (as compared to larger raptor nests for example) and they are unlikely to last through the non-breeding season. There are examples of kites using individual trees for nesting more than once. And it's possible that kites could use a nesting platform from a previous year, as suggested, though a review of the literature (e.g. Waian 1973) indicates this is rare. But it's more likely they would construct a nest in another tree. In fact, it is not uncommon for kites to begin construction on more than one nest simultaneously, eventually selecting the one most preferred for laying eggs and rearing young. Kites prefer to conceal their nests in the tree canopy (as compared to an osprey, eagle, or even a red-tailed hawk), the character (density and configuration) of which changes from year-to-year. Kites select nest sites that are hidden and in a location that is proximate to good foraging habitat. The Ocean Estate development

envelope was reconfigured to preserve the tree used for nesting in 2013. There are no contradictions in the EIR text regarding nest use by kites.

Response C3-30

Comment acknowledged.

See response to Comment #29.

Response C3-31

There are only two successful kite breeding events documented on the property: 2002 and 2013. Second pairs of kites attempted nesting (through nest construction) in both of those years, but did not fledge young. There are two additional recorded observations of kites engaged in nest building (2000, 2004), but nesting was not confirmed. Single or even two or three observations of apparent mated or territorial pairs of kites in a given year is not conclusive evidence of nesting.

See response to Comment C3-10.

Response C3-32

See response to Comment C3-29.

Response C3-33

An understanding of how those factors, which may vary dramatically from year-to-year, influence nest site selection is beyond the scope of the EIR. For planning purposes, buffers are most often prescriptive and subject to adjustment based on site context. It is a fact that there are other suitable nest trees on the site that are proximate to preferred foraging habitat. There is no evidence of nest tree fidelity or even long-term or sustained use of this site for nesting by white-tailed kites.

Response C3-34

The EIR (nor the Dudek report) in no way asserts that "...it's okay if we lose this site....". To the contrary, the development envelope was reconfigured to preserve the tree used for nesting in 2013. More importantly, the mitigation includes preservation and management of large tracts of foraging habitat in proximity to potential, future nesting trees. This measure is far more likely to ensure long-term, sustained use of the site than simply preserving a single tree. The focus of the mitigation is from a much larger, more realistic and practical perspective of habitat management.

Response C3-35

The suggested method for determining a development setback is overly simplistic. Kite territory size is highly variable, as recorded in the literature. Nest site selection is also highly variable. To use one nesting event as the basis for establishing a setback ignores these facts.

Foraging territories on the site have been determined and mapped through observation of hunting behavior by professional biologists over more than one season. These areas have been incorporated into the open space management plan. Preservation of foraging habitat proximate to suitable nest sites is the essential element in determining development setbacks.

Response C3-36

Comment acknowledged. Also see response C3-37, below.

Response C3-37

Adequacy of development setbacks or "buffers" is subject to much debate. Prescriptive setbacks, as appear in many planning documents, are a good place to start. It is reasonable to adjust setbacks based on site context and (in this case) characteristics of a particular nest site. Kites are known to nest in proximity to occupied dwellings (i.e. within 50-100 feet). However, it is acknowledged that setbacks of 75 feet for the driveway and 100 feet for the residence are the minimum that could be considered reasonable.

It is useful to place this excerpt from the More Mesa (Rincon 2010) study in context. The study also reported the following:

Females (assumed) were only observed to flush directly from a nest on two occasions, both in 2008 and as a result of a biologist walking along the edge of the riparian zone pausing briefly to observe the newly discovered nest. Males (assumed) perching in close proximity to these nests were observed to have varying responses. While humans rarely elicited a response from the East Pair males in 2008 and 2009, the Central Pair male in 2009 would typically always call and flush to a more distant perch at a human's approach. Despite the proximity of the 2008 and 2009 West Pair nests to several main trails, few direct disturbance observations were made during either year. The 2008 and 2009 West Pair males exhibited a similar response as described above for the Central Pair male for humans approaching in the grassland areas. Biologists noted these males were generally less disturbed by humans traveling on the main trail underneath the coast live oaks in Drainage A (along the old railroad cut) than by those approaching through the exposed grasslands. It is notable that one of the 2008 West Pair male's primary near-nest perch locations was < 50 feet from this main trail. The male was rarely observed to flush from this perch as long as humans traveling on the trail below kept moving."

These observations suggest that behavioral response to human presence is highly variable. But in general kites are relatively tolerant of human activity. Please also refer to Response C3-5, above.

Response C3-38

The mitigation is properly focused on preservation and long-term management of unbroken tracts of foraging habitat proximate to suitable nest trees. This is to be accomplished through establishment of a 100+-acre conservation easement that includes preferred foraging territory for white-tailed kites. Mitigation Measure BIO-10 requires habitat restoration and management, in part to improve and maintain nesting and foraging value for kites. Measures to improve foraging value include both short term measures (mowing ruderal vegetation to enhance prey accessibility) and long-term measures (habitat restoration and enhancement).

Response C3-39

See Response C3-5.

Response C3-40

Pre-construction breeding season bird surveys are a standard condition of nearly all new development projects. The condition is intended (in part) to comply with provisions of the Federal Migratory Bird Treaty Act and California Fish and Game Code that prevent taking of native bird species. Similar conditions have been successfully implemented for several development projects in the Santa Barbara Region.

Response C3-41

Planting of live oak trees would provide potential nest sites in the long-term. Planting of live oaks is not intended to enhance foraging habitat (necessarily) or improve habitat for voles or other prey species. Conversion of ruderal vegetation to a mosaic of annual and perennial grassland and coastal sage scrub, in addition to seasonal mowing, as required by Mitigation Measure BIO-10 is meant to improve habitat for voles and other native rodent species and thus improve foraging opportunities for kites. The restoration plan will be submitted for review by the County for adequacy.

Response C3-42

A primary goal any restoration project is to provide or improve habitat for wildlife. No scientific basis has been provided for the assertion that after 5 years, no wildlife would be present. Given the level of research, effort, and considerable cost dedicated to habitat restoration, it would not appear that this is a not a commonly held belief.

Response C3-43

Habitat enhancement and restoration are commonly accepted as mitigation for areas lost to development. Long-term studies of rodent populations are beyond the scope of the EIR. But certainly, the issue will have to be addressed in developing the restoration plan.

Response C3-44

Concur. Mitigation Measure BIO-10(4) underscores the importance of adaptive management.

Response C3-45

See responses to Comments #41, 42, and 43.

Response C3-46

The "perch" trees have not been documented as nest trees. There is very little, if any "impact" associated with planting oak trees. Planting oaks of this size has been effective and successful, if somewhat costly, on many projects. It is likely that the trees will not be chosen as nest sites within a five year period. However, effective management, if it is to be successful, must adopt a long-term perspective in sustaining kite populations. To overlook the potential long-term benefits of recruiting native trees as future nest sites is short-sighted.

Response C3- 47

Use of rodenticides and herbicides and pesticides cannot be prohibited on private residential or agricultural properties. However, the applicant included in their project description a statement that "Only organic and biodegradable fertilizers and pesticides/herbicides shall be used onsite." In addition, rodenticide mitigation measure BIO-17a ensures effective implementation of the measure and maximum feasible protect native rodents. The measure prohibits rodenticides of all kinds within the approximately 117-acre Open Space and Conservation Easement. Within the development envelopes, anticoagulant rodenticides are prohibited in order to prevent/limit rodenticide contact by non-target species. These rodenticides may only be used for noxious species that compete with native rodent species. The purpose of the measure is to protect native rodent species which serve as an important food source for white-tailed kites, while also allowing limited rodenticide use for non-native nuisance species that compete with native rodents. Rodenticides are only allowed within the development envelopes for non-native species, while native species must be trapped and relocated.

Response C3-48

Comment acknowledged.

Response C3-49

See response to Comments #42, #43, #46, and #56.

Response C3-50

Mowing of nearly the entire property was done on an annual basis for several years (10+) following abandonment of the former oil and gas lease for fire hazard abatement. Prescriptive mowing was suspended a few years ago. Kites continued to use the site for foraging throughout this period. Biologists conducting systematic surveys to determine kite use of the property in

2005, 2006, 2007 (Paul Collins) and more recently 2011 and 2012 (Paul Collins, John Davis, David Compton) noticed apparent effects on foraging success which have been correlated (at least in part) with mowing, which may affect prey abundance and accessibility and spread of noxious weeds (predominantly wild mustard). Further research and experimentation will be necessary to determine the optimal nature and frequency of various restoration treatments as is suggested in

Response C3-51

Comment acknowledged. MM-BIO-10 has been updated to reflect the revised dates as suggested by the commenter.

Response C3- 52

The Conceptual Upland and Riparian Mitigation and Monitoring Plan is currently in draft form and is available for review at the Planning and Development offices. Submittal of the final plan for review and approval by the County will be required prior to issuance of the development permit.

Development of a comprehensive, yet detailed management plan will require considerable literature research. Each of the factors listed by the reviewer will need to be considered in preparing the plan, with particular attention to the Adaptive Management Strategy, as required by MM-BIO-10. Sustaining prey populations for kites is best accomplished through habitat restoration and management. The plan is designed to restore habitat for voles and to increase the prey population for white tailed kites.

Response C3-53

See response to Comments #42 and #61.

Response C3-54

- a) The proposed development will not affect rodents at the population level.
- b) The plan is specifically designed to restore habitat for rodents and increase the prey population for white tailed kites.
- c) The plan is specifically designed to restore habitat for rodents and increase the prey population for white tailed kites.
- d) This comment is speculative. Please see a-c, above.
- e) Comment acknowledged. See response D3-2.
- f) Comment acknowledged. As discussed in the EIR, there will be some loss of foraging habitat for kites. The impact will be mitigated by preserving, improving, and managing large areas observed through systematic survey to be preferred for foraging. These areas will be protected within an open space conservation easement.

- g) The nest tree used in 2013 has been preserved through reconfiguration of the Ocean Estate development envelope, with a development setback of 75 and 100 feet.
- h) See response D2-24. There are several restrictions on night lighting to prevent "ambient" light from illuminating habitat surrounding the development envelope.
- i) See response to Comments #42 and 61.

Response C3-55. The habitat restoration plan, through its adaptive management strategy, must contain provisions for same.

Response C3-55

All of these points have merit and should be considered in designing the restoration/management plan.

Response C3-56

Captive propagation has proven successful in aiding recovery of threatened and endangered species (e.g. black-footed ferret, California condor, island fox), as noted. It is an extreme measure that requires significant investment in time and money. It is not applicable to this project. Sustaining prey populations for kites is better accomplished through habitat restoration and management.

Response C3-57

Mitigation measures embodied in MM BIO-9 and MM BIO-10 are sufficient to offset project-related impacts to white-tailed kites.

Response C3-58

Systematic surveys to determine white-tailed kite use of the property were conducted during the breeding and non-breeding season in 2005, 2006 and 2007 by professional biologist Paul Collins. He made no observations of communal roosting by white-tailed kites. There are no records for communal roosting on the Paradiso site.

Response C3-59

Vulnerability of the local white-tailed kite population is acknowledged.

Response C3-60

Projects in the Goleta area with potential to affect white-tailed kite have not provided restoration of kite habitat on a similar scale. One example might be the "Bluffs at Sandpiper" (Comstock Homes) residential development on West Ellwood Mesa. This project involved setting aside a large tract of open space (Sperling Preserve) partially to benefit wildlife and annual nesting surveys for raptors during construction. The development is nearing completion and kites have

nested within 1,000 feet (or less) of the development nearly every year since construction began (2005). It should also be noted that a native grassland restoration effort was successfully completed within the Sperling Preserve in an area that is regularly used by kites for hunting and perching. Habitat restoration specifically to improve foraging value for white-tailed kites has not been attempted in the Goleta area, at least not on the scale proposed for the Paradiso project.

Response C3-61

A primary (if not the primary) goal of every restoration project should be to reach the point where the plant community is self-sustaining and full functional value for wildlife is achieved.

Other restoration efforts may not be comparable here, since an expressed goal is to improve foraging value for kites.

See response to Comment #42.

Response C3-62

Comment acknowledged.

Response C3-63

See response to Comment #38.

Response C3-64

See response to Comments #41, #42, and #43.

Response C3-65

See Response C3- 47regarding herbicides and pesticides. Constriction activities would be temporary and would result in negligible impacts. MM BIO-9b limits nesting season construction activities. See Responses D2-15, D2-19 and D2-20 for measures controlling construction hours, dust generation, noise, etc. and discussing specific limitations on where construction workers may go during construction activities (only with the development envelopes). Equipment use for agricultural activities and/or vegetation clearance is allowed onsite by right currently and is not a proposed change as a part of the project.

Response C3-66

See response to Comments #55, #56, and #61.

Response C3- 67

Comment acknowledged.

Response C3-68

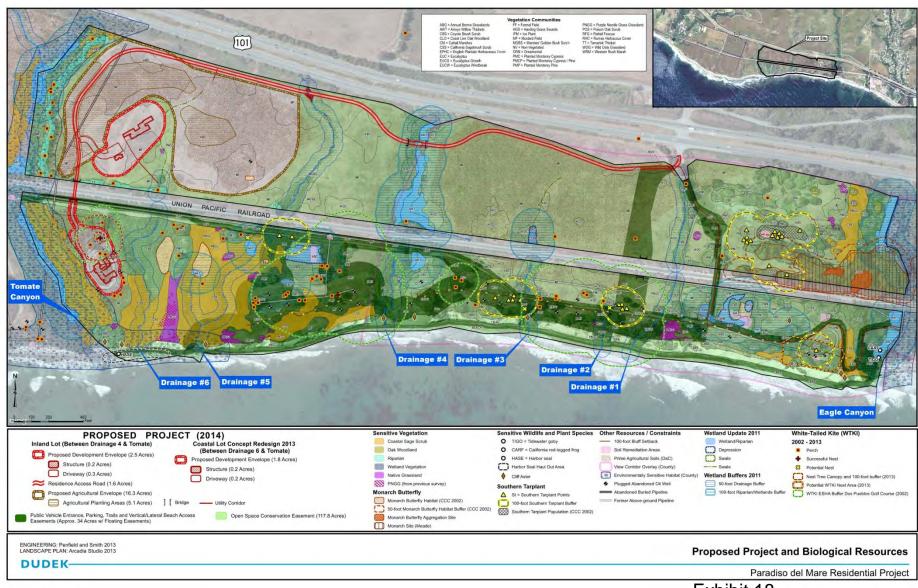


Exhibit 18 A-4-STB-14-0010



Existing View 1, looking toward Inland Estate from Highway 101 northbound



View 1, View of the proposed project



View 1, View of the proposed project with no foreground vegetation

EXHIBIT 19 A-4-STB-14-0010





Existing View 2, looking toward Inland Estate from Highway 101 northbound



View 2, View of the proposed project



View 2, View of the proposed project with no foreground vegetation



Existing View 3, looking toward Inland Estate from Highway 101 northbound



View 3, View of the proposed project



View 3, View of the proposed project with no foreground vegetation



Existing View 4, looking toward Ocean Estate from UPRR



View 4, View of the proposed project



View 4, View of the proposed project with no foreground vegetation



Existing View 5, looking toward Inland Estate from UPRR



View 5, View of the proposed project



View 5, View of the proposed project with no foreground vegetation



Existing View 6, looking west toward the proposed rail bridge from UPRR



View 6, looking west, view of the proposed rail bridge



View 6, looking west, view of the proposed rail bridge with no foreground vegetation

Environmental Consulting Services NDATTEMS

Santa Barbara Planning Commission Santa Barbara, California 93101 25 November 2013

MEETING

12-4-13

Re:

Response to Comments Regarding Proposed Paradiso Del Mare Development, Gaviota, California; Recommendations for Resolving Uncertainties

Dear Honorable Planning Commissioners:

My name is Dr. Mark Kram and I had the privilege of presenting to you at the most recent hearing for the proposed Paradiso Del Mare development. During that hearing, I was able to briefly express my concerns about the hazardous materials conditions and previous characterization efforts performed at the proposed southern development envelope (SDE). I had another appointment that afternoon and was therefore not able to be present for the responses by both the applicant's representatives as well as representatives of Santa Barbara County. I did, however, review the recorded session. The purpose of this note is to emphasize my concerns and to respond to the comments presented by others regarding these concerns.

Before I address specific comments, I want to first state that throughout my career, my mission has been to conduct my professional endeavors using state-of-the-art, non -biased empirical analyses, and that my sole purpose for becoming involved is to ensure that government representatives make appropriate decisions based on fact and not conjecture or association with what has occurred at other sites, as every hazardous release project I've worked on represented a site-specific situation with unique attributes. As you may know, I currently serve as the Chief Scientist for Groundswell Technologies, which is known throughout the groundwater remediation industry as providing some of the most advanced site assessment and management services to government agencies (both domestic and international) and private sector clients. A key service we provide is the rapid processing of complex environmental data that can be intuitively grasped by decision-makers with varying backgrounds. We supplant models and conjecture with empirical evidence, and take painstaking precautions to articulate and quantify the level of error introduced by sparse data sets and uncertainties. Due to our unique capabilities, we've been awarded sole source federal contracts justified by these qualifications.

Due to budgetary and technology constraints, our industry is plagued with challenges when it comes to proper site characterization and determination of risk. While we continue to improve as new technologies and revelations emerge, I can tell you with confidence that the status quo implemented by most government agencies results in risks that could have been avoided if more appropriate high resolution technologies were implemented during the characterization and monitoring campaigns. During the hearing, Commissioner Brown asked Mr. Rejzek whether there have been cases for which a clean regulatory bill of health has been issued and then at a future date unacceptable risks were discovered. Mr. Rejzek correctly answered yes, but qualified this as being a rare occurrence. Top industry leaders may take objection to this qualifier, as improper site characterization is far more common than one would be led to believe based on Mr. Rejzek's response. Expensive legal disputes have transpired and are in progress as a result of these missed risks. For instance, there are currently thousands of buildings situated over dilute

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EXHIBIT 20

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Dr. Mark Kram Letter

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groundwater contaminant plumes that are emitting toxic vapors that then enter these structures and pose serious risks to occupants. For the majority of these sites, the vapor intrusion pathway was not considered, or methods used to characterize the risks were non-continuous or implemented at incorrect times to allow for characterization of worst case risk scenarios. Regulatory rules were followed, minimum sampling requirements (e.g., 5-foot vertical spacing, random soil vapor surveys) were met, and the regulators who were following protocol unfortunately signed off on the project while unacceptable risks remained. As a result, inhabitants of thousands of homes and buildings in California (including some prominent buildings in downtown Santa Barbara) are currently being exposed to harmful chemicals. While links to cancer are difficult to prove, the potential exists. Furthermore, profound legal risks remain, whereby plaintiffs have been awarded tens of millions or more by the courts, even when regulators deemed the sites appropriate for development. These vapor intrusion risks could have been avoided if more conservative measures were required by the regulatory community during the assessment phase of the project prior to approving development.

While there are talented regulators in Santa Barbara County, regulatory protocol tends to be a bit behind state-of-the-art technology because change requires industry recognition that a new risk or improved method must be considered, and then consensus building must occur to establish appropriate guidance. Based on our observations using continuous monitoring technologies, I've been recruited by leaders within the American Society of Testing and Materials (ASTM) to develop standards and guidance that will help regulators and consultants adopt new protocol to help address this significant human risk. A special international symposium was convened this past January, and I served as the co-Chair of the event. During the event, participants prepared a comprehensive list of recommendations for industry professionals and regulators, and this has been disseminated to key standards development entities including EPA, ASTM, and ITRC. Acceptance and adoption by local regulators will require more time, but these changes are certain. Therefore, adhering to the minimum acceptable protocol is, in my opinion, not sufficient for this site, as we have the opportunity to employ superior approaches in a preemptive manner with the understanding that these new rules and protocol will be forthcoming.

What I am advocating for would not require a tremendous amount of additional data collection and assessment effort. It would be prudent for all parties to have key uncertainties resolved with empirical evidence before making such an important decision that could potentially impact the health of the community. Given that the applicant is proposing to build dwellings adjacent to three abandoned oil wells, this would seem to warrant these additional precautions. Speculation and conjecture based on previous practices do not allow for decisions that are founded in good science. As such, in order to resolve the uncertainties associated with the hazardous materials component of the project, I propose requiring the following specific actions:

Evaluate Groundwater Conditions: Collect groundwater samples by installing monitoring
wells in each of the two ravines and testing for a suite of appropriate chemicals related to
oil well drilling activities (including the degreesing of soiled parts via solvents);

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- 2) Test Well Seals for Possible Methane Leaks: Install three GasClams into the subsurface around each of the three abandoned oil wells (for a total of nine GasClams), and monitor continuously on at least an hourly basis through at least two complete barometric cycles;
- Determine Lateral and Vertical Extent of Contamination within the SDE: Advance ten pushes of a membrane interface probe (MIP) in a gridded map view pattern using a Geoprobe direct push rig for vertically continuous assessment of both petroleum and halogenated volatile organic constituents as well as methane (e.g., use a flame ionization detector). If "hot spots" are detected, collect samples from corresponding depths for further analyses. Continue probe advancement to depths encountering groundwater if possible.

If, after following these recommendations, results of these additional characterization efforts are in agreement with the applicant's original interpretation of the current risks, I will feel much more comfortable about their conclusions.

I would like to now address the exchanges that transpired near the end of the hearing when the applicant and County representatives responded to my comments.

The applicant maintains that understanding of groundwater levels is not conjecture, but is based on recorded levels from adjacent locations. While this may be an acceptable assumption, the more important questions have to do with the concern about the potential presence of contaminated groundwater that could potentially represent a long term exposure threat or impair the seal haul-out area if discharges to the beach area occurred through natural hydraulic gradients exhibited at low tide. It appears that the depth to water argument was made by the applicant's consultant to support the decision to not collect groundwater samples. However, it is possible to collect water samples from wells installed in nearby map locations exhibiting lower elevations (e.g., in the ravines) to be certain. Consistent with this line of thinking, Commissioner Cooney commented, "What I hear you saying is that you really don't know, because you are basing your assumptions on generalities about other properties, but you could do well testing at various places for the water, even though it may be deep in some places, it might be shallower in others; we're just trying to understand if there may be contamination revealed by other wells." These uncertainties can be resolved by implementing recommendations #1 and #3 above.

The applicant maintains that the sampling intervals have been adopted by the County and by DTSC. This is true. However, the County has the discretion and authority to require more detailed site characterization activities when warranted. Given that EPA's position is that the current 5-foot interval sampling protocol is flawed, that high resolution vertically continuous sensor based probe systems provide far superior results, and that three abandoned oil wells are located adjacent to the proposed SDE footprint, it is my professional opinion that a more prudent position is warranted. This is addressed in recommendations #2 and #3 above. Further considerations include the following:

1) When initial locations for soil sampling were selected, how were these determined?

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- Was it just by chance that the applicant's consultant selected locations where contamination was identified?
- What is the likelihood that the consultant selected locations that would reflect worst case scenarios?

The applicant's consultant claimed that my reference to the LA situation whereby a building exploded and a methane ordinance was adopted is not applicable to this project due to the ongoing activities and relative high density of abandoned wells in the LA region. I submit to you that every site is unique. Furthermore, I consider three abandoned wells located within 10 to 30 feet of the SDE to be extremely high density. Until empirical site-specific evidence about the presence of methane in the subsurface is collected and analyzed using continuous monitoring techniques (e.g., implementation of recommendation #2 above), reaching appropriate conclusions about potential vapor intrusion risks is not currently possible.

In a related comment, the applicant's consultant accurately stated that the proposed project meets DOGGR minimum setback requirements. Given the nature of this project and the pending regulatory changes, it behooves us to apply more caution and thereby adopt more than the minimum current setback requirements. As I mentioned in my presentation and previous letters, it has recently been noted that vapor intrusion risk conditions can be dynamic. If surveys are performed without this consideration, it is possible that risks can be missed and that worst case scenarios will not be characterized (Kram et al., 2011; EPA, 2013; Kram et al., 2013; Holton et al., 2013). This principal applies to both methane as well as volatile organic compounds (VOCs). In a recent investigation funded by the Department of Defense (Holton et al., 2013), one of the most comprehensive continuous monitoring field efforts to-date was performed to evaluate the natural variability of contaminant concentrations entering into a home via vapor intrusion. The investigators concluded the following "Use of the two simple sampling schemes illustrates that there can be relatively high probabilities of false-negative decisions and poor characterization of long-term mean concentrations with sparse data sets typical of current practice". The principal investigator for this effort is Dr. Paul Johnson of ASU, who has served as the Chief Editor of the prestigious journal Ground Water Monitoring and Remediation, and is recognized as one of the leading authorities in vapor intrusion. In fact, the industry standard vapor intrusion model is referred to as the "Johnson-Ettinger Model", and is based on earlier work he performed that was later adopted by regulatory agencies. These findings lead me to believe that regulations (including DOGGR, DTSC and Santa Barbara County recommended guidance) will catch up with leading edge revelations and best management practices regarding methane and VOC vapor intrusion risks by adopting continuous monitoring methods that I am advocating for as recommendation #2 above. In fact, I am currently serving as co-author (by invitation) of an ASTM standard guidance document to address this issue (ASTM, 2014), and I served as co-Chair of an ASTM International conference addressing this issue in January of 2013 entitled "Symposium on Continuous Soil Gas Measurements: Worst Case Risk Parameters". A special technical publication comprised of key symposium presentations and recommendations for regulatory agencies is due for release in a few weeks (ASTM, 2013), and I had the honor of serving as co-Editor with Dr. Lorne Everett, who is the Chair of the ASTM subcommittee preparing vapor intrusion risk characterization standards.

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Mr. McCaw was asked about whether he has observed issues with well seals following abandonment, and he replied that he had not. Mr. Rejzek stated that the wells were re-tested in 1996 (almost 18 years ago). It is highly unlikely that these well seals were evaluated using the continuous monitoring approaches I am advocating for in recommendation #2.

Mr. Rejzek was asked about any previous explosions and mentioned an occurrence that transpired around the current Bacara property, and that methane sensors are now deployed there. This suggests that additional methane testing would be prudent to make sure similar issues do not currently exist at the subject property.

Mr. Rejzek mentioned that a continuous coring device was advanced to approximately 75 feet of depth. This is not the same as continuously vertical sensing, as soil samples are not 100 percent recoverable using traditional coring methods, so this characterization method is not vertically continuous. I am recommending (recommendation #3) the use of a membrane interface probe (MIP) sensing technology that is capable of measuring concentration readings at centimeter scale vertical resolution (consistent with EPA's comments regarding migration of contaminants in the subsurface). Mr. Rejzek also mentioned that he did not believe that deeper contamination would pose a risk, and that the materials in question were of low viscosity. This is not consistent with observations of contamination at depths of 15 feet below grade. Deeper migration suggests that not all the hazardous materials disposed of at the site were of low viscosity. Therefore the potential for deeper migration of toxic materials remains, and a more thorough characterization is warranted (e.g., recommendation #3).

Mr. Rejzek was asked whether an earthquake could cause methane to come to the surface through the abandoned wells. He mentioned that H₂S would be detected first, but it is unknown whether methane could be emitted. Note that in 1978 the Goleta Earthquake registered 5.2 on the Richter Scale, with the most intense ground motion registered between Turnpike Road and Winchester Canyon Road (http://projects.eri.ucsb.edu/sb_eqs/1978/1978.html), resulting in damage to the airport and UCSB, and derailment of a moving train. Additional seismicity has been recorded in this region since that time. Therefore, it is highly likely that more will occur. Whether or not this would pose a methane exposure risk for the subject property remains uncertain. Consistent with Commissioner Cooney's comments, it would be prudent to require sensors for methane and H₂S given the proximity to the three abandoned wells.

When asked about pending EPA policy changes regarding vapor intrusion, Mr. Rejzek discussed his understanding that there is concern about dynamics and the potential for more stringent future requirements based on new revelations, but stated that they did not observe volatile constituents at the site. However, continuous monitoring approaches were not employed to evaluate for VOCs or methane at the site.

Thank you for allowing me to address these key issues. It is my belief that by implementing the three recommendations above, the community will have a much higher level of confidence that prudent measures were taken to best protect people and ecological resources. It is my hope that

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the Commissioners will advocate for resolution of the remaining uncertainties while considering whether to accept or deny this project.

Thank you for your consideration.

Kindest Regards,

Mark Kram, Ph.D., CGWP #471

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Coastal Access location shown on property to the west of Paradiso del Mar

Exhibit 21 A-4-STB-14-0010