The County of San Diego

Planning Commission Hearing Report

Date:	October 10, 2014	**Case/File No.:**	Warner Springs Cultural Trust Site Plan Waiver Appeal PDS2014-AA-14-001
Place:	County Conference Center 5520 Overland Avenue San Diego, CA 92123	**Project:**	Appeal of Director's Decision to Deny Site Plan Waiver for the Warner Springs Cultural Trust
Time:	9:00 a.m.	**Location:**	State Route 79, north of the Warner Springs Resort
Agenda Item:	#1	**General Plan:**	Specific Plan Area
Appeal Status:	Not Appealable	**Zoning:**	Specific Planning Area (S88)
Applicant/Owner:	Warner Springs Cultural Trust C/O Pala Band of Mission Indians, Trustee	**Community:**	North Mountain Subregional Planning Area - Warner Springs
Environmental:	Exempt from CEQA Review	**APNs:**	137-091-02 and 137-100-01

A. EXECUTIVE SUMMARY

1. Requested Actions

This is a request for the Planning Commission to consider an Administrative Appeal of the Director's Decision to deny a Site Plan Waiver, determine if the required findings can be made, and take the following actions:

It is requested that the Planning Commission:

a. Deny the appeal (Attachment C) and uphold the Director's decision to deny the Site Plan Waiver for the reasons discussed within this staff report.

2. Key Requirements for Requested Actions

a. Is the proposed project consistent with the County's Zoning Ordinance?

b. Does the project comply with the California Environmental Quality Act (CEQA)?

B. REPORT SUMMARY

The purpose of this staff report is to provide the Planning Commission with the information necessary to consider an appeal of the Director's decision to deny a Site Plan Waiver.

The appeal was filed on June 2, 2014 by Theodore J. Griswold pursuant to Zoning Ordinance §7200 et seq. which requires the appellant to provide documentation "setting forth the grounds upon which the appellant asserts there was an error or abuse of discretion" (§7201c). Based on staff's analysis, it is the Department's position that the required Site Plan Waiver findings cannot be made; there were no errors or abuse of discretion, and recommends denial of the appeal of the Director's decision to deny the Site Plan Waiver.

C. DEVELOPMENT PROPOSAL

1. Project Site History

The subject property was identified as a cultural preserve (240 acres) in the Warner Springs Ranch Specific Plan (PDS2001-3810-83-04 (SP)) that was approved by the Board of Supervisors on July 20, 1983. The Specific Plan authorized the development of 452 of 2,885 acres in a phased approach. Phase One includes the development of a hotel and recreational uses, and 35 rural homesites. The Specific Plan provided for the rehabilitation and improvement of the existing resort (guest cottages, lodge, restaurant, lounge, conference facilities, trading post, and two pools), allowing for the renovation of a historical site, and development of a 154 unit hotel. The focus of the resort was around recreational and cultural facilities for swimming, horseback riding, tennis and golf. In addition, a children's camp was authorized within the original employee housing site. East of the resort area, 35 rural lots, averaging one dwelling unit per four acres was approved.

In an effort to preserve the cultural integrity of the area and at the same time incorporate the culturally sensitive area into the project design, a 240 acre cultural preserve was established. The preserve includes the St. Francis Chapel and culturally sensitive resources.

Several areas within the 2,885 acres of the Warner Springs Property but outside of the Specific Plan boundaries were identified as Future Development Areas that were to be studied and planned at a future date. These areas would require subsequent environmental analysis and permits, and included three types of residential development (tennis ranch, golf course community, and rural lots), a family campground area, open space, and an air strip. The Future Development Area provides 685 single-family dwelling units and a subsequent Specific Plan and environmental analysis is required prior to any development.

The Specific Plan required the implementation of an agreement for the administration and terms of the Cultural Preserve. The Memorandum of Agreement (MOA) also known as the Trust was executed in 1983 with A. Cal Rossi as the Trustee. In 2011, the Pala Band of Mission Indians became Trustee of the property.

The Cultural Trust was established for conservation purposes, specifically to "(1) preserve the Real Property as open space for the scenic enjoyment of the general public, or pursuant to any clearly delineated federal, state or local governmental conservation policy, (2) preserve the historically important Indian burial grounds and religious and cultural structures located on the Real Property, (3) foster archaeological and other scientific studies of the Real Property, (4) further the study of customs, traditions, language and history of the Indians who may have frequented the Real Property, (5) preserve the Real Property for the education of the general public with regard to such

customs, traditions, language and history, and (6) allow the continued use of religious facilities on the Real Property for religious purposes" (Attachment I).

The property is zoned with the Special Area "H" Designator and a "V" Setback Designator which require a Site Plan. Specifically, a Site Plan is required pursuant to §5709(b) and (c) because resources onsite include both designated historic and archaeological landmarks. The Specific Plan identifies that a qualified archaeologist monitor all earth disturbance activities (trenching, excavating, placement of utility lines, etc.). The monitoring archaeologist would have the power and authority to close down such operations when significant historic/prehistoric resources are encountered until avoidance or salvage can be arranged. A Site Plan would be the appropriate process in which to implement this condition. The property is under the jurisdiction of the County of San Diego and is not Tribal lands (in trust/reservation).

2. Background

The Pala Tribe of Mission Indians is the trustee for the Warner Springs Cultural Trust. They installed the chain link fence in late Summer 2013 without benefit of authorization from the County, and without an archaeological monitor, and therefore a Stop Work Order was issued. The chain link fence is currently an active Code Compliance case. The appellant states that the fence was for the protection and preservation of the onsite cultural resources due to previous unauthorized activities that include trespassing, dumping of manure, pot hunting/vandalism, and encroachment due to equine use.

The fence is approximately one and one-half miles in length and does not completely surround the project site. Approximately one-third mile of the fence is visible from State Route 79 (SR-79) and approximately one-half mile is adjacent to neighboring property owners. The fence is located around the historic St. Francis chapel in the western portion of the subject property and continues through the southern boundary and onto the eastern boundary of the project site, and crosses onsite drainages.

The fence created a Code Compliance case with Planning & Development Services (PDS) for a Zoning violation and with the Department of Public Works (DPW), Private Development Construction Inspection (PDCI) for a watercourse violation. Meetings were held with the appellant and options to resolve the issues related to the fence were thoroughly discussed and included: (1) remove the fence, (2) apply for a Site Plan, or (3) apply for a Site Plan Waiver.

A request for a Site Plan Waiver was applied by the Warner Springs Cultural Trust on January 9, 2014. The San Diego County Historic Site Board considered the request at their January 27, 2014 meeting. The role of the Historic Site Board is to provide the Director of PDS with a recommendation. The Historic Site Board made a recommendation of denial of the Site Plan Waiver request with a vote of 4 ayes - 1 noes -1 abstained -1 absent (Attachment E). Field visits were conducted and meetings were held with the project proponent and opponents to consider their concerns.

The Site Plan Waiver was denied by the Director of PDS on May 23, 2014 (Attachment B). The appellant filed an appeal of this decision on June 2, 2014.

Recent grading activities (September 2014) have occurred onsite. The grading activities were conducted without an archaeological monitor and are related to road maintenance for the St. Francis chapel. These activities are currently under review.

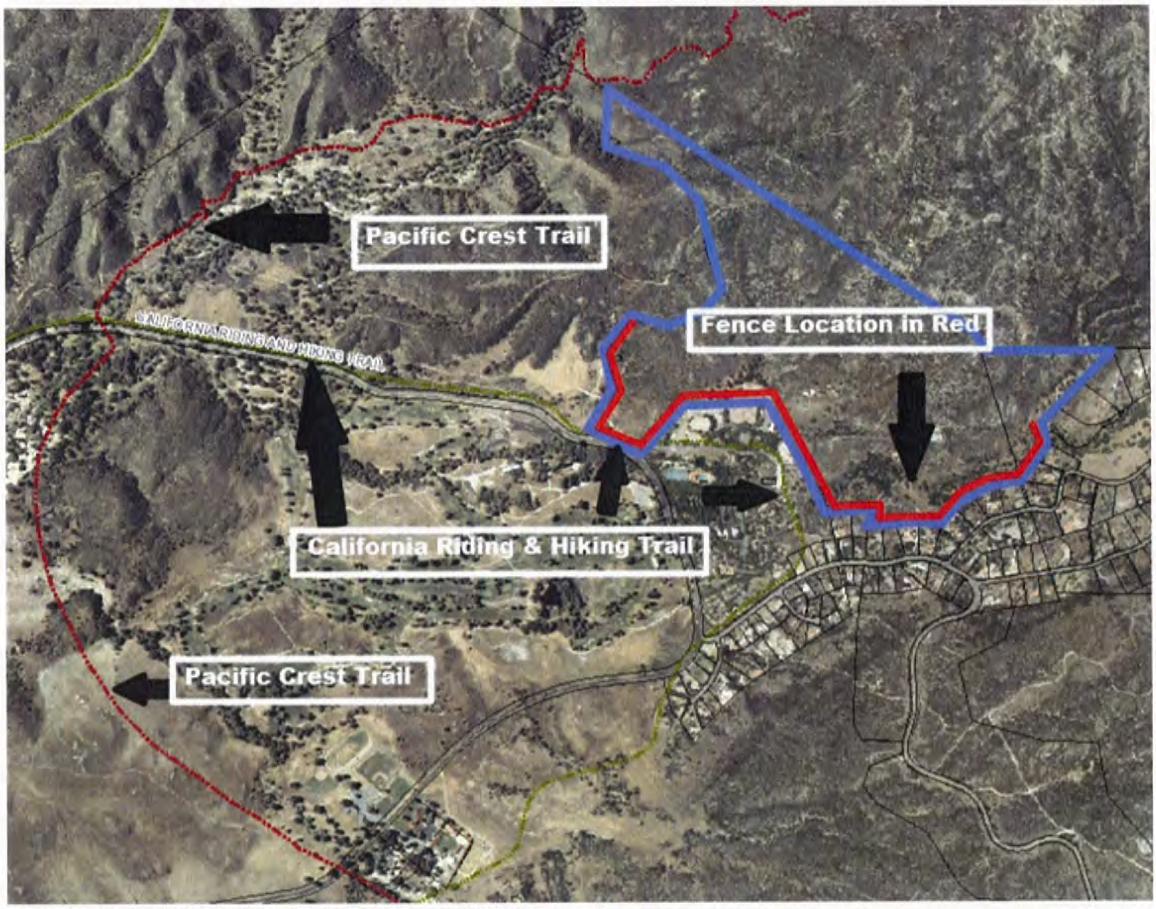


Figure 1: Aerial Photo – Existing Conditions

Please refer to Attachment A – Planning Documentation, to view the existing location of the chain link fence and Attachment J for site photos.

3. Subject Property and Surrounding Land Uses

The subject property is 240 acres in size and is located northeast of SR-79 in the Warner Springs community. The site is minimally developed with the historic St. Francis Chapel, Cupeno cemetery, State trails, and the existing chain link fence that is the subject of this appeal. Resources on site include cultural resources (archaeological and historic), native habitat (Red Shank Chaparral, Coast Live Oak Riparian Forest, and Montane Buckwheat Scrub) based on GIS data, and drainages (Canada Agua Caliente).

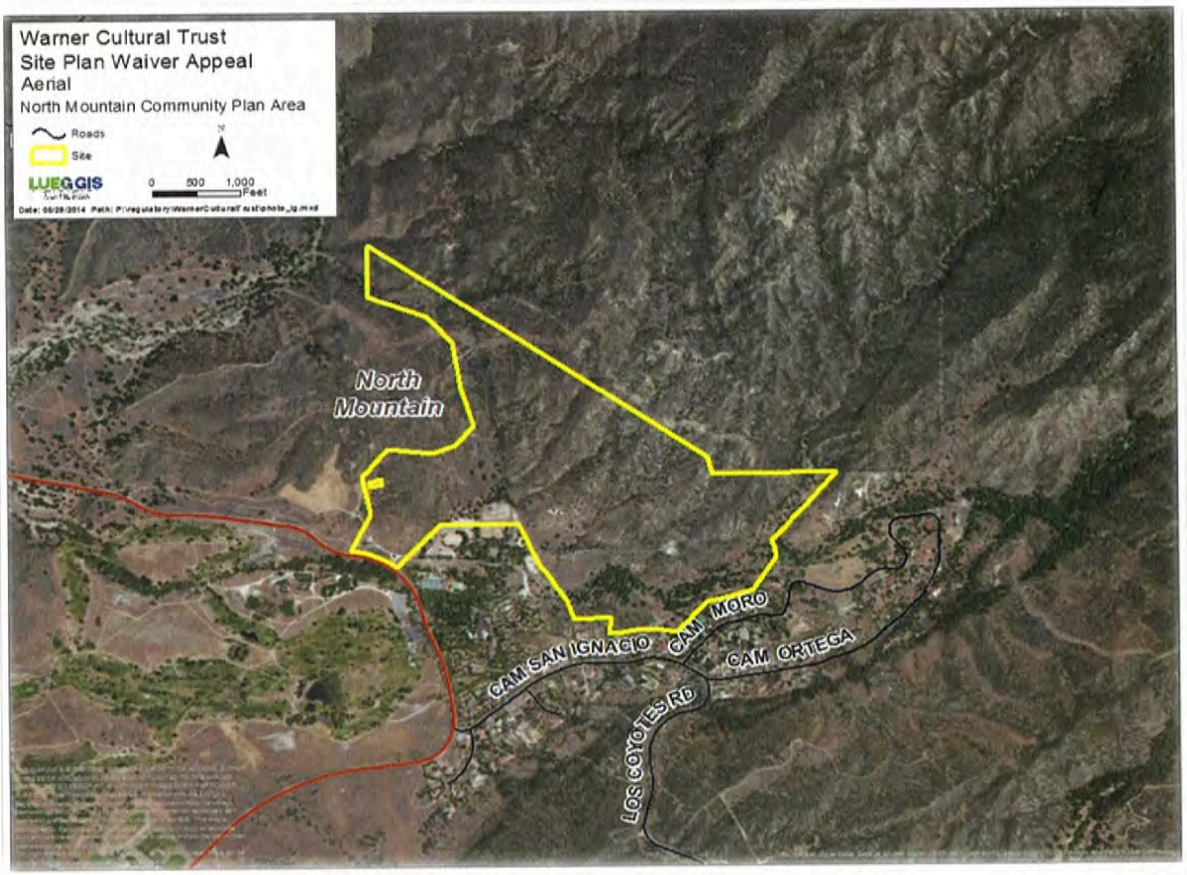


Figure 2: Aerial Photo - General Location

Surrounding land uses primarily consist of undeveloped lands, open space, Warner Springs Resort and Golf Course, and estate residential development.

Table C-1: Surrounding Zoning and Land Uses

Location	General Plan	Zoning	Adjacent Streets	Description
North	No Jurisdiction	Open Space (S80)	None	Cleveland National Forest
East	No Jurisdiction; Semi-Rural (SR-1); Village (VR-2.9)	Rural Residential (RR); Open Space (S80)	Camino Moro; Camino Ortega	Cleveland National Forest; Estate Residential
South	Semi-Rural (SR-4); Specific Plan Area; Village (VR-2.9)	Rural Residential (RR); General Agriculture (A72)	Camino Moro; Camino Ortega; Camino San Ignacio	Warner Springs Resort; Estate Residential
West	Rural (RL-80)	General Agriculture (A72)	None	Undeveloped Lands

D. ANALYSIS AND DISCUSSION

1. Analysis of the Site Plan Waiver

a. Project Analysis

The project site is zoned with the "H" (Historic) Special Area Designator and is subject to §5700 et seq. of the County Zoning Ordinance which prohibits any construction or alteration of any building or structure without an approved Site Plan. Alternatively, a Site Plan Waiver may be applied for pursuant to §5710; however, if denied, a Site Plan is required. An exemption (waiver) to the requirement to process a Site Plan may be granted by the Director if either of the following circumstances occurs:

- It is determined that the nature of the project is such that subjecting the project to the Site Plan review process would not materially contribute to district or landmark preservation objectives. Consideration under this subsection shall be given to the recommendation of the Historic Review Board or the San Diego County Historic Site Board, or both.
- If all of the purposes and requirements of the Site Plan have been or will be fulfilled by another required discretionary permit which has been or will be reviewed by the Historic Site Board or other applicable Historic District Board.

Site visits by Code Compliance, PDCI, and Project Planning staff were conducted during late Summer 2013 through Spring 2014. Based on these field investigations, it was determined that the fence was installed without authorization by PDS. It was also identified that (1) the fence crosses drainages and trails, (2) biological resources were removed to provide an open area for the installation of the fence, (3) manure has been dumped on site for a long period of time, (4) encroachments into the preserve have occurred, and (5) the fence is visible from SR-79. Based on these investigations, on August 21, 2013, Code Compliance issued both a Stop Work Order and Administrative Warning requiring the appellant to take corrective action. The Administrative Warning was revised on September 26, 2013 to include a water tank that was alleged to be unpermitted. The issue of the water tank was resolved and a revised Administrative Warning identifying the chain link fence as the only issue was forwarded to the appellant on October 12. 2013. PDCI issued a letter on November 20, 2013 identifying the onsite watercourse violation. The letter provided corrective actions that included: (1) remove the portion of the chain link fence crossing the watercourse, or (2) submit for a Site Plan as required under the County's Zoning Ordinance. See Attachment I for Code Compliance documentation.

The Site Plan Waiver was denied on May 23, 2014 for the following reasons (Attachment B):

- The findings under the Zoning Ordinance (§5710a) could not be made;
- A Site Plan would materially contribute to the preservation objectives for the site by placing conditions that would provide protection for the onsite resources;
- The Site Plan is the process in which to determine the appropriate location and design for the fence, conduct environmental review, condition the project to ensure the protection and preservation of the onsite resources, and provide for public input;
- The Site Plan review would evaluate the placement of the fence in relation to the historic chapel, cultural sites, trails, and existing watercourses; and

- The Site Plan review would analyze visual resources and how the fence fits with the surrounding community.

The findings required under Zoning Ordinance §5710 could not be made because the Site Plan review process would provide the means in which to ensure that preservation objectives for the Cultural Preserve would be met (e.g. archaeological monitoring, fence placement in relation to the onsite archaeological and historic sites, and environmental review for related impacts to biology, drainages, etc.). Consideration was given to the County Historic Site Board who on January 27, 2014 made a recommendation of denial of the Site Plan Waiver request to the Director of PDS. It was determined that the chain link fence is not exempt under §5709(d) because it is not an alteration to an interior structure, is not an utility improvement, and is not a temporary improvement associated with construction activities associated with a building permit. The fence also does not meet the exemption criteria under §5710 because it has been determined that a Site Plan will contribute to the preservation objectives and the requirements of the Site Plan have not been fulfilled by another permit. Based on the information and available data, it was determined that a Site Plan is required and the Site Plan Waiver request was denied.

Figure 3: View Looking North from State Route 79

b. Appellant's Basis for Appeal

The Pala Tribe as trustee for The Warner Springs Cultural Trust appealed the decision of the Director to deny the Site Plan Waiver because they believe there was an error and an abuse of discretion for the following reasons (Attachment C):

- The Site Plan review would endanger rather than protect the cultural resources on the property;
- The Site Plan review provides PDS no additional information regarding the fence construction than has already been provided by the Trustee;
- PDS erred by claiming that "conditioning" would materially contribute to the preservation objectives; and
- PDS erred by using rationale other than that required by the Zoning Ordinance in rendering a denial; and PDS did not provide documentation to support its denial of the Site Plan Waiver.

c. County's Response to Appellant's Basis for Appeal

- **The Site Plan review would endanger rather than protect the cultural resources on the property.**

  The Site Plan review would not reveal the locations of the cultural resources to the general public. The location of cultural resources will not be disclosed pursuant to Government Code §6254(r); therefore, the resources would not be endangered.

- **The Site Plan review provides PDS no additional information regarding the fence construction than has already been provided by the Trustee.**

  The Site Plan review would consist of more than just fence construction and would include environmental analysis, fence design and placement, conditioning, and public input. The review would include an analysis of the existing chain link fence for compatibility, and compliance with applicable laws and regulations. As part of the evaluation, conformance with the California Environmental Quality Act (CEQA) would be determined. Biological (temporary and permanent), visual, and drainage impacts were identified in association with the installation of the chain link fence. CEQA review would provide the means to analyze project impacts and condition the project appropriately including archaeological monitoring, as well as fence type and location. In addition, Site Plan review would include evaluating the placement of the fence in relation to the historic St. Francis chapel, Cupeno cemetery, existing trails, and drainages (southern and eastern portions of the property). The requirement of a Site Plan would supplement the information provided by the appellant that included background related to the Trust, purpose of the H-designation of the Trust property, why the fence is needed for the protection of the on-site cultural resources, maps, and photo documentation of issues related to encroachments and trespass.

- **PDS erred by claiming that "conditioning" would materially contribute to the preservation objectives.**

  Conditioning would contribute to the preservation objectives because the Site Plan is the mechanism to implement conditions of the Specific Plan. The location of the fence would be evaluated in relation to the historic St. Francis chapel and Cupeno cemetery, as well as other onsite resources. In addition, the appropriateness of the design of the fence (galvanized chain link) would be analyzed. Conditioning the Site Plan could include a requirement for an archaeological monitor to be present during any earth disturbing activities in order to determine whether subsurface cultural resources are present and to manage those issues as they occur with onsite activities as identified in the Specific Plan. In addition, issues associated with emergency access and vegetation maintenance would also be conditioned.

- **PDS erred by using rationale other than that required by the Zoning Ordinance in rendering a denial; and PDS did not provide documentation to support its denial of the Site Plan Waiver.**

  The rationale used in rendering the decision to deny the Site Plan Waiver was based on the Zoning Ordinance and CEQA. All information and documentation upon which the denial was based has been provided to the appellant. As previously stated, the chain link fence does not meet the criteria of a Site Plan Waiver. Specifically, Zoning Ordinance §5709(d) and §5710 were not met in order to waive the requirements of a Site Plan.

Figure 4: Existing Fence across Drainage

2. Zoning Ordinance Consistency

The proposed project complies with all applicable zoning requirements of the Specific Planning Area (S88) zone except for the "H" Special Area Designator and "V" Setback Designator that requires the approval of a Site Plan as shown in the Zone Box below. The Planning Commission should consider whether a Site Plan Waiver or a Site Plan is the appropriate process to address the project issues.

Table D-1: Zoning Ordinance Development Regulations

CURRENT ZONING REGULATIONS		CONSISTENT?
Use Regulation:	S88	Yes
Animal Regulation:	N/A	N/A
Density:	N/A	N/A
Lot Size:	200 AC	Yes
Building Type:	A	Yes
Height:	A	Yes
Lot Coverage:	N/A	N/A
Setback:	V	**No**
Open Space:	N/A	N/A
Special Area Regulations:	H	**No**

3. California Environmental Quality Act (CEQA) Compliance

A decision to deny the appeal and uphold the Director's decision to deny the Site Plan Waiver is not subject to CEQA pursuant to CEQA Guidelines §15060(c) because it will not result in a direct reasonably foreseeable indirect physical change in the environment (Attachment D).

Figure 5: St. Francis Chapel

E. COMMUNITY PLANNING GROUP

The project site is located in the North Mountain Community Planning Area. There is no Community Planning Group for the North Mountain Community Planning area.

F. PUBLIC INPUT

The review of a Site Plan Waiver for the "H" Special Area Designator is under the purview of the San Diego County Historic Site Board. The Historic Site Board considered the Site Plan Waiver at their January 27, 2014 meeting and made a recommendation to deny the Site Plan Waiver by a vote of 4 ayes – 1 noes – 1 abstain – 1 absent (Attachment E).

Numerous comment letters and communications were received as part of the processing of the Site Plan Waiver (Attachments G and H). County staff met with the proponent and opponents of the project to listen and to consider their concerns. As part of the public outreach, County staff made several visits to the project site, as well as internal and external meetings to meet with the project proponents and opponents.

Staff met (formal meetings, field visits) with the Warner Springs Cultural Trust (Pala Tribe) to discuss their concerns. They identified trespassing, dumping of manure and trash, pot hunting/vandalism as concerns and the reason for the installation of the fence. As a result of the Stop Work Order, the installation of the fence was terminated and is currently in an incomplete state. All support poles are installed; however some of the fencing still needs to be attached to the poles. During the processing of the Site Plan Waiver, vandalism occurred to the chain link fence and the Warner Springs Cultural Trust reported the incidents to the County Sheriff.

Concerns of the project opponents include environmental impacts of biology, aesthetics and visual, fire hazards, community character, and trail access. They refer to the Trust document that identifies the property for the "scenic enjoyment of the general public" and without access they are not allowed to enjoy the property. They offered a solution to the concern of security for the project site which could be provided by the Warner Springs Resort who has 24 hour/7 days per week security including security guards and cameras. They stated that the Warner Springs Cultural Trust could enter into an agreement with the Warner Springs Resort and share the cost of security.

Figure 6: Western Boundary of Cultural Preserve

G. RECOMMENDATIONS

Staff recommends that the Planning Commission:

a. Deny the appeal (Attachment C) and uphold the Director's decision to deny the Site Plan Waiver for the reasons discussed within this staff report.

Report Prepared By:	***Report Approved By:***
Donna Beddow, Project Manager	Mark Wardlaw, Director
858-694-3656	858-694-2962
donna.beddow@sdcounty.ca.gov	mark.wardlaw@sdcounty.ca.gov

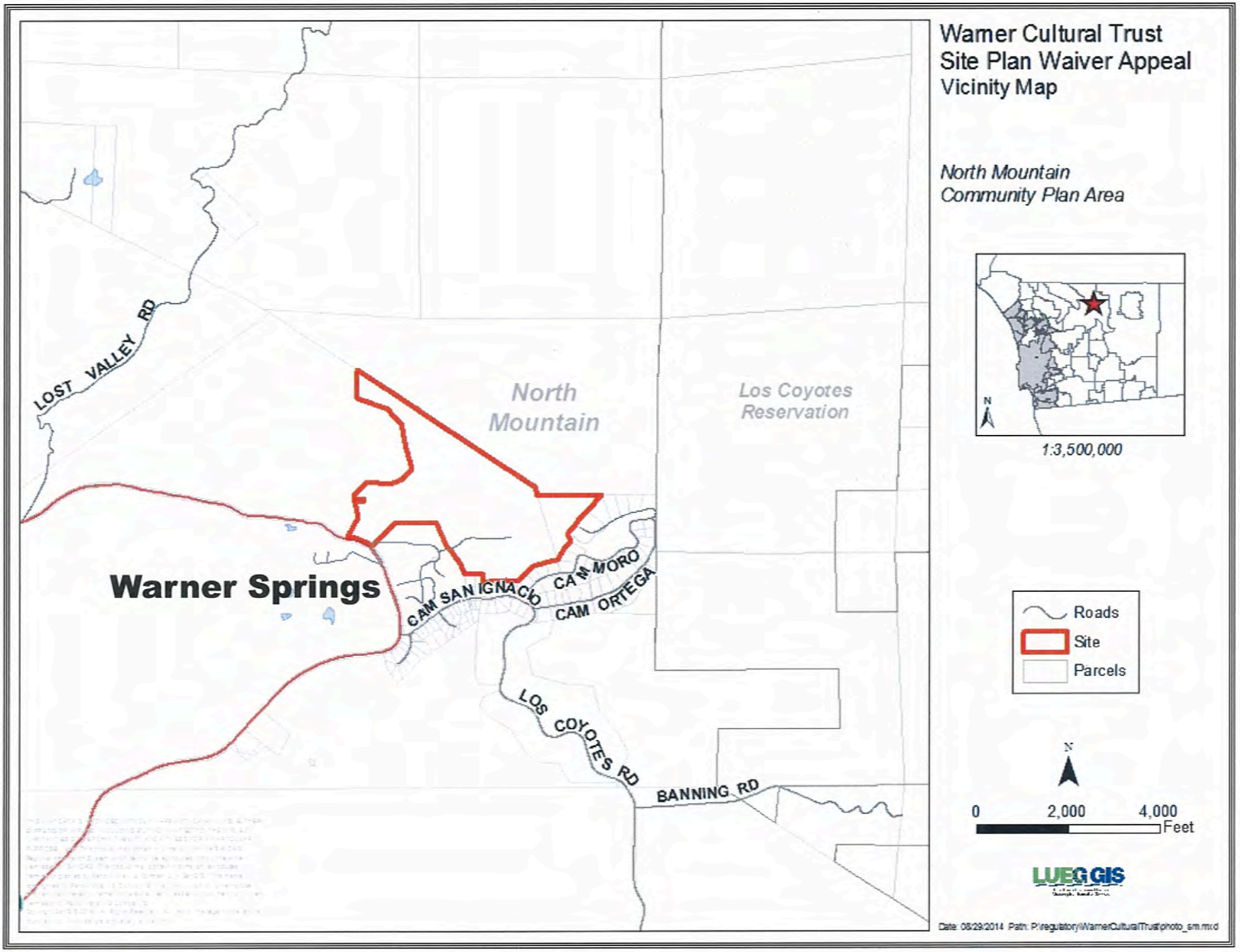
AUTHORIZED REPRESENTATIVE: _____

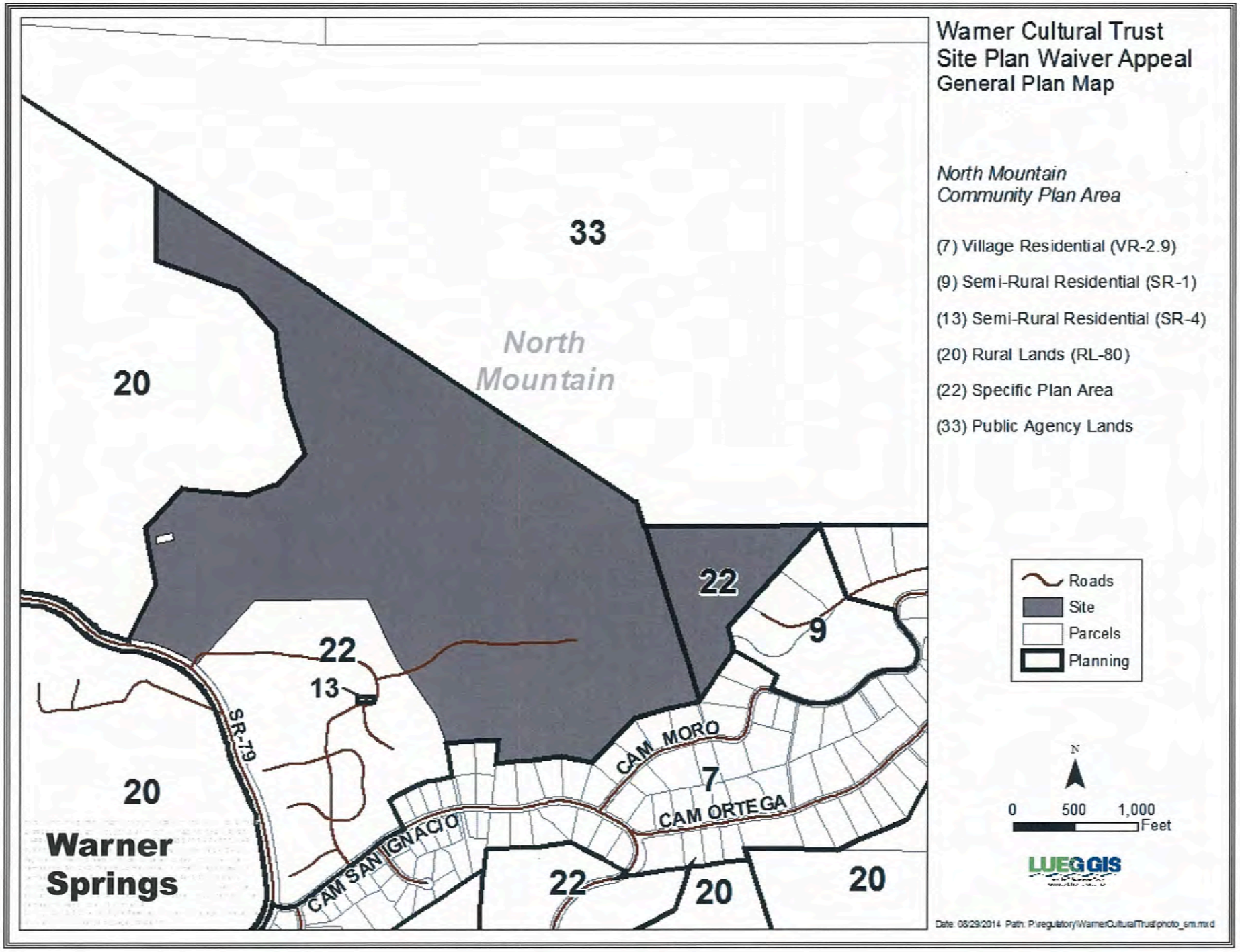
MARK WARDLAW, DIRECTOR

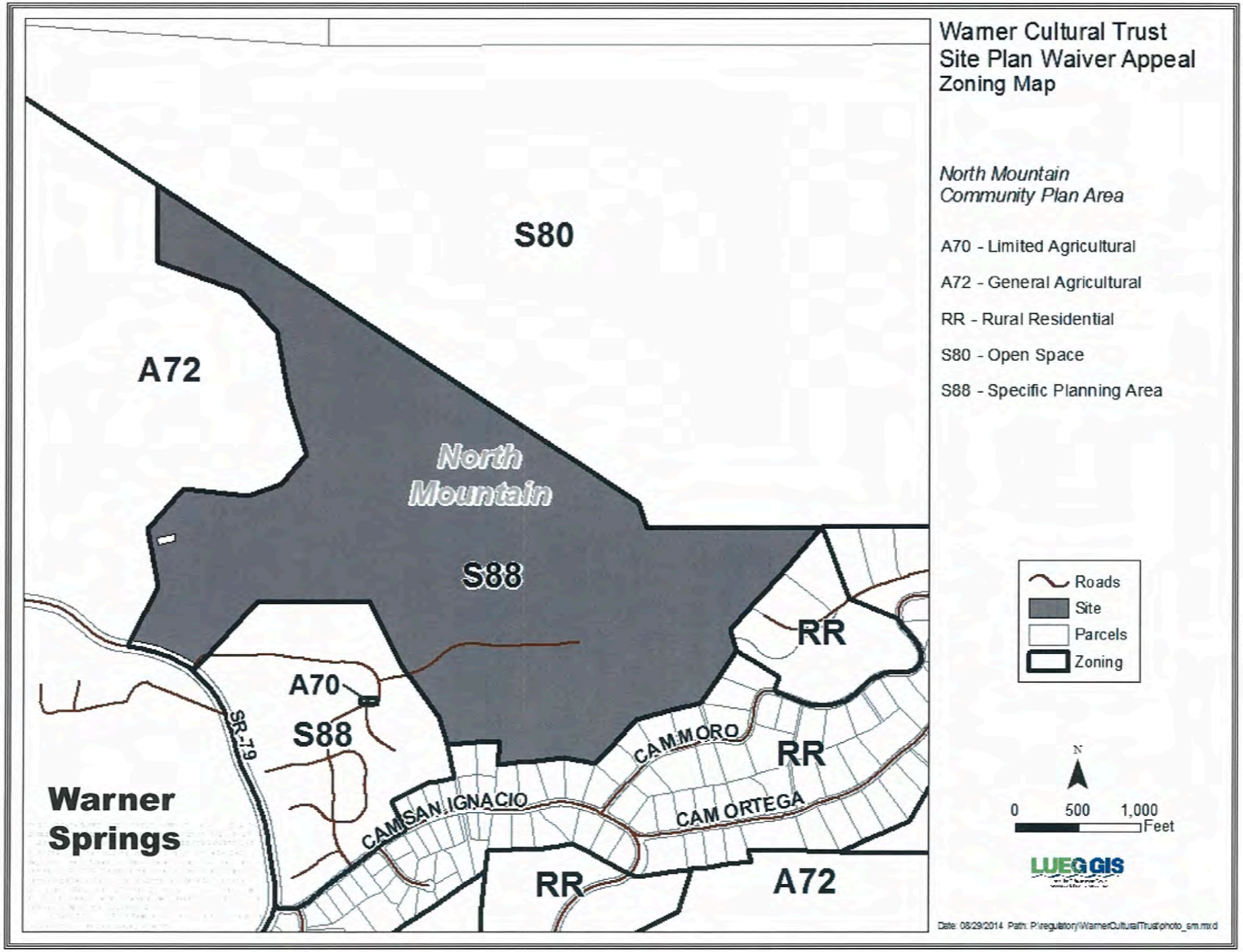
ATTACHMENTS:

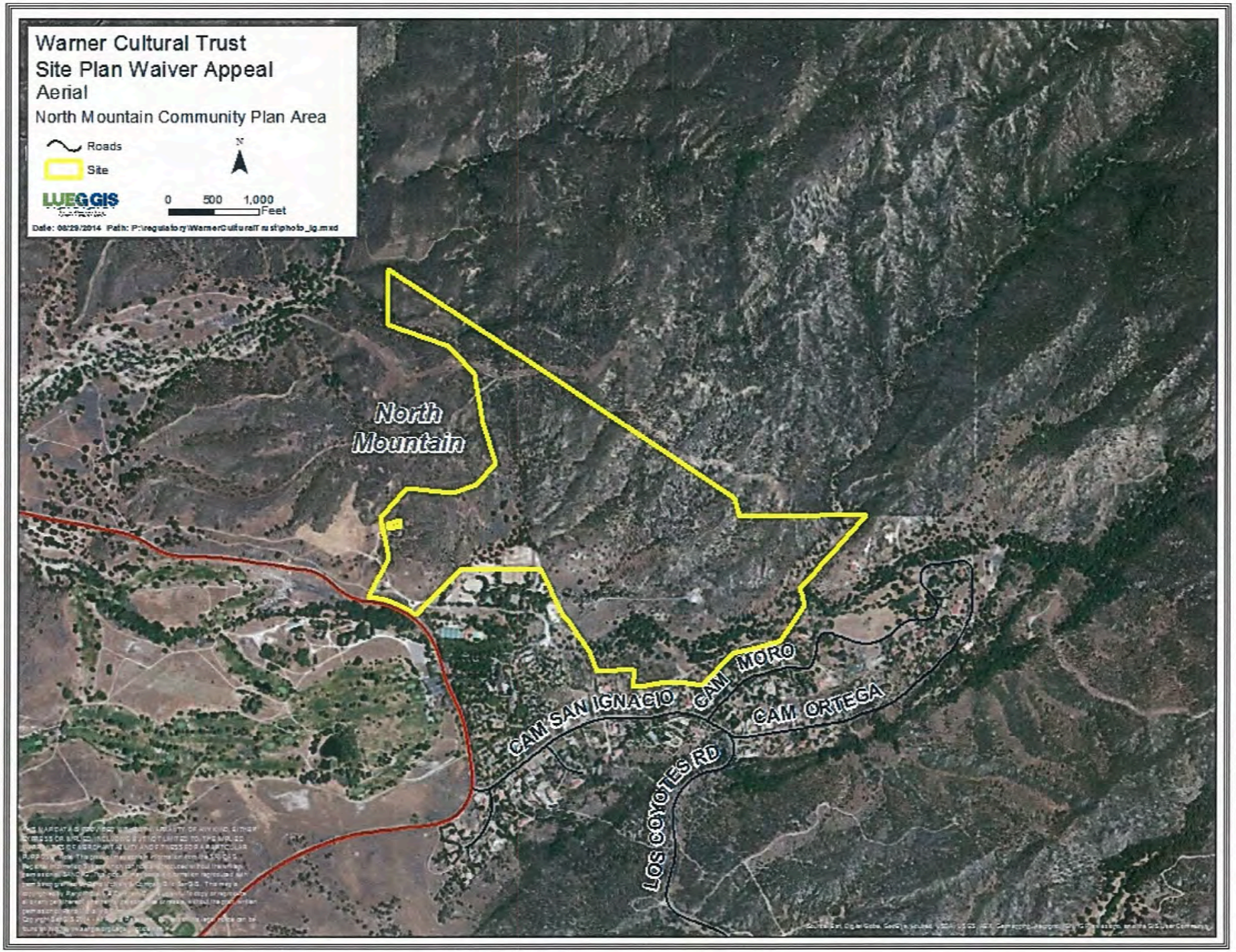
Attachment A – Planning Documentation
Attachment B – Director's Decision Denying the Warner Springs Cultural Trust Site Plan Waiver
Attachment C – Appellant Appeal
Attachment D – Environmental Documentation
Attachment E – Public Documentation
Attachment F – Ownership Disclosure
Attachment G – Proponent Communications
Attachment H – Opponent Communications
Attachment I – Trust Documents
Attachment J – Site Photos
Attachment I – Code Compliance Documentation

Attachment A
Planning Documentation


Warner Cultural Trust
Site Plan Waiver Appeal
Vicinity Map
North Mountain
Community Plan Area
1:3,500,000
LOST VALLEY RD
North Mountain
Los Coyotes Reservation
Warner Springs
CAM SAN IGNACIO
CAM MORO
CAM ORTEGA
LOS COYOTES RD
BANNING RD
Roads
Site
Parcels
N
0
2,000
4,000
Feet
LUEG GIS
Date: 08/29/2014 Path: P:\regulatory\WarnerCulturalTrust\photo_sm.mxd

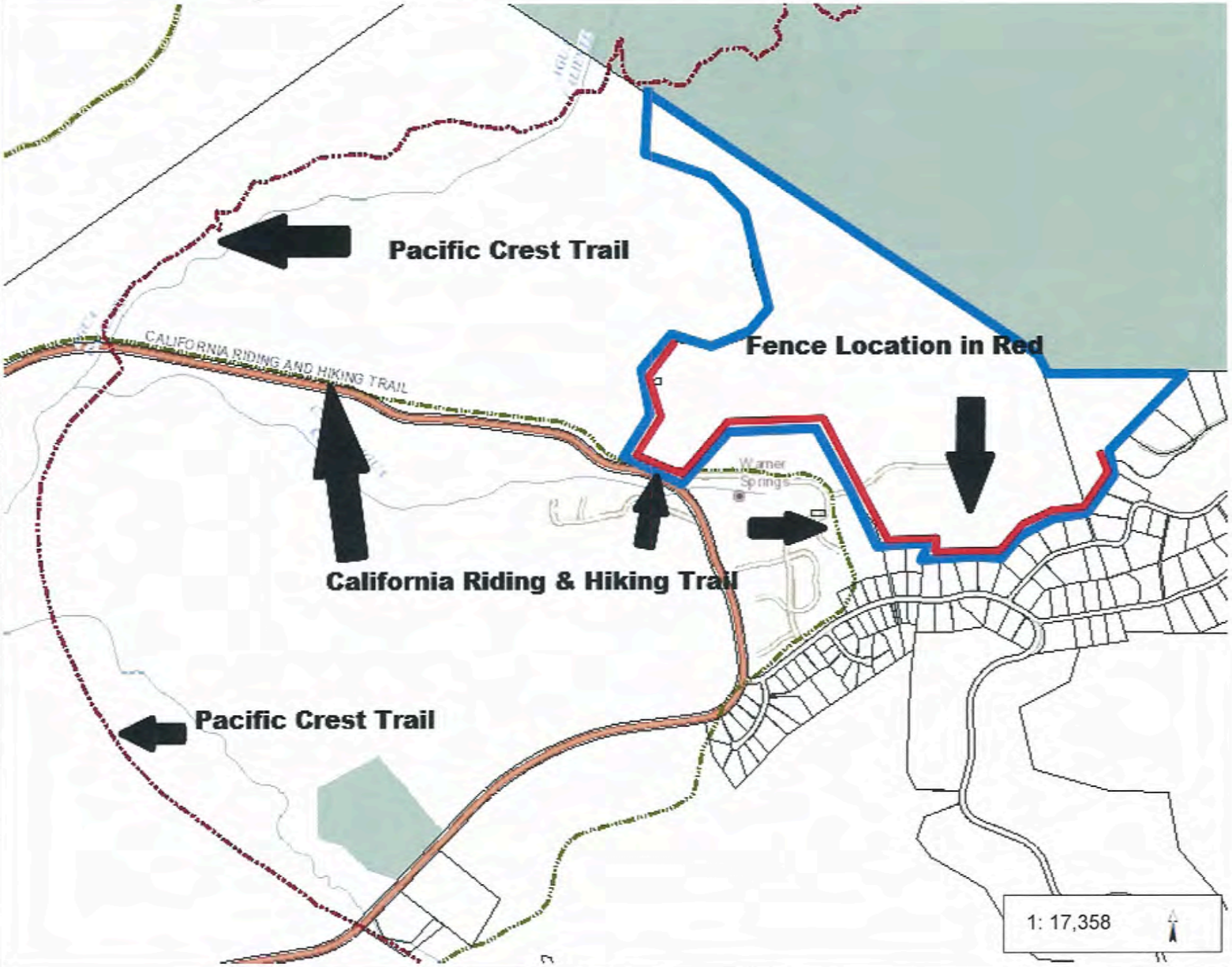

Warner Cultural Trust
Site Plan Waiver Appeal
General Plan Map
North Mountain
Community Plan Area
(7) Village Residential (VR-2.9)
(9) Semi-Rural Residential (SR-1)
(13) Semi-Rural Residential (SR-4)
(20) Rural Lands (RL-80)
(22) Specific Plan Area
(33) Public Agency Lands
Roads
Site
Parcels
Planning
N
0
500
1,000
Feet
LUEGGIS
Date: 08/29/2014 Path: P:\regulatory\WarnerCulturalTrust\photo_sm.mxd
33
North Mountain
20
22
9
22
13
SR-79
20
Warner Springs
CAM MORO
7
CAM ORTEGA
CAM SAN IGNACIO
22
20
20


Warner Cultural Trust
Site Plan Waiver Appeal
Zoning Map
North Mountain
Community Plan Area
A70 - Limited Agricultural
A72 - General Agricultural
RR - Rural Residential
S80 - Open Space
S88 - Specific Planning Area
S80
A72
North Mountain
S88
RR
A70
S88
SR-79
CAM MORO
RR
CAM SAN IGNACIO
CAM ORTEGA
Warner Springs
RR
A72
Roads
Site
Parcels
Zoning
N
0
500
1,000
Feet
LUEGGIS
Date: 08/29/2014 Path: P:\regulatory\WarnerCulturalTrust\photo_sm.mxd


Warner Cultural Trust
Site Plan Waiver Appeal
Aerial
North Mountain Community Plan Area
Roads
Site
N
LUEGGIS
0 500 1,000
Feet
Date: 08/29/2014 Path: P:\regulatory\WarnerCulturalTrust\photo_lg.mxd
North Mountain
CAM SAN IGNACIO
CAM MORO
CAM ORTEGA
LOS COYOTES RD

LUEG GIS
Land Use & Environment Group
Geographic Information Services

Warner Springs Cultural Trust



Legend

- Parcels
- Trails
  - Existing
  - Planned
  - Proposed

Notes

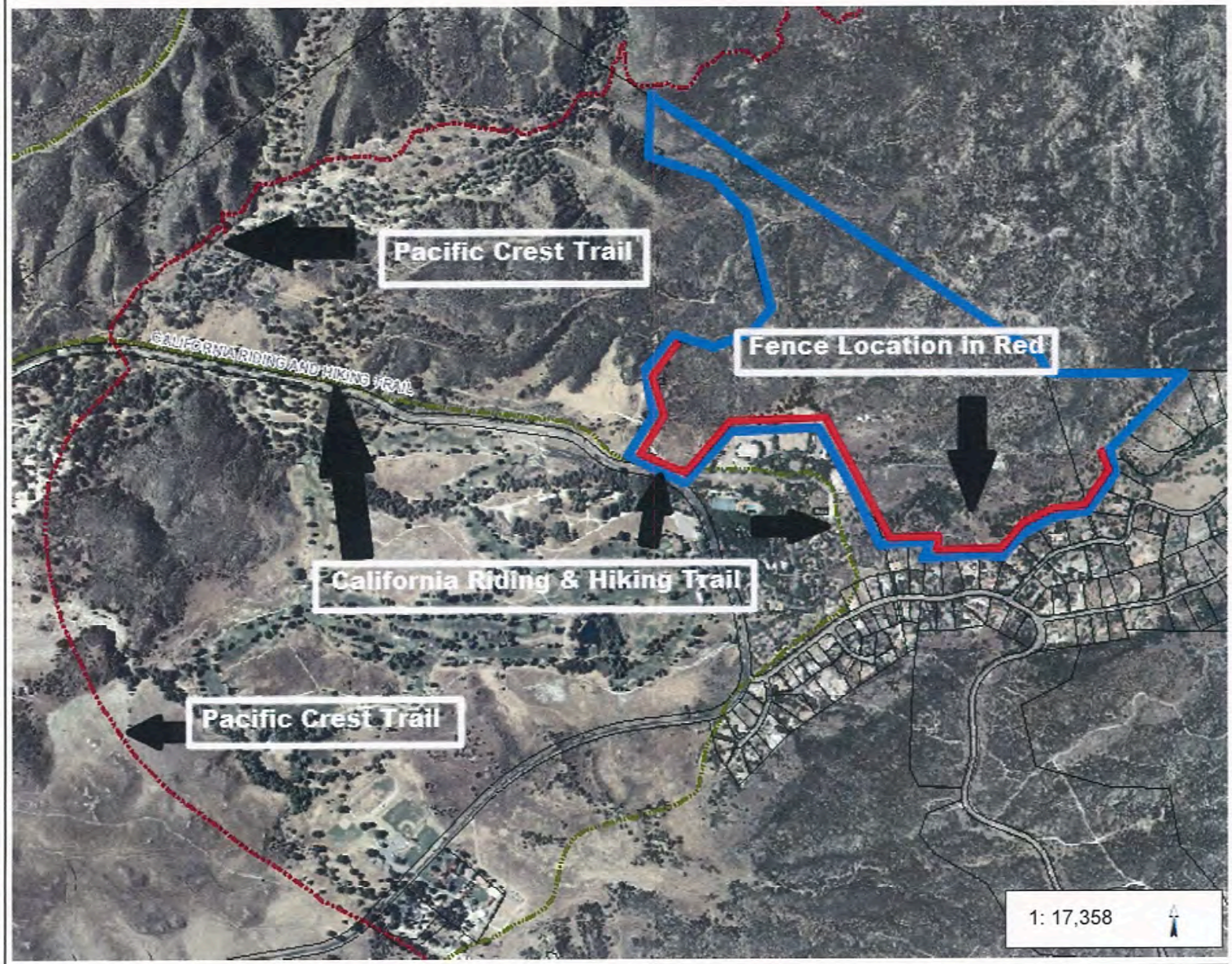
0.5 0 0.27 0.5 Miles

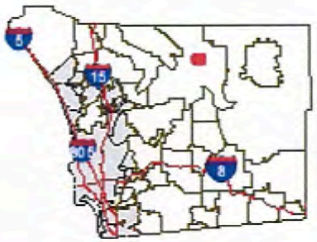
NAD_1983_StatePlane_California_VI_FIPS_0406_Feet
Planning and Development Services

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

LUEG GIS
Land Use & Environment Group
Geographic Information Services

Warner Springs Cultural Trust





Legend

- Parcels
- Trails
  - Existing
  - Planned
  - Proposed

Notes

0.5 0 0.27 0.5 Miles

NAD_1983_StatePlane_California_VI_FIPS_0406_Feet
Planning and Development Services

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Attachment B
Director's Decision to Deny the Site Plan Waiver

County of San Diego

MARK WARDLAW
DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
www.sdcounty.ca.gov/pds

DARREN GRETLER
ASSISTANT DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

May 23, 2014

Procopio Cory Hargreaves & Savitch, LLP
Attn: Mr. Ted Griswold
525 B Street, Suite 2200
San Diego, CA 92101

RE: Warner Cultural Trust Site Plan Waiver

Dear Mr. Griswold:

This letter is in response to your request for a Site Plan Waiver filed on January 9, 2014 for the installation of two miles of chain link fencing on the Warner Cultural Trust (WCT) property in the Warner Springs community, within the jurisdiction of the County of San Diego. The request for a waiver has been considered and evaluated, and a decision has been rendered on your request. The request for a Site Plan Waiver is denied. Below is a description of the project chronology related to the chain link fence, as well as concerns that have been identified, meetings and field inspections that have taken place, and an analysis of the findings that are required in order to grant a Site Plan Waiver.

The Warner Cultural Trust property is zoned with the "H" Special Area Designator (Historic/Archaeological Landmark). The Special Area Designator requires the approval of a Site Plan for the installation of any structure. (Zoning Ordinance (ZO) Section 5700 et seq.) On August 21, 2013, a Stop Work Order and Administrative Warning were issued as a result of the installation of a chain link fence without benefit of permit and for the water course violation. Measures offered to correct the violation were to stop the installation of the fence and apply for a Site Plan or Site Plan Waiver, or remove the fence. On January 9, 2014, WCT applied for a Site Plan Waiver. The Site Plan Waiver was heard at the Historic Site Board on January 27, 2014 and a recommendation to deny the request was made by the Historic Site Board. This recommendation was forwarded to the Director of Planning & Development Services (PDS) for consideration.

The Director and staff met with you and the Trustee of the WCT on February 19, 2014. At that meeting, the Trustee expressed concern for the protection and preservation of the cultural resources on the site. At that meeting, the Trustee explained that unauthorized activities had occurred onsite including trespassing, dumping of manure, pot hunting/vandalism, and encroachments for equine use. The Trustee concluded that these activities have negatively impacted the integrity of the onsite cultural resources. This concern was the primary reason given for the installation of the fence.

The Director and staff also met with the surrounding homeowners, Warner Springs Resort, and Save Our Heritage Organization (SOHO) on March 26, 2014. At that meeting, the representatives identified concerns about the placement of the fencing related to biological resources, cultural resources, fire hazards, watercourse disturbance, visual quality and community character, trespassing onto adjacent properties by the staff installing the fence, questions concerning using security that patrols Warner Springs Resort, and the lack of access to Stage Road, trails, and other property features. In addition, those in attendance identified that one of the primary uses of the Trust property, as outlined in the Trust Agreement, was the scenic enjoyment of the open space area for the general public.

Several site visits were made to the Trust property by the County. PDS conducted field visits on March 7, 2014 (Donna Beddow, Shasta Gaughen - WCT) and May 9, 2014 (Mark Wardlaw, Donna Beddow, Shasta Gaughen - WCT, Ted Griswold - WCT, David Bantz – Los Tules). These site visits were conducted to assess conditions and to understand the concerns and issues provided in previous meetings with the Trustee and with the general public. The Department of Public Works (Lawrence Cuatico) conducted two site investigations on November 4, 2013 and December 19, 2013. The purpose of these site visits was to investigate the original complaint of a water course violation, and follow up with the Trustee to determine the appropriate steps to remediate issues identified in the complaint. The Department of Parks and Recreation (Maryanne Vancio) met at the subject property with California State Parks (Alexandra Stehl) on April 24, 2014 to confirm the location of the California Riding and Hiking Trail. It was determined that the trail easement granted to California State Parks crosses the Trust property and is currently blocked by the chain link fence.

In order to approve a Site Plan Waiver, specific findings under the County's Zoning Ordinance (§5710a) must be made. An exemption from the requirement to process a Site Plan permit pursuant to section 5709 may be granted by the Director under the following circumstances:

> *If it is determined that the nature of the proposed project is such that subjecting it to the Site Plan review process would not materially contribute to district or landmark preservation objectives. In making a decision on such a Site Plan permit exemption due consideration must be given to the recommendation of the applicable Historic District Review Board or the San Diego County Historic Site Board, or both, as specified in Section 5745.*

Based on the information obtained from the Historic Site Board recommendation, meetings with interested parties, site inspections and review of the appropriate regulations (ZO §5700 et seq.,), the Director has determined that a Site Plan permit waiver or exemption cannot be granted for the chain link fence for the following reasons. The Director finds that a Site Plan review would materially contribute to the preservation objectives for the Warner Cultural Trust property by placing conditions that would provide protection for the on-site resources. The Site Plan is the process in which to determine the appropriate location for the fence, conduct environmental review, condition the project to ensure the protection and preservation of the on-site resources, and provide for public input. The Site Plan review would evaluate the placement of the fence in relation to the historic chapel, cultural sites, and trails. This review would also analyze visual resources and how the fence fits with the surrounding community.

A Site Plan is required to authorize the existing fence, therefore PDS requests an application for a Site Plan be filed within 45 days from the date of this letter. The application materials for a Site Plan can be found on the County's website at http://www.sdcounty.ca.gov/pds/zoning/formfields/ESUB_STP_Standard.pdf. If a Site Plan application is not filed, PDS will require the fence be removed within 60 days from the date of this letter or enforcement action will be taken.

The decision to deny the Site Plan Waiver may be appealed to the Planning Commission in accordance with Section 7200 et.seq. of the Zoning Ordinance. The appeal application can be found on the County's website at http://www.sdcounty.ca.gov/pds/zoning/formfields/ESUB_APPEAL_Admin_Decision.pdf. The appeal application must be filed with the Secretary of the Planning Commission within ten (10) calendar days of the date of this decision and must be accompanied by *a deposit (not a fee)* as prescribed in the Department's fee schedule, PDS Form #369, pursuant to Section 362 of the San Diego County Administrative Code. If the tenth day falls on a weekend or County holiday, an appeal will be accepted until 4:00 p.m. on the following day the County is open for business. Filing of an appeal will stay the decision of the Director until a hearing on your application is held and action is taken by the Planning Commission.

Please contact Donna Beddow at (858) 694-3656 or at donna.beddow@sdcounty.ca.gov should you have any questions.

Sincerely,

for: MARK WARDLAW, Director

MW:SR:db

cc: Robert Smith, Chairperson, Pala Band of Mission Indians, 35008 Pala Temecula Road, PMB 50, Pala, CA 92059
Shasta Gaughen, Ph.D., Pala Band of Mission Indians, 35008 Pala Temecula Road, PMB 445, Pala, CA 92059
David Bantz, P.O. Box 4, Warner Springs, CA 92086
Don Burgess, P.O. Box 38, Warner Springs, CA 92086
Bruce & Alana Coons (SOHO), 2475 San Diego Avenue, San Diego, CA 92110
Gerald & Kathy Fishkin, P.O. Box 14, Warner Springs, CA 92086
Deborah Hauser, 2156 Via Tiempo, Cardiff, CA 92007
Oliver Hefler, P.O. Box 4, Warner Springs, CA 92086
George Kettenurg, 32659 Camino Orta, Warner Springs, CA 92086
Charles & Janie Meyer, P.O. Box 155, Warner Springs, CA 92086
Warner Springs Historical Society, P.O. Box 188, Warner Springs, CA 92086
Lawrence Peabody, 26420 Paradise Valley Road, Warner Springs, CA 92086

email cc: Rick Lantis, Chief, Department of Public Works, PDCI
Pam Elias, Chief, Planning & Development Services, Code Enforcement
Steve Murray, Coordinator, Planning & Development Services, Code Enforcement
Glen Gundert, Senior Civil Engineer, Department of Public Works, PDCI

Theresa Nieto, Pala Band of Mission Indians
Howard Maxcy Jr., Pala Band of Mission Indians
Rick Silvera, Pala Band of Mission Indians
Marcus Orozco, Pala Band of Mission Indians
Joseph Blonski
Corey Buhrer
Gene Doxey
Jon Goldenbaum
Kathryn Fletcher
David Hemelstrand
Diane Hemelstrand
David Langley
Jim & Susan Laslavic
Steve Monfort
Brian Mooney, Warner Springs Resort
Los Tules Property Owners Association

Attachment C
Applicant Appeal

RECEIVED
JUN 02 2014
Planning and Development Services

3.57

County of San Diego, Planning & Development Services

APPEAL APPLICATION

ZONING DIVISION

APPEAL TO:

- ☐ Board of Supervisors
- ☒ Planning Commission
- ☐ Administrative Appeal (Requires Deposit & PDS-346)

FOR OFFICIAL USE ONLY

1055 0	Code ____	PDS2014-AA-14-001,
Thomas Guide Map	Fee	Record ID

North Mountain
Community Plan Area

WARNER SPRINGS Ranch SPA
General Plan Designation

Zone S88

APPELLANT FILL IN BELOW THIS LINE, THIS SIDE ONLY – PLEASE PRINT OR TYPE

No assigned address on State Route 79, east of Warner Springs Resort	137-091-02 & 137-100-01
Site Address *Number Street City Zip*	**Assessor's Parcel Number**

Pala Band of Mission Indians	Warner Springs Cultural Trust, dated 11-17-83
Appellant's Name *Last First Middle*	**Owner's Name** *Last First Middle*
PMB 50, 35008 Pala Temecula Road	PMB 50, 35008 Pala Temecula Road
Mailing Address *Number Street*	**Mailing Address** *Number Street*
Pala, CA 92059	Pala, CA 92059
City Zip	*City Zip*
(760) 891-3515	(760) 891-3515
Telephone	**Telephone**

REQUEST: Clearly define all items requested in the appeal. Submit plans if necessary, to illustrate request.
The Pala Band of Mission Indians, which is the sole trustee of the property owner, the Warner Springs Cultural Trust, dated 11-17-83, requests that the Planning Commission reverse the administrative decision to deny the tribe's Site Plan Waiver filed on January 9, 2014.

JUSTIFICATION: Attach additional sheets if necessary.
Please see the attached pages.

Signature of Appellant

Pala Band of Mission Indians, Trustee of Property Owner
If Company Officer – indicate Company Name and function
(Please print)

Procopio®

www.procopio.com

Procopio, Cory, Hargreaves and Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

Theodore J. Griswold
Direct Dial: (619) 515-3277
E-Mail: ted.griswold@procopio.com

June 2, 2014

BY HAND DELIVERY

Lisa M. Fitzpatrick
Secretary of the Planning Commission
County of San Diego
Planning & Development Services
5510 Overland Avenue, Suite 110
San Diego, CA 92123

RECEIVED
JUN 03 2014
Planning and
Development Services

Re: *Warner Cultural Trust Site Plan Waiver*
Appeal to Planning Commission of Administrative Decision

Dear Ms. Fitzpatrick:

Enclosed please find an appeal to the County of San Diego ("County") Planning Commission of the County Planning and Development Services' decision regarding the Warner Cultural Trust Site Plan Waiver request (the "Project"). This appeal is filed by our client, the Pala Band of Mission Indians, the sole trustee of the property owner, the Warner Springs Cultural Trust, dated 11-17-83. The appeal consists of the following document:

Tab 1 – County DPS Appeal Application (Form PDS-125), with supplemental pages and the following two exhibits:

Exhibit 1 – Request for Waiver of "H" Designator Design Review and Site Plan Requirement concerning the Project, filed January 9, 2014;

Exhibit 2 – County DPS letter denying the Waiver application for the Project, dated May 23, 2014.

Tab 2 – Application Deposit Acknowledgement and Agreement (Form DPS-126), with a check in the amount of $1,670 as the deposit for an appeal of administrative decision pursuant to Form PDS-369.

Tab 3 – Discretionary Permit Application (Form DPS 346). Please note that the purpose of this appeal is to obtain County concurrence that a permit is not required for the Project. Given the nature of the appeal, a discretionary permit application would not be necessary for the Planning Commission's consideration of this appeal. However, we have included this application form as a part of the appeal so that this appeal cannot be deemed as incomplete.

Procopio

Please direct all communications regarding this appeal to my attention.

Sincerely,

Kevin Davis for

Theodore J. Griswold

TJG/KMD
Enclosures

cc: Chairman Robert Smith, Pala Band of Mission Indians, Trustee of the Warner Springs Cultural Trust, dated 11-17-83

Warner Cultural Trust Site Plan Waiver
Appeal of Administrative Decision

RECEIVED
JUN 02 2014
Planning and
Development Services

3.57 LR.

The Pala Band of Mission Indians requests that the County of San Diego ("County") Planning Commission reverse the administrative decision of the County Department of Planning and Development Services ("PDS") to deny the Warner Cultural Trust Site Plan Waiver application filed on January 9, 2014. Specifically, the application was filed as a Request for Waiver of "H" Designator Design Review and Site Plan Requirement. A copy of the application is provided as Exhibit 1, and the DPS denial letter, dated May 23, 2014, is provided as Exhibit 2.

Property Owner and Applicant Information

The subject Property is owned by the Warner Springs Cultural Trust, dated 11-17-83 ("Trust"). The sole trustee of the Trust is the Pala Band of Mission Indians ("Trustee"). As explained further below, Trustee filed the Warner Cultural Trust Site Plan Waiver application based on its Trustee responsibilities to protect the Property. Trustee remains the applicant for this appeal of the PDS denial, and requests that the Planning Commission send all correspondences regarding this appeal to its legal counsel as follows:

Theodore J. Griswold
Procopio, Cory, Hargreaves & Savitch, LLP
525 B Street, Suite 2200
San Diego, CA 92101

Telephone: (619) 515-3277
Facsimile: (619) 235-0398
Email: ted.griswold@procopio.com

Project Location

The project is located north of the Warner Springs Resort, on State Route 79 (Thomas Brothers Map No. 409, coordinates K-7) in north east San Diego County. Maps of the project location are provided (Exhibit 1, Attachment 1) and additional photos are attached to the December 2, 2013 letter Response to Code Enforcement Administrative Warning Case PDS2013-ENFGEN-000071; Warner Springs Trust 11-17-83.

Background: The Project Description

The Proposed Project is the completion of a 6-foot high chain link fence along portions of the Trust Property perimeter to protect the Warner Springs Cultural Trust Property and cultural resources from further damage from neighboring properties and the Warner Springs Resort staff and visitors. The extraordinary need for the erection of the protective fence is detailed in the Trustee's December 2, 2013 Response to Code Enforcement Administrative Warning Case POS2013-ENFGEN-000071 (including attachments thereto) (Exhibit 1, Attachment 2). Additional documentation of regular and repeated trespass from neighboring property owners is attached hereto (Exhibit 1, Attachment 3), showing numerous gates from neighboring back yards providing access to the Trust Property, dumping, clearing and grading activities arising from these access points.

Prior to beginning construction of the protective fence on the Trust Property, the Trustee inquired to the County Building Department and PDS whether any building permits or land use approvals were required for the erection of the 6-foot chain link fence to protect the Property. Trustee was told from both sources that no approvals of any type were required for the erection of the fence so long as it was located solely on Trust Property.

Trustee thereafter began the construction of the protective fence along the boundary of the Property in areas where unauthorized access had occurred. Days into the fence construction process, Trustee's contractors were served with a Stop Work Notice informing Trustee for the first time that the Property holds an "H" Designation, and any grading activity on the site must be approved through a site plan, or a site plan waiver must be obtained. The notice directed the Trustee to stop all work associated with the fence. At the time, the fence was approximately 90% constructed, with nearly all poles in the ground (with the exception of those crossing the unauthorized access road). All equipment and materials for the fence construction were removed from the site and work remains suspended, pending the resolution of the current waiver request.

The Trustee filed the Site Plan Waiver in order to complete the fence construction along the Property line, which entails stringing the chain link on the existing poles. The Trustee requested the waiver of the need to complete an expensive and unnecessary Site Plan prior to completing the fence, as preparation of a Site Plan would not further the purpose of the H-Designation, which is in place in order to protect the cultural resources on the Trust Property.

Summary of the PDS Administrative Decision

PDS denied Trustee's application for the Warner Cultural Trust Site Plan Waiver based on the Director's finding that "a Site Plan review would materially contribute to the preservation objectives for the Warner Cultural Trust Property by placing conditions that would provide protection for the on-site resources."

PDS's denial is based on the position that the Site Plan review would "determine the appropriate location for the fence, conduct environmental review, condition the project to ensure the protection and preservation of the on-site resources, and provide for public input" including the "placement of the fence in relation to the historic chapel, cultural site, and trails."

The denial letter also provides that the Site Plan review would allow PDS to "analyze visual resources and how the fence fits with the surrounding community." The denial alleges that the California Riding and Hiking Trail easement granted to California State Parks crosses the Trust Property and is currently blocked by the fence, and cites to concerns from residents of the neighboring Warner Springs Resort that include without limitation the lack of access to Stage Road, trails and other property features.

Basis for Appeal of the PDS Administrative Decision

An administrative decision may be appealed to the Planning Commission where there is an error or abuse of discretion. (County Zoning Ordinance § 7201c). Trustee believes that the denial of the Warner Cultural Trust Site Plan Waiver was an error and an abuse of discretion because: (1) the Site Plan review would endanger rather than protect the cultural resources on the Property; (2) the Site Plan review provides PDS

no additional information regarding the fence construction than has already been provided by the Trustee; (3) PDS erred by claiming that "conditioning" (undefined in the PDS denial letter) the fence completion would materially contribute to the preservation objectives; (4) PDS erred by using rationale other than that required by the Zoning Ordinance in rending a denial; and (5) PDS did not provide documentation to support its denial of the Site Plan Waiver.

The Site Plan Review Would Endanger, Rather Than Protect, These Cultural Resources

PDS has authority to grant a Site Plan Waiver when:

> "the nature of the proposed project is such that subjecting it to the Site Plan review process would not materially contribute to district or landmark preservation objectives."

(County Zoning Ordinance § 5710a). The district preservation objectives are "to identify, preserve and protect the historic, cultural, archaeological and/or architectural resource values of designated landmarks and districts and to encourage compatible uses and architectural design." (County Zoning Ordinance § 5700).

As set forth in Trustee's Site Plan Waiver application, subjecting the fence construction project to the Site Plan review process will not "contribute to the preservation objectives" of the Warner Cultural Trust. To the contrary, going through the Site Plan review would endanger the preservation objectives of the Warner Cultural Trust by requiring that the locations of the cultural sites become subject to public review and comment. The cultural resources would remain exposed to risk by allowing public access to the Property during the Site Plan review process. PDS therefore erred and abused its discretion when denying the Site Plan Waiver because the Site Plan review process that PDS would require will endanger, rather than protect, the cultural resources on the Trust Property.

The Site Plan Review Would Provide No Value or Additional Information

The development of a Site Plan for H-Designated areas conducted for limited, explicit purposes achieves the landmark preservation objectives by evaluating:

> (1) the existing or proposed use or activity;
>
> (2) the historic, cultural, archaeological or architectural resource values or significances of the site; and
>
> (3) the relationship of the proposed use or activity to the designated landmark or district.

(County Zoning Ordinance § 5715). A Site Plan is approved where the proposed use or activity would "enhance ... and not interfere with ... the historic, cultural, architectural or archaeological resource values of the designated landmark or district." (County Zoning Ordinance § 5718).

In this case, the Site Plan process would add no value or additional information to achieve the preservation objectives of the Warner Cultural Trust Property for the following reasons:

(1) "Existing or proposed use or activities" – the details of the fence construction project are already known and have been provided to PDS through the as-built fence plans;

(2) "Resource value" – the historic, cultural, and archaeological values of the Property are well known and documented by the establishment of the Trust and the cultural preserve; and,

(3) "Relationship of the use to the resource value" – the fenced-off areas of the Property are directly related to and protect the cultural resources on the Property. This relationship is already known.

Further, the review standard for PDS to approve a Site Plan is very limited, requiring only that the project enhance and not interfere with the historic, cultural, or archaeological resource values. The construction of the fence accomplishes this objective to protect the cultural resources on the Trust Property by preventing public access and endangerment of these resources. PDS therefore erred and abused its discretion by denying the Site Plan Waiver where PDS used criteria beyond the scope of its duty under the Zoning Ordinance (desire for public comment input on other uses for the Trust Property) in its decision making rationale. This error subjects the Property to a Site Plan review process which would endanger the cultural resources of the Trust Property and where no value or additional information to benefit the preservation of cultural resources would be obtained by the process.

PDS Failed to Provide Documentation to Support Its Denial

Finally, the basis for PDS's denial does not relate to the preservation objectives of the Warner Cultural Trust. Instead, the denial letter provides that PDS would like to analyze visual resources and how the fence fits with the surrounding community. These concerns do not emanate from the Zoning Ordinance mandate to review with the singular focus of the protection of on-site resources.

Moreover, this new position expressed by PDS has no nexus to the H-Designation and would not materially contribute to the preservation objectives. PDS raises the possibility that the California Riding and Hiking Trail easement may be blocked by the fence, and cited concerns about lack of access to Stage Road (where no right-of-way exists), trails and other property features. However, PDS provided no documents demonstrating that the California Riding and Hiking Trail exists on the Trust Property. PDS did not cite any documents that supported the claim that there is an easement in any specific location on the Property. As a result, PDS's decision was arbitrary and did not rely on evidence that was in the file.

Trustee submitted Public Records Act requests to PDS, the County Department of Parks and Recreation and the California Department of Parks and Recreation to obtain documentation concerning the basis for the PDS decision, including the purported location of the California Riding and Hiking Trail easement. Due to the short, 10-day deadline to file this appeal, Trustee has not received any such records from these agencies. Trustee reserves the right to revise, amend and further modify this appeal upon receipt of the documents responsive to these Public Records Act requests.

Conclusion

Trustee believes that the denial of the Warner Cultural Trust Site Plan Waiver was an error and an abuse of discretion by PDS because the Site Plan review would endanger, rather than protect, the cultural resources

on the Property while providing PDS no additional information. The decision denying the waiver failed to abide by the Zoning Ordinance-mandated criteria for rending such a decision for an H-Designated area. Furthermore, PDS has not provided sufficient documentation to support its denial of the Site Plan Waiver. For these reasons, Trustee requests that the Planning Commission reverse PDS's administrative decision to deny the Warner Cultural Trust Site Plan Waiver application filed on January 9, 2014, or grant the waiver so that the Trustee can complete the construction of the protective fence.

Exhibit 1

Application
(Dated January 9, 2014)

Procopio®

www.procopio.com

Procopio, Cory, Hargreaves and Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

Theodore J. Griswold, Esq.
Direct Dial: (619) 515-3277
E-Mail: ted.griswold@procopio.com

January 9, 2014

VIA FEDERAL EXPRESS

Mr. Scott Moomjian
Chair, San Diego County Historic Site Board
County of San Diego
Department of Planning and Land Use
5510 Overland Avenue, Suite 110
San Diego, CA 92123

Re: Request for Waiver of "H" Designator Design Review
APN: 137-091-02 and 137-100-01
Warner Springs Cultural Trust Property

Dear Mr. Moomjian:

Enclosed please find the Request for Waiver of "H" Designator Design Review submitted for your review and approval. Please contact me at your earliest convenience with any questions or concerns.

Best regards,

Theodore J. Griswold, Esq.

TJG:ct
Enclosures

cc: (Via Email Only w/attachments)
Chairman Robert H. Smith
Mr. Timothy Kirkland, Code Enforcement
Ms. Donna Beddow, Planning

REQUEST FOR WAIVER OF "H" DESIGNATOR DESIGN REVIEW

You have requested a waiver of Site Plan Review which is normally required for projects subject to H Designator Design Review. Before the Department can make a final decision on your request, you must present the project to the local Historic Site Board so that the Department can consider their recommendation. **Please fill out this form and include a copy of the project drawing(s), and mail as soon as possible to the Historic Site Board chairperson.** The Historic Site Board will schedule a hearing of your case for their next available meeting and will notify you of the date, time, and place of the meeting. When you go to the meeting, make sure you bring three (3) copies of the project drawing(s) identical to those you will be submitting for building permits. You must leave two (2) copies of these drawings with the Historic Site Board, and they will become public record of the Historic Site Board's recommendation to the Director of Planning & Development Services.

THIS SECTION TO BE FILLED OUT BY STAFF PLANNER: Date:

APN 137-091-02, 137-100-01
San Diego County Historic Site Board, Chair: Scott Moomjian
Chair's mailing address: 5510 Overland Avenue, Suite 110, San Diego, CA 92123
Chair's phone # (858) 694-3656

☐ The Department may be able to support this waiver request.
☐ The Department may not be able to support this waiver request, for the following reason(s):

THIS SECTION MUST BE FILLED OUT BY APPLICANT PRIOR TO BEING SENT TO THE BOARD:

Owner's name: Warner Cultural Trust 11-17-83 (see attached) Contact: c/o Theodore Griswold
Owner's or Agent's Phone # (daytime): 619-515-3277 (evening): 619-823-3277
Owner's or Agent's mailing address: Procopio Cory Hargreaves & Savitch LLP, 525 B Street, Suite 2200, San Diego CA 92101
Brief description of project: See Additional Information, attached.
Project Location (include Thomas Brothers map coordinates and attach a map if necessary. You must provide enough information to allow the Historic Site Board to identify the site. If the Historic Site Board cannot locate the site, your project could be unnecessarily delayed.

THIS SECTION TO BE FILLED OUT BY THE HISTORIC SITE BOARD, and returned along with one (1) copy of the project drawings signed by the Chair, to: Department of Planning & Development Services, 5510 Overland Avenue, Suite 110, San Diego, CA 92123, in care of Donna Beddow, Historic Site Board Liaison.

Meeting date: _____

Action: ☐ Waiver recommended. ☐ Waiver not recommended, County Site Plan should be required.

Signature: _____

DPLU #554 (7/01)

Request for Waiver of "H" Designator Design Review and Site Plan Requirement

Additional Information

Owner's Name

Subject Property Owner is the Warner Springs Cultural Trust, dated 11-17-83 ("Trust"), and the sole Trustee of that Trust is the Pala Band of Mission Indians ("Pala", or "Trustee"").

Project Location

Project location is north of the Warner Springs Resort, on State Route 79 (Thomas Brothers Map No. 409, coordinates K-7) in north east San Diego County. Maps of the project location are attached (Attachment 1) and additional photos are attached to the December 2, 2013 letter Response to Code Enforcement Administrative Warning Case PDS2013-ENFGEN-000071; Warner Springs Trust 11-17-83.

Project Description

The Proposed Project is the completion of a 6-foot high chain link fence along portions of the Trust property perimeter to protect the Warner Springs Cultural Trust Property and cultural resources from further damage from neighboring properties and the Warner Springs Resort staff and visitors. The extraordinary need for the erection of the protective fence is detailed in the *Trustee's December 2, 2013 Response to Code Enforcement Administrative Warning Case PDS2013-ENFGEN-000071 (including attachments thereto)* (Attachment 2). Additional documentation of regular and repeated trespass from neighboring property owners is attached hereto (Attachment 3), showing numerous gates from neighboring back yards providing access to the Trust property, dumping, clearing and grading activities arising from these access points.

Prior to beginning construction of the protective fence on the Trust Property, the Trustee inquired to the County Building Department and the Planning and Development Services Department (PSD) whether any building permits or land use approvals were required for the erection of the 6-foot chain link fence to protect the property. Trustee was told from both sources that no approvals of any type were required for the erection of the fence so long as it was located solely on Trust property. Trustee thereafter began the construction of the protective fence along the boundary of the property in areas where unauthorized access had occurred. Days into the fence construction process, Trustee's contractors were served with a Stop Work Notice directing Trustee to stop all work associated with the fence. At the time, the fence was approximately 90% constructed, with nearly all poles in the ground (with the exception of those crossing the unauthorized access road). All equipment and materials for the fence construction were removed from the site and work remains suspended, pending the resolution of the current Warning.

The Trustee is seeking to complete the fence construction along the property line, which will entail the stringing of the Chain link on the existing poles. The Trustee is requesting the waiver of the need to complete an expensive and unnecessary Site Plan prior to completing the fence, as such a Site Plan would not provide the County or the Historic Site Board meaningful additional information regarding the Project.

ATTACHMENT 1

Warner Cultural Trust Property

Proposed Overall Encroachment Areas and Proposed Protective Fence

(760) 782-42
Contact

Championship Golf

Membership

Resort Location

Resort Hotel

Just 1 hour and 15 minutes from San Diego, Temecula and Palm Desert, California.

Warner Springs Ranch Resort Location

In less than 2 hours from Los Angeles or San Diego, you will find yourself worlds away from the everyday stresses of workaday cities and suburbs...enjoying the serenity, beauty and peace found in our Historic location – Warner Springs Ranch Resort.

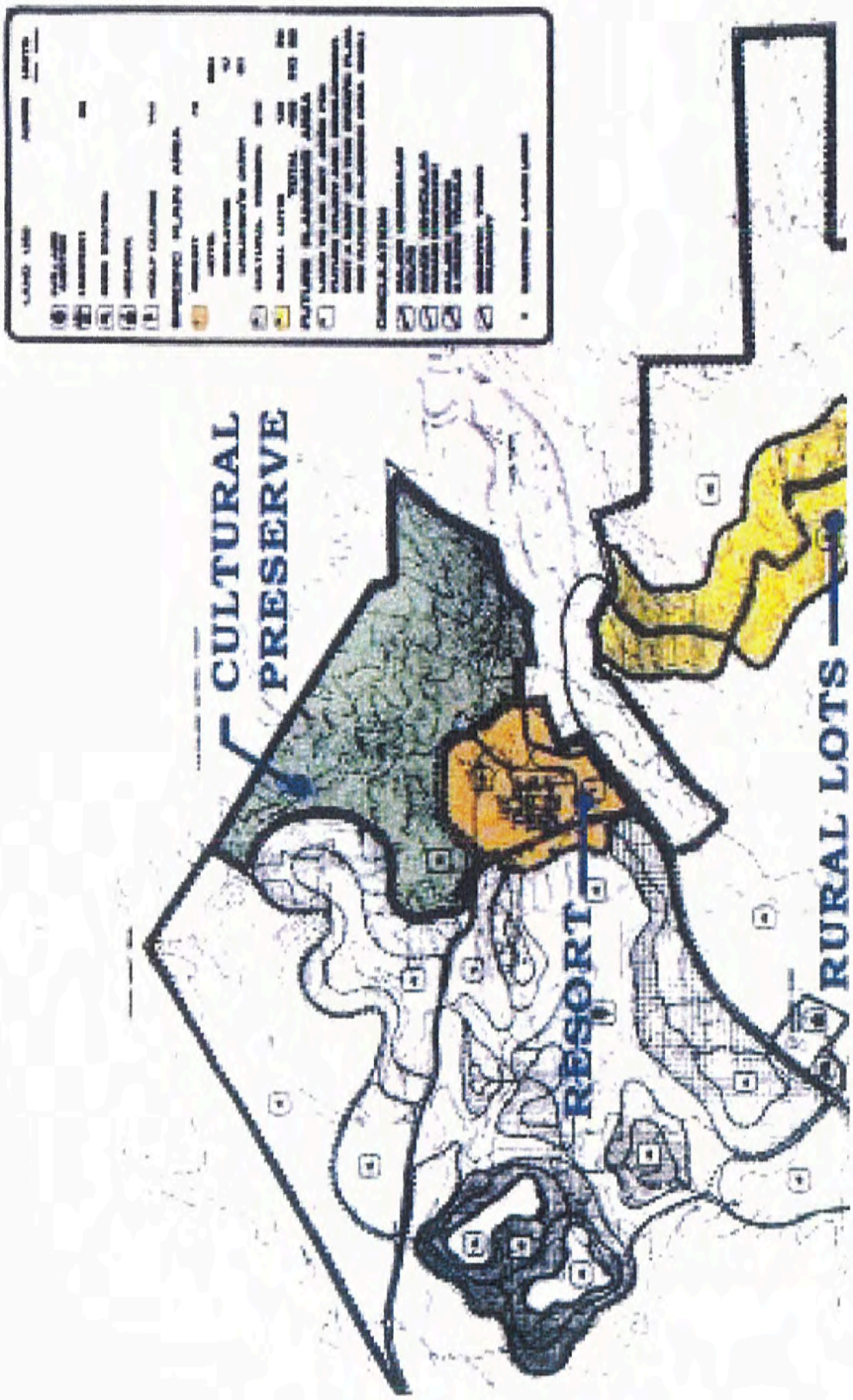
Equestrian Cen

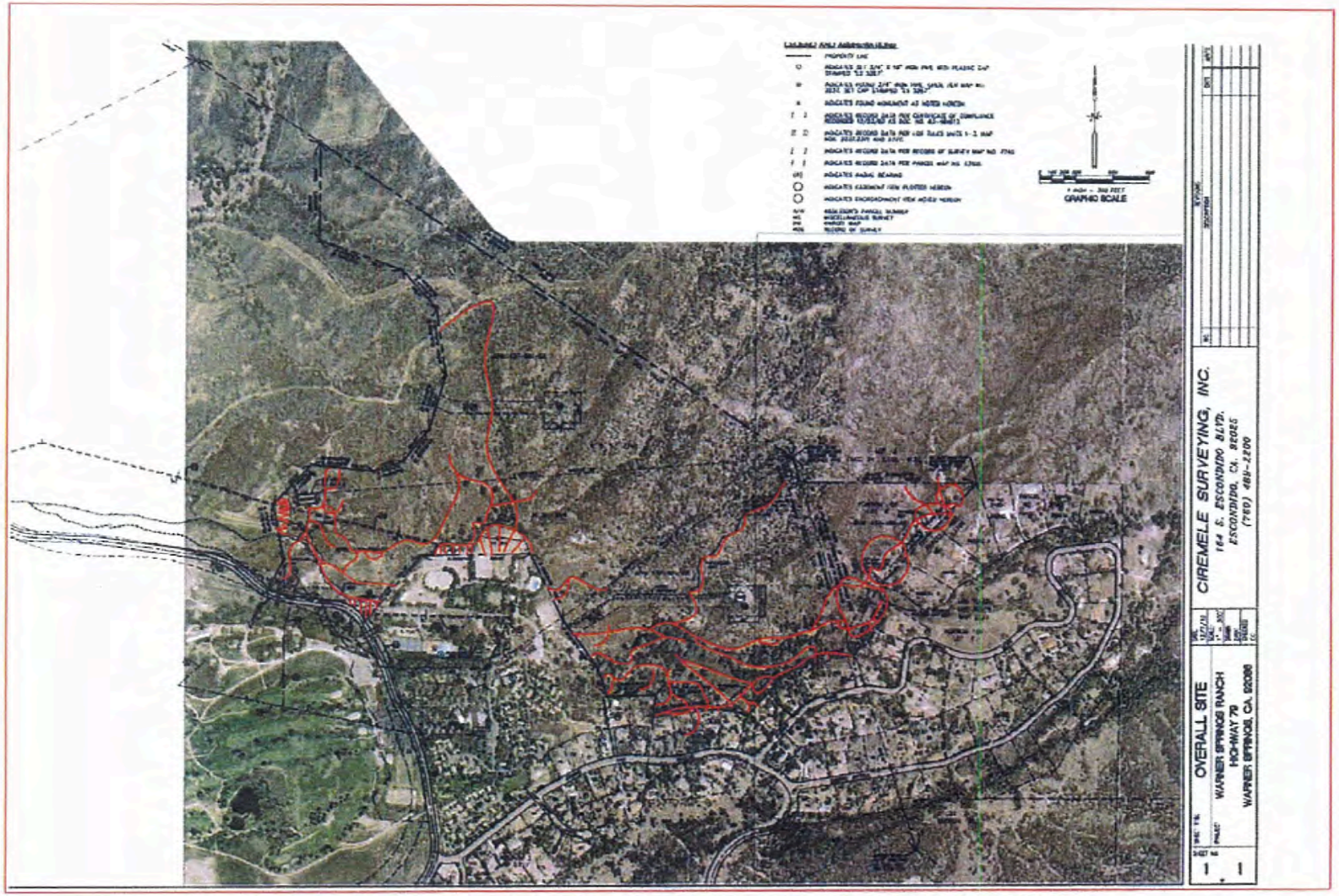
Bicycle

Hiking Tr

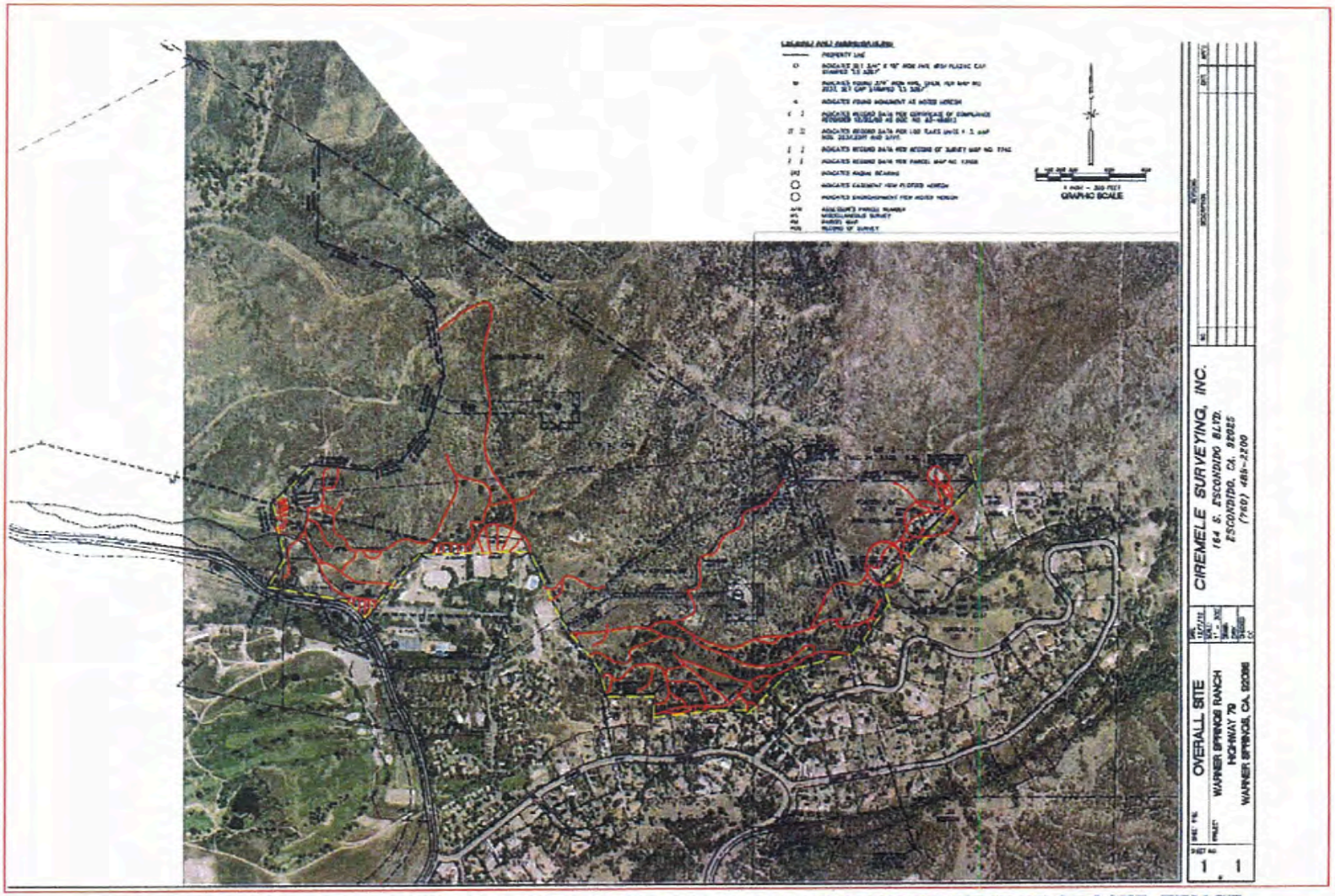
Hunting & Fishi

1 - 40


CULTURAL
PRESERVE
RESORT
RURAL LOTS



ENCROACHMENT AND TRESPASS IMPACTS ON CULTURAL PROPERTY



ENCROACHMENT AND TRESPASS IMPACTS ON CULTURAL PROPERTY WITH PROPOSED FENCE

PROPOSED FENCE

ATTACHMENT 2

Warner Cultural Trust Property

December 2, 2013 Letter

Procopio

www.procopio.com

Procopio, Cory, Hargreaves and Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

Theodore J. Griswold
Direct Dial: (619) 515-3277
E-Mail: ted.griswold@procopio.com

December 2, 2013

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Chris Heidenreich
Code Enforcement Officer
County of San Diego
151 E. Carmel Street
San Marcos, CA 92078

Re: Response to Code Enforcement Administrative Warning Case PDS2013-ENFGEN-000071; Warner Springs Trust 11-17-83

Dear Mr. Heidenreich:

Our office represents the Trustee of the Warner Springs Trust 11-17-83 ("Trustee"). This responds to the County's Stop Work Order and Administrative Warning (Amended) dated October 16, 2013 ("Warning") sent to the Trust regarding the construction of the partial perimeter fence ("Fence") on the Trust Property ("Trust Property"). The fence is under construction to stem current trespass and damage to the Trust Property resources. The Warning was received after the Trustee had already received concurrence from the County Planning and Development Services Department ("PDS") and Building Permit Department that the Fence required no discretionary approvals. The Fence was already approximately 90% constructed when the Stop Work Order was served on the contractors working on the site. The Warning alleged that the fence construction violated San Diego Zoning Code Ordinance Section 5709(B), and directed the Trustee to "submit an application for a site plan approval, a request for a waiver of the site plan, or remove the fence."[1]

[1] SDZCO Section 5710 states that any Site Plan permit exemption requests shall be transmitted by the applicant to the Advisory Board using a form approved by the Director for that purpose. While acknowledging that the Trustee may seek a waiver (presumably referring to the 5710 exemption process in lieu of submitting a site plan for review), the County did not direct the Trustee regarding the appropriate form to use for a waiver, or an exemption. A review of the County online form data base found that no such forms are electronically available to the public. The Trustee respectfully requests that, to the extent that the Director wished to have the request for exemption on a specific form, the County make such a form available to the Trustee and it will be submitted in short order. Absent such a form, the Trustee submits this request for a waiver and/or exemption, along with the rationale supporting the request.

Procopio

Summary Response:

By this correspondence, the Trustee is requesting a waiver of the site plan requirements in SDZCO 5709 because 1) the Fence construction did not violate 5709 because all activities were authorized by County before construction began and all remaining activities could not adversely affect H -Designated areas; and 2) the Fence construction was authorized as a protective action to protect Trust resources through the creation of the Trust, which was previously approved by the County as part of the Warner Springs Specific Plan.

In addition, the Fence construction is exempt from requirements of 5709(B) pursuant to SDZCO 5710(B) because the site plan process would not further the purpose of the H-Designation. In fact, requiring the processing of a site plan for a chain link fence would not benefit the Trust resources, and it would subject the important cultural resources to further damages from trespass, fill and artifact removal. The Fencing is also exempt pursuant to 5710(A), because construction of protective devices was authorized by previous County approvals under the Specific Plan, directing the creation of the Preserve and the Trust. In addition, because the Trust was created and approved by the County without any funding source for the Trust management, the processing of a site plan for the chain link fence would cause unreasonable (and indefinite) delay in completing the Fence because the Trust does not have the financial resources ($30,000+) to hire the necessary engineers, consultants and technicians to develop and process the site plan.

I. FACTUAL BACKGROUND

a. Creation of the Cultural Trust

The Cultural Trust was created in order to preserve and protect the cultural resources on the Trust Property. The requirement to create the Cultural Trust Property as a cultural preserve was initially provided in the 1981 General Plan Amendment for the Warner Springs area, which authorized the development of a Specific Plan for the area. The 1981 EIR stated that the 240 acre cultural preserve "has been dedicated within the ranch boundaries. Except for planned consideration of a cultural museum, this area which includes St. Frances Chapel and Native American cemeteries, will remain undisturbed." (EIR, p.15.)

The 1983 County Report that proposed the Specific Plan contemplated the creation of the Cultural Preserve as part of the Specific Plan Project description to ". . . incorporate this into the project design, a cultural preserve totaling 240 acres within the ranch boundaries is proposed to be deeded to a non-profit organization which will include representatives of the Pala and Los Coyotes Indian Reservations (trust agreement, Appendix D)." (p. 8, LSP 83-01). The nature of this preserve was to protect resources, and not to allow for public access.

In finding General Plan Consistency for SPA 83-04, the County made two findings related to the Cultural Preserve:

> Environmental Goals. 3.1 "protect lands" needed for preservation. "The Specific Plan. . . sets aside 240 acres as a cultural preserve to protect significant archeological resources." (p. 24, General Plan Consistency, SPA 83-04)
>
> Cultural Sites. Policy 1. Conserve and protect resources. A cultural preserve of 240 acres is proposed as part of the Specific plan. This property will be retained as undisturbed land and overlayed by a Historic District Preservation Area in order to preserve significant archeological resources in the area. (p. 34, *id.*)

These findings showed that the Cultural Trust property was intended to be left completely "undisturbed" with the exception of purposes directly related to the Trust purpose. All other Specific Plan documents addressing the Cultural Trust Property provide additional support for the absolute non-disturbance of the Cultural Trust Property. (*See*, 1981 General Plan Amendment; Cultural Trust Agreement; Resolution approving SPA 83-04; SPA 84-03 Conditions of Approval; Staff Report approving SPA 84-03).

The GPA, Specific Plan (and as amended) and other County approvals never provided for "public use" of the Cultural Trust site, emphasizing that no general access was contemplated to the Trust Property. The only "public" use of the Trust Property is for "scenic enjoyment" and a "public education" component of the mitigation requirement. The Resort was required to create a cultural center and museum on part of the Cultural Trust Property, which would provide "education of the general public with regard to such customs, traditions, language and history of the Indians." (GPA EIR, p. 56; Trust Agreement). In addition, the Resort was required to provide staffing of the Center for the purpose of providing the Center's continued maintenance and *serve as means of monitoring the condition and integrity of those resources placed within open space easements for preservation.* (GPA EIR, p.56) The requirement to construct and staff a cultural center and museum was also part of the General Plan Conformance findings for Specific Plan 83-04, and as a result, became a requirement of the Specific Plan. The Specific Plan changed the location of the museum and cultural center to the resort property, but did not change the staffing requirements. The requirement was also incorporated into the revisions of Requirement K of the Specific Plan approvals for SPA 84-03. However, the cultural center, museum and staffing by the Resort, including monitoring, were never funded or created by the Resort.

b. The County Ignored the Failure of the Original Trustee to Protect the Resources on the Trust Property.

As part of the creation of the Trust, the original Resort owner Cal Rossi was also required to create a method of funding the Trust and was to create a 501(c) (3) corporation to hold and manage the property (which would take the property off of the property tax rolls). Rossi completed neither task, and failed to maintain the Trust Property to any measurable degree. From 1983-1994, the Pala Band and Los Coyotes Tribal members regularly visited the Trust property to check on its integrity, conduct cultural gatherings and maintain the Cemetery for their people. During this period, other than creation of the Trust, there were no apparent actions taken by the Original Trustee to maintain the Cultural Trust or to preserve the resources on the site. In fact, the Original Trustee, acting as the Resort Owner, took actions that led to the degradation and damage to the cultural resources on the property, breaching his fiduciary obligation to the trust (See. Cal. Probate Code 16004, 16004). These actions included many of the later-discovered encroachments, construction of equestrian facilities, construction of trails into culturally sensitive sites, dumping and developing direct access to the areas that were supposed to be protected by the Trust (see section 1.d, below). In 1994, the Trust property was finally the subject of a tax foreclosure auction due to unpaid taxes and a complete lack of assets held by the Original Trustee and the Trust. Throughout this period of complete neglect by the Original Trustee, the County took no action whatsoever to enforce the requirements of the Cultural Trust resource preservation requirement dictated by the General Plan, Specific Plan or Specific Plan Amendment.

c. The Pala Band became the Successor Trustee due to the Failure of the Original Trustee to protect the Trust Resources.

The Pala Band learned of the potential sale of the Trust Property through a tax sale and did not want to see the Property sold off into new ownership, which would have eliminated the protection for the Property and resources. Sale through a tax auction, as the County initiated in 1994, would have terminated the Trust protection of the Property. Pala intervened and agreed to satisfy the unpaid taxes in exchange for Pala being designated as the sole Trustee for the Trust and remove the Resort as a potential trustee.

The Property is currently held by the Cultural Trust, with Pala as the sole trustee as of September 14, 1994. The Trust remains unfunded. The Trustee currently pays all of expenses for the maintenance of the Property and pays the property taxes out of its own resources, but is under no obligation to do so. It is estimated that Trustee has paid over $140,000 in property taxes alone since taking over as sole trustee for the Property. The Trust is obligated to reimburse the Trustee for all expenses incurred in the operation of the Trust. (Trust Agreement Art. XXII.) As a result, the Trust is currently indebted to the Trustee.

d. Discovery Of Significant Encroachments And Trespass On The Cultural Trust By The Resort And Members Of The Public.

Several years after becoming trustee for the Cultural Trust property, the Pala Band was provided the opportunity to purchase the Resort property in its entirety. In anticipation of purchasing the Resort Property in 2010, which would allow the Trustee to have direct proximity to the Trust property, the Pala Band had an ALTA survey conducted on the Resort and Trust properties to determine the specific boundaries of each property. The ALTA survey found significant encroachments, trespass, dumping , and apparent regular unauthorized use of the Trust Property by the Resort and other members of the public. These activities caused significant damage to the cultural resources on several areas of the Trust Property and included the following:

1) Unauthorized Construction of a Large Horse Training and Running Facility on the Trust Property: The Resort constructed a large horse corral on the Cultural Trust property (**approximately 2.5 acres**) that has been covered with horse manure spread adjacent to the horse corrals and running areas. The area is surrounded by a fence that was constructed by the Resort on the Trust property without the permission of the Trustee. Given the lack of contours on the land, it is clear that significant grading took place to create the equestrian facility. It is apparent that the area has been used for many years for the purposes of running horses and depositing manure (apparently to avoid costs of proper disposal). The area is clearly evident as being used for grazing horses and depositing horse manure dating back to at least 1994. (Attachment A, Historic photos include 2010, 2006, and 1994 depictions.) The area is not irrigated and slopes toward a nearby creek (Warner Creek). As a result, drainage from the horse manure runs across the Property and into the creek. This creates potential environmental liability for the Resort as the Polluting Party and the Trustee of the Cultural Trust property for Clean Water Act violations.

2) Unauthorized Construction of Riding Ring and Corrals on Trust Property. In addition to the large horse running facility, the Resort constructed corrals and a riding ring on the Cultural Trust Property. (Attachment A) Like the horse running facility, these facilities were constructed without any permits or approvals.

3) Construction Debris and Grading Activity. In addition, on the eastern portion of the unauthorized horse facility built onto the Trust property, there is an elevated area that appears to have been used for deposition of construction materials. (Attachment A) An area approximately 20 feet in diameter shows evidence of asphalt deposition and tiles are found in the soils throughout. The extent of buried construction debris below the ground is unclear; however, the existence of debris at the surface indicates that this is a probability. Environmental contamination should be investigated. The review of an

August 24, 2010 aerial photo of the site indicates that the area at the eastern portion was used for construction debris storage and other materials. It is apparent that the construction debris site has been in place for five to ten years at the very least.

4) Unauthorized Use of Cultural Property for dumping tons of horse manure. The Resort equestrian facility has been using an unauthorized access road[2] to have its tractors dump and spread loads of horse manure on a large area (estimated 0.8 acres) on the Trust property near the Historic Cemetery. (Attachment B) This area is culturally sensitive and includes one or more of the recorded Cultural Sites on the property. The manure dumping continues onto the Resort property to the west of the property, which is also included as the Cultural Site. This Trust property was still actively used for deposition of materials as of June 2011, despite demands to cease operations.

5) Unauthorized back driveway into the Ranch and onto Trust Property. The Resort created a paved driveway on the Cultural Trust property directly from SR 79 to a back gate to the Resort Property. (Attachment C) The gate is regularly used by maintenance vehicles among others and is a significant avenue of trespass onto the Cultural Trust Property. The Resort has no easement or right of way for the road, and the road and the connection to SR 79 is not supported by any legal document. This Resort back access road has no legal "public use." To the contrary, the Resort uses the road as a private road, evidenced by the Resort gating the road as a back entrance to the resort, precluding public access. As a result, only private gain can be obtained by maintaining the road. This gain occurs at the expense of the Cultural Trust resources. It is evident that the access road is also used as an avenue of trespass onto the Cultural Property by the public and by the Resort (use for unauthorized travel and dumping witnessed while we were present). A Public Records Act request of all County documents related to the Trust property indicated that no permits were sought by the Resort for the construction of this unauthorized entrance. The lack of authorized access has been confirmed by PDS. (Attachment F)

6) Unauthorized encroachments from the Los Tules Residential Development. Adjacent to the Resort, one of the homeowners in the Los Tules residential development constructed an unauthorized 8 foot wall on Trust property at the corner of Unit 2 in the Los Tules development. The Trustee provided a cease and desist demand to the property owner to have the wall removed. In another location, a Los Tules property owner constructed a shed on the Cultural Trust Property. In other locations, the Trustee discovered vegetation debris deposited on the Trust property from neighboring properties and an unauthorized road directly over an archeological site. (Attachment D)

[2] The Resort has no access easements whatsoever to cross the Cultural Trust Property.

7) Unauthorized Trails and supporting structures created on property. While investigating the other encroachments on the Trust property, the Trustee discovered that the Resort and neighboring properties had created trails on the property leading directly to cultural resources and protected sites on the Trust property. (Attachment E) In some cases, the trails are supported by maps, signs and information that could lead to property degradation. In other locations, it is clear that residents regularly use the Cultural Trust property for dog-walking and as an extension of their back yards.

e. Current status of Encroachments and Trespass on the Cultural Trust by the Resort and Members of the Public.

The Trustee provided proof of encroachments and violations to the County, which indicated that it would take no action against the Resort regarding the encroachments/trespass/dumping, stating that the damage was "a civil matter between property owners" and that it would be up to the Trust as property owner to seek corrective action from the Resort (even though, as the County knows, the Trust has not funds to take such an action). (Attachment G.)

The Trustee also provided notice of the encroachments/trespass/dumping to the Resort, and demanded removal and restoration of all of the unauthorized activities. The Resort admitted that it was responsible for the damaging activities, but stated that it was unable to comply with removal and remediation, lacking necessary funds to do so. Instead, the Resort knocked down the unauthorized horse facilities and removed some (but not all) of the above ground structures from Trust Property ("Warning"). However, all of the unauthorized and illegal grading, fill, trash, manure, access and trails remained.

Given the Resort's inability to take corrective action to remediate the property damage, the Trustee suspended further actions to protect the property from Resort and public damage. The Pala Band had an executed purchase agreement to buy the Resort property and, upon purchase, the Pala Band would have direct oversight and control of the activities on the Trust Property and could take corrective action (and protective measures) at that time. However, before the purchase could be completed, the Resort declared bankruptcy, and Bankruptcy Court approved sale of the Resort to another party. In the Bankruptcy hearings, the proposed new owner openly stated its intent to expand the uses of the Resort facility and construction of hundreds of new homes in the area.

Knowing that the Trustee would now be unable to adequately protect the resources as an adjacent property owner, and aware that the new owner of the resort planned to significantly expand operations at the Resort, the threat of future harm to the Trust Property became imminent. Absent financial resources to maintain a patrolling presence at the Trust Property, passive protection of the resources was required to fulfill the Trust obligations. As a result, the Trustee sought any necessary approvals to construct a protective fence on the Property.

Prior to beginning construction of the protective fence on the Trust Property, the Trustee inquired to the County Building Department and Planning and Development Services Department (PSD) whether any building permits or land use approvals were required for the erection of the 6-foot chain link fence to protect the property. Trustee was told from both sources that no approvals of any type were required for the erection of the fence so long as it was located solely on Trust property. Trustee thereafter began the construction of the protective fence along the boundary of the property in areas where unauthorized access had occurred. Days into the fence construction process, Trustee's contractors were served with a Stop Work Notice directing Trustee to stop all work associated with the fence. At the time, the fence was approximately 90% constructed, with nearly all poles in the ground (with the exception of those crossing the unauthorized access road). All equipment and materials for the fence construction were removed from the site and work remains suspended, pending the resolution of the current Warning. It is noteworthy that on the same day that the equipment was removed, the Trustee had to expel two pair of trespassers that it found on the property with back packs and shovels. (Attachment H.)

II. PURPOSE OF THE H-DESIGNATION OF THE TRUST PROPERTY

Subsequent to the issuance of the stop work notice, Trustee inquired as to the basis of the alleged violation and was first told of the H-Designator on the property. It is unclear when the H-Designator was first placed on the property. While previously unaware of the H-Designation on the property, the Trustee agrees with the designation and believes that it is consistent with the preservation purpose of the property.

Upon inquiry to the County regarding the basis of the instant Warning from the County, Ms. Beddow with PDS provided the Trustee with documentation apparently from the latest Specific Plan Amendment for the property (no document citation was included) which supported the intention to place an "H" Designator on the Trust Property (though it does not state when the designation occurred). The rationale for the proposed designation was "in order to preserve the historic, cultural and architectural resource values of this 240 acres and, specifically, the existing church, burial grounds and archeological resources onsite." (*see* Attachment I, Aug. 22, 2013 email from David Sibbet, with attachments). It is noteworthy that the purpose of the proposed designation is identical to the purpose of the perimeter fence—to preserve the onsite archeological resources and prevent further harm to them.

The Resort Owner and surrounding property owners—the causes of the damage to the Trust resources over the past years—have taken the opposite position that the Trust Property is a public property with open access. Moreover, the Resort has indicated its intention to intensify the use of the Resort and to add hundreds of homes as part of a new specific plan amendment. As a result, absent action taken to prevent unauthorized use of the property, further damage will occur in violation of both the Trust purpose and the H-designation.

III. CONSTRUCTION OF THE FENCE IS THE ONLY REASONABLE METHOD OF PROTECTING THE TRUST RESOURCES ON THE PROPERTY.

a. Trust Was Created As Unfunded And Has No Resources To Fund Regular Patrol And Maintenance Of The Resources.

When the Trustee status was transferred to the current Trustee, the only asset held by the Trust was the Cultural Trust property. There were no bank accounts, trust funds or financial resources held by the Trust. However, the Trust Agreement, which was approved by the County as a requirement of the Mitigation and Conditions of Approval for the Resort, makes multiple references throughout the Agreement to "Trust Funds," "other trust assets," "investment of Trust Assets," "Retain cash," "the income [from the Trust]," "disbursements," "securities, cash and other property of the trust," "the principal and income of the trust," "invest in or retain any stocks, shares, bonds, notes," "trust funds invested", hire a custodian of "funds and securities", "distribute trust income for each taxable year", and "keep any or all trust property or funds in any place." Clearly, the Trust Agreement contemplates that there was a fund to be created to support the Trust.

The Trust Agreement also contemplates that the Trustee expend funds in the administration of the Trust to "form and organize a nonprofit corporation," "employ a bank or trust company," and "employ clerks, accountants, investment counsel, investment agents, and any special services, and to pay reasonable compensation and expenses of all such services in addition to the compensation of the trustees," and "to employ and pay attorneys, lecturers, writers, investigators, archeologists, scientists and such assistants and employees of every kind as they deem necessary." Clearly the Trust Agreement contemplates that there are costs associated with the administration of the Trust.

Notwithstanding the foregoing, the Trust Agreement specifically requires that "[n]one of the Trustees shall be required to furnish any bond or surety, and none of them shall be responsible or liable for the acts or omissions of any other of the trustees or of any predecessor or of a representative, custodian, agent, depositary, or counsel selected with reasonable care" and that the Trustee is not required to individually incur expenses for the maintenance of the Trust Property and is reimbursed for any such expenses incurred (Article XII E, F, Trust Agreement). Given that the Trust is expected to expend funds through administration, and that the Trustee is not contemplated to expend its own funds to administer the Trust, how did the County understand that Trustee would pay for administration of the Trust?

In order to determine the Trust's financial capability to respond to the County's Warning, the Trustee sought assistance from the County to determine the responsible party to fund the actions of the Trustee. On September 27th, 2013, the County indicated to the Trustee that it "cannot find any authority for the County to require the Resort to fund the Trust." (Attachment J, email dated Sept. 27, 2013 from Timothy Kirkland) This position was confirmed by Assistant County Counsel Claudia Anzures. (Attachment K, Email dated Oct. 15, 2013 from Timothy Kirkland.) The County also indicated that it was not the party responsible for funding the Trust.

As a result, the Trust is in the current situation:

1. The Trust has no assets other than the property.
2. The Trustee has costs associated with its Trustee responsibilities.
3. The Trustee Agreement approved by the Resort Owner and the County to create the Trust dictates that the Trustee is not required to pay the costs of the Trustee responsibilities.
4. The County states that the Resort, which created the Trust as part of its Resort Project approved by the County, is not responsible for funding the Trust.
5. The County has determined that the County is not responsible for funding the Trust obligations.
6. The County has stated that the Trustee is not responsible for funding compliance of its Warning requirements, but the "property owner of record" is responsible (though the Trust has no funds to pay for compliance).

The Trustee has inquired to the County, as to how the Trust was intended to be funded and how its management responsibilities now are to be funded. (Attachment L, letter dated October 4, 2013 from Ted Griswold to Timothy Kirkland.) The County has not responded to this inquiry. As a result, the County has required that the Trust be created and incur costs, but has not created any method for the Trust paying for these costs of administering the Trust.

b. Notwithstanding The Failure Of The County To Have The Cultural Trust Funded For Proper Administration, Trustee Has The Fiduciary (And Moral) Obligation To Protect The Resources.

The Trustee has a fiduciary duty to the Trust to maintain and protect the resources of the Trust (Trust Agreement, Art. I). This duty is required to be the sole interest of the Trustee. (Probate Code Section 16002, subd. (a); *Toedter v. Bradshaw* (1958)164 Cal. App. 2d 200.) Any violation of this duty to administer the trust solely in the interest of the beneficiaries is a breach

of trust. (Prob. Code, § 16400.) However, because the County approved the Trust as unfunded, the Trustee must find a way to meet its fiduciary obligation without any expectation of continuing funds to support property management. Moreover, because the Trust resources recognized by the County by its H-Designation, are part of the cultural heritage of the Trustee, the County and the Trustee have a moral obligation to preserve those resources from harm.

c. Given the lack of funding resources, fencing the property is the most reasonable and appropriate way to realize the Trust purposes.

Given the lack of ongoing funding resources for the Trust property, an ongoing monitoring or surveying of the property is not fiscally possible. The installation of a remote monitoring system would be costly and, without a barrier to entry, susceptible to vandalism and theft. Protection of the resources in the form of the creation of a barrier to entry is cost effective and a deterrent for a vast majority of the trespassers from the surrounding area and pot hunters. Fencing a property in order to protect archeological and cultural resources on a property has been determined as a reasonable and appropriate method to protect against trespass, vandalism and artifact collection from neighboring residents. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal. App.4th 200, 214-215) In order to protect the confidentiality of the precise location of the cultural resources on the Trust property, consistent with the Trustee's protective obligations, the prudent method of protecting the resources on the Trust property is to create a perimeter fence in the areas of current unauthorized access. This is the only reasonable option available to the Trustee, and the strategy chosen by the Trustee.

IV. SITE PLAN REQUIREMENT IN 5709 DOES NOT APPLY TO THE FENCE ACTIVITY.

Section 5708 of the County Zoning Code requires that "No construction or alteration of any building or structure, grading, removal of historic features or artifacts, or any other activity or use potentially damaging to a designated Historic Landmark or District protected under this Ordinance shall be permitted, except by site plan review pursuant to Section 5709 (a. or b.) and/or 5710." (emphasis added). The perimeter fence is specifically designed to protect against and preclude any activity or use that could damage the resources on the Property. In fact, the history of the site indicates that the failure to fence the Property would be damaging to the Designated Historic site. As a result, the prohibition in section 5708, which leads to the site plan requirements in 5709, is inapplicable to the fence activity and the Site plan requirement should be removed.

In addition, the Trustee took all reasonable steps prior to the initial construction of the Fence to determine which, if any, constraints or approvals were required for the Fence, and the Trustee was specifically told that no approvals were required. The Trustee reasonably and responsibly proceeded accordingly. Given that the fence has already been constructed to 90% completion (including all activity within the areas now known as the H-designated areas on the

property), completion of the fence could not be an "activity or use potentially damaging to a designated Historic Landmark" since the remainder of the fence construction would occur outside of the H-designated areas. (Attachment M.)

The amount of remaining construction activity on the fence is the placement of perhaps 4-6 anchor poles, outside of the sensitive areas on the property at the location of the SR 79 frontage and the unauthorized access road. The access road is not related in any way to the H-Designation or the Trust purpose, and in fact has been used in a manner that threatens the integrity of the Trust resources by facilitating trespass by the Resort and others. The access has not been authorized by the Trustee of the Trust property, the County or Caltrans at any time. (Attachment F.) The Resort has no easement, license, permit or right-of-way over the road area. As a result, the access road should be immediately fenced and removed, and the Resort should be required to prepare a restoration plan to address this and other trespass actions by the Resort on the Cultural Trust property.

V. FENCE CONSTRUCTION IS EXEMPT UNDER 5710(B) BECAUSE IT HAS ALREADY BEEN AUTHORIZED BY A DISCRETIONARY ACTION BY THE COUNTY

If the Fence is found to be within the purview of the site plan requirement under section 5709(B), the Fence should be found to be exempt under Section 5710 (A), which allows for an exemption from the Site Plan process if all of the "purposes and requirements of the Site Plan have been or will be fulfilled by another required discretionary permit which has been or will be reviewed by the Historic Site Board or other applicable Historic District Board." The activities of the Trustee in constructing the protective Fence should be considered approved under the Specific Plan for the Property. The Specific Plan required the creation of the Trust for the preservation of the resources on the property. It provided no avenue or authorization for public access, trespass, dumping, removal of materials or encroaching on the property. Through the approval of the Trust Agreement, the County authorized the Trustee to take actions on the property "absolutely necessary to carry out the purposes of this trust." (Trust Agreement, Article III). As previously noted, given the unfunded nature of the Trust, the absolute necessity of preserving the resources on the Trust Property can only be done be erecting a barrier to entry to the Property, in a manner that will retain the scenic quality of the Property. The least obtrusive method of meeting this objective is constructing a chain-link fence over access points on the property. Following the County's approval of the Specific Plan and Trust Agreement, the purpose of the site plan process for the fence should be considered as having been fulfilled.

VI. FENCE CONSTRUCTION IS EXEMPT FROM THE SITE PLAN REQUIREMENT UNDER 5710(A) BECAUSE A SITE PLAN WOULD NOT FURTHER THE PURPOSES OF THE H-DESIGNATED AREA.

If the Fence is found to be within the purview of the site plan requirement under section 5709(B), the Fence should also be found to be exempt under Section 5710 (A). An exemption is warranted where subjecting the project to the Site Plan review process would not materially contribute to district or landmark preservation objectives. (*Id.*) The site plan process is both time consuming and costly and would not likely change the design of the perimeter Fence, since it is already designed to minimize any impact on the cultural resources.

The application process alone is estimated to cost $10,000, plus the cost of environmental review, engineering and county review, which would approximately triple that amount. (D. Sibbet, pers. Comm). The Trust does not have $30,000 in funds to pay for the site plan process.

Even if the trust could fund the application process (which it cannot), the site plan process would take several months to complete. However, the danger of harm to the resources is immediate and constant. As previously reported to the County, within the last 3 months, four artifact hunters have been chased away from the site, and this occurred when the Trustee happened to visit the site. The degree of ongoing harm could be significant, but is not estimable without the funds to have an onsite caretaker for the Property. It is clear that the threat to the resources is imminent and substantial. With the Resort planning to expand, that threat will increase. Waiting until the site plan review process is complete would place existing resources in jeopardy unnecessarily. Subjecting the fence to a Site Plan review process would detract from and partially defeat the purpose of the H-Designation of the site.

VII. THE TRUST DOES NOT HAVE THE FINANCIAL RESOURCES TO PREPARE AND PROCESS A SITE PLAN.

Because the Trust was created and approved by the County without any funding source for the Trust management, the processing of a site plan for the chain link fence is impossible because the Trust does not have the financial resources ($30,000+) to hire the necessary engineers, consultants and technicians to develop and process the site plan. As a result, even if the County refused to exempt the chain link fence from the site plan process, the Trust would not be able to prepare the site plan unless it obtained funding from an outside source (e.g. grant applications). It is unclear if any such funding sources are available for the development of a site plan for a chain link fence.

VIII. COUNTY PRECEDENT INVOLVING DEVELOPMENT ACTIVITIES, GRADING AND DUMPING BY THE RESORT ON PROPERTY THAT INCLUDED THE H-DESIGNATION HAVE NOT REQUIRED THE DEVELOPMENT OF A SITE PLAN.

The Trustee has provided the County with significant information regarding development, grading and dumping activities conducted by the Resort over the years, including recently, on the Cultural Trust property and on adjacent Resort parcels. All of these properties are currently overlayed with the H-Designation. The unauthorized dumping and grading on the Trust property was conducted by the Resort within the past three years (and prior to this). The construction and operation (and deconstruction) of the horse stables, running areas and riding ring on the Trust Property all occurred within the past 5 years (and prior to that). The County's response to the report of these activities was that the County will take no action under SDZCO 5709 or any other zoning code violation to enforce against encroachment, trespass, unauthorized grading, construction and expansion of the Resort onto the Trust property, and illegal dumping of manure, claiming it is a "private property issue."

Where these activities (including multiple horse corrals, manure dumping, debris dumping and barn construction) occurred on other H-designated portions of the Resort Property outside of the Specific Plan and Major Use Permit areas, also without the benefit of a Site Plan (or any approvals), the County stated that it would allow the Resort to maintain these facilities in their locations for an indefinite time, and the Resort could include them as an after-the-fact Specific Plan Amendment when such an amendment is applied for in the future.

Clearly the County is not seeking to rectify the unauthorized ground disturbance conducted by the Resort on the Trust Property or the expansion of the Resort equestrian facilities on the Resort property through a mandated site plan. Yet the County seems prepared to require that the Trustee undergo the Site Plan Process in its effort to protect the cultural resources on the property. The Trustee would appreciate an explanation of this inconsistency of the application of County Codes.

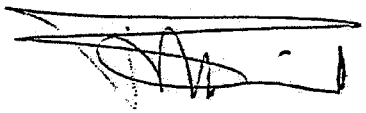
IX. CONCLUSION

In the best interest of the protection and preservation of the Warner Springs Cultural Trust resources and the intent of the Trust Agreement, it is appropriate for the County to waive any requirement for the Trustee to prepare and process a site plan for the completion of the partial perimeter chain link fence on the Trust Property. This requirement would be extraordinary for the mere construction of a chain link fence in any circumstance; however, given that the fence is designed to protect the very resources that the H-Designation purports to preserve makes it both extraordinary and superfluous. While a portion of the H-designated resources extend beyond the Trust Property boundary onto the Resort property, and the fence would cross these areas along the property line, the County has already indicated that impacts to

Procopio

the H-designated areas on the Resort Property need not be removed and will not require the immediate submission of a site plan. In addition, the County is not enforcing against the Resort for its expansion onto the H-designated areas on the Trust Property. As a result, requiring the Trustee to submit the site plan for the chain link fence would also be contradictory to the County's position regarding the Resort's significant violations (which caused damages to the Trust Property). In light of the foregoing, the Trustee respectfully requests removal of the County's Stop Work Order and the Administrative Warning, and concurrence from the County that the Trustee may complete the protective perimeter fence for the Trust Property immediately.

Very truly yours,



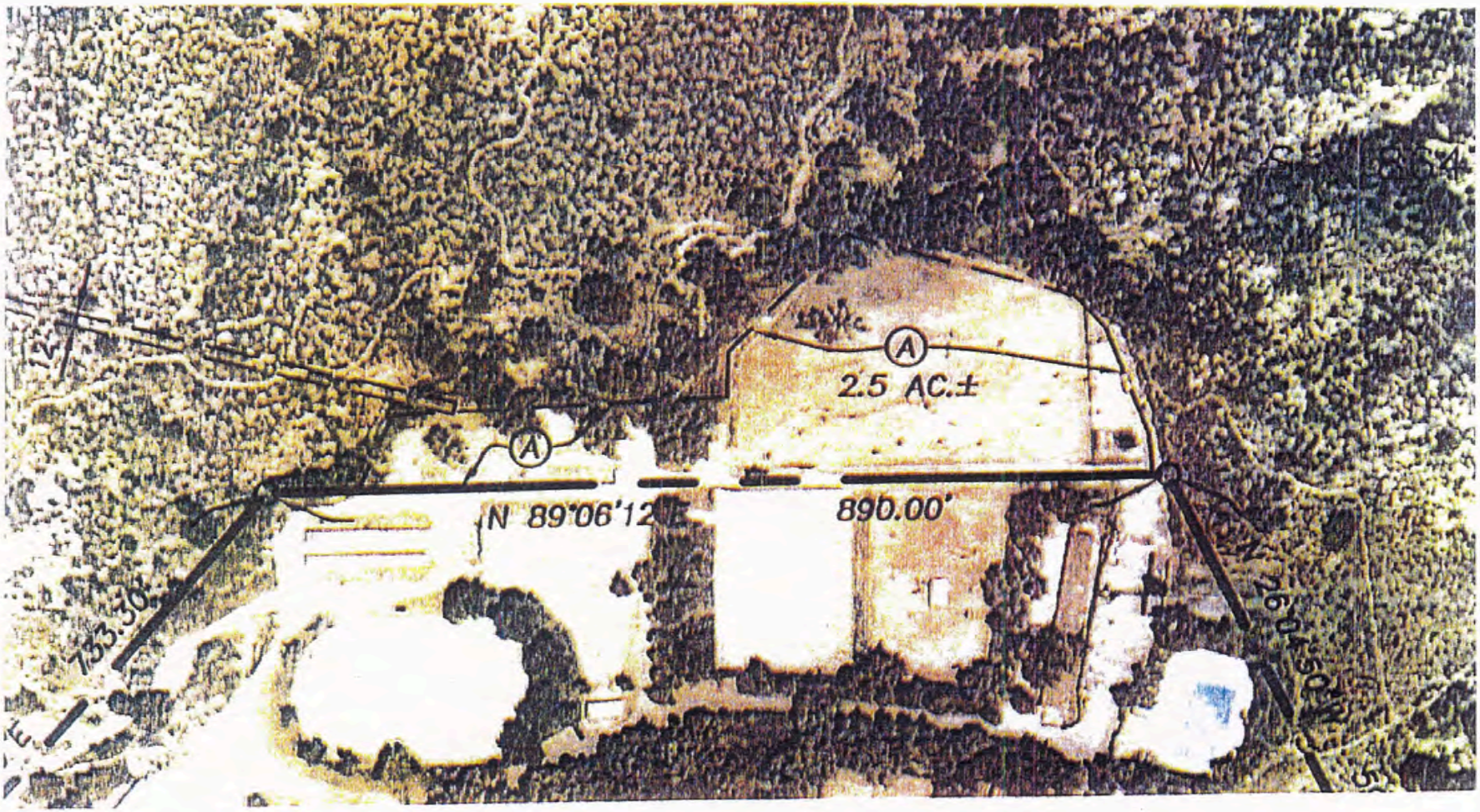
Theodore J. Griswold

TJG:ct

Enclosure

cc: Chairman Robert H. Smith (via email only)

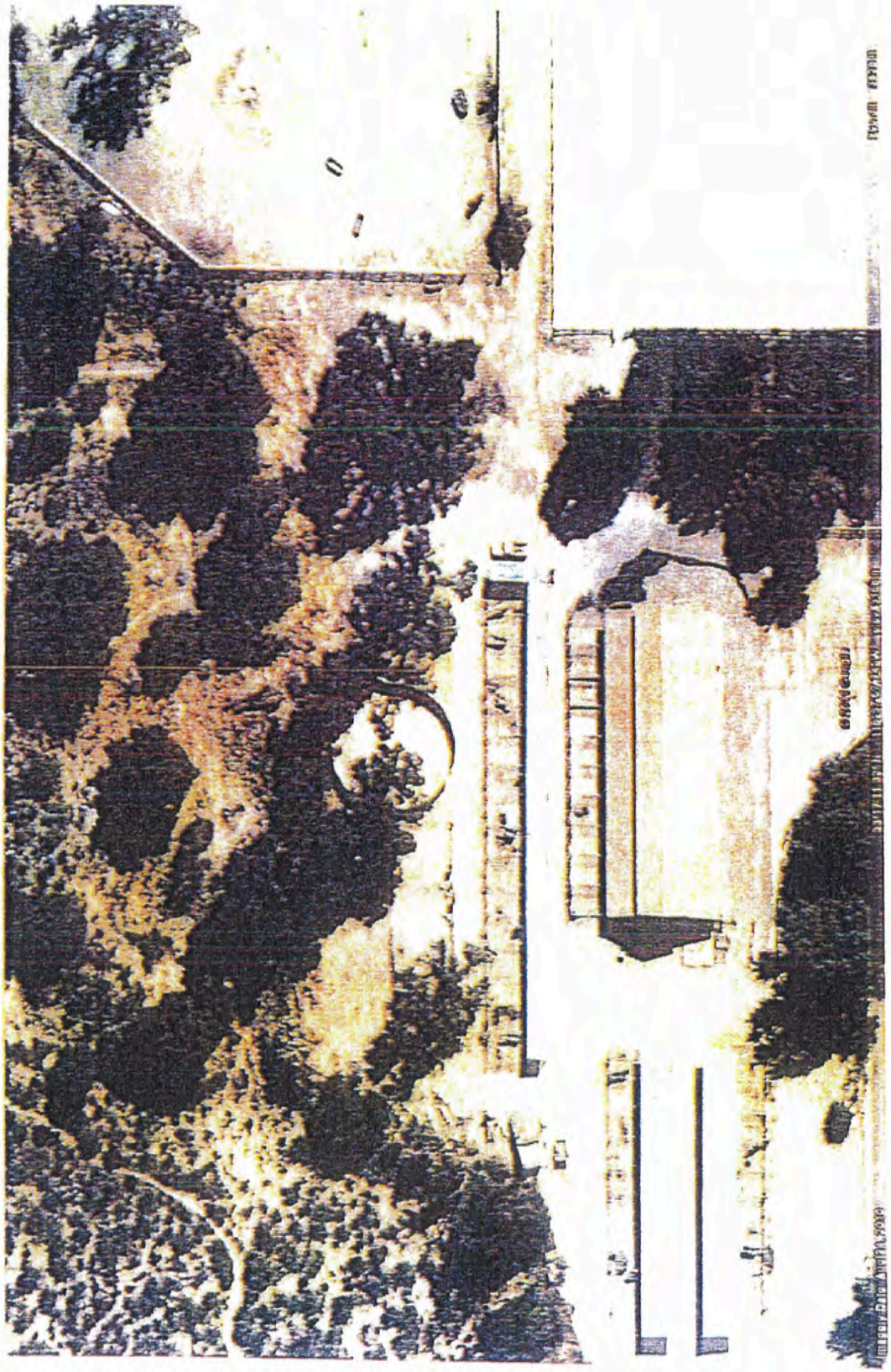
ATTACHMENT A
ENCROACHMENT AREA A

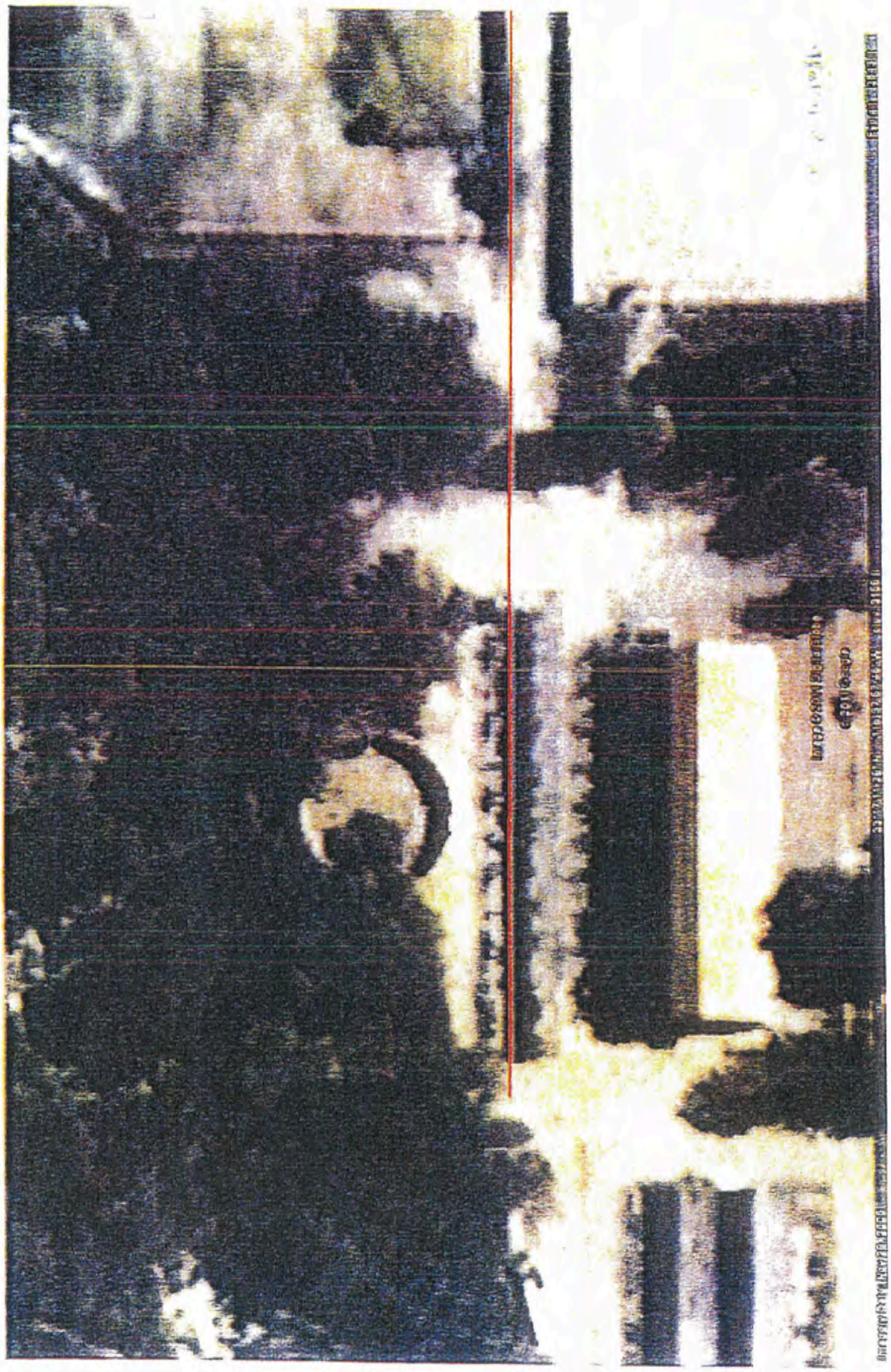

2.5 AC.±
N 89°06'12"E
890.00'
733.30'
N 26°04'50"W

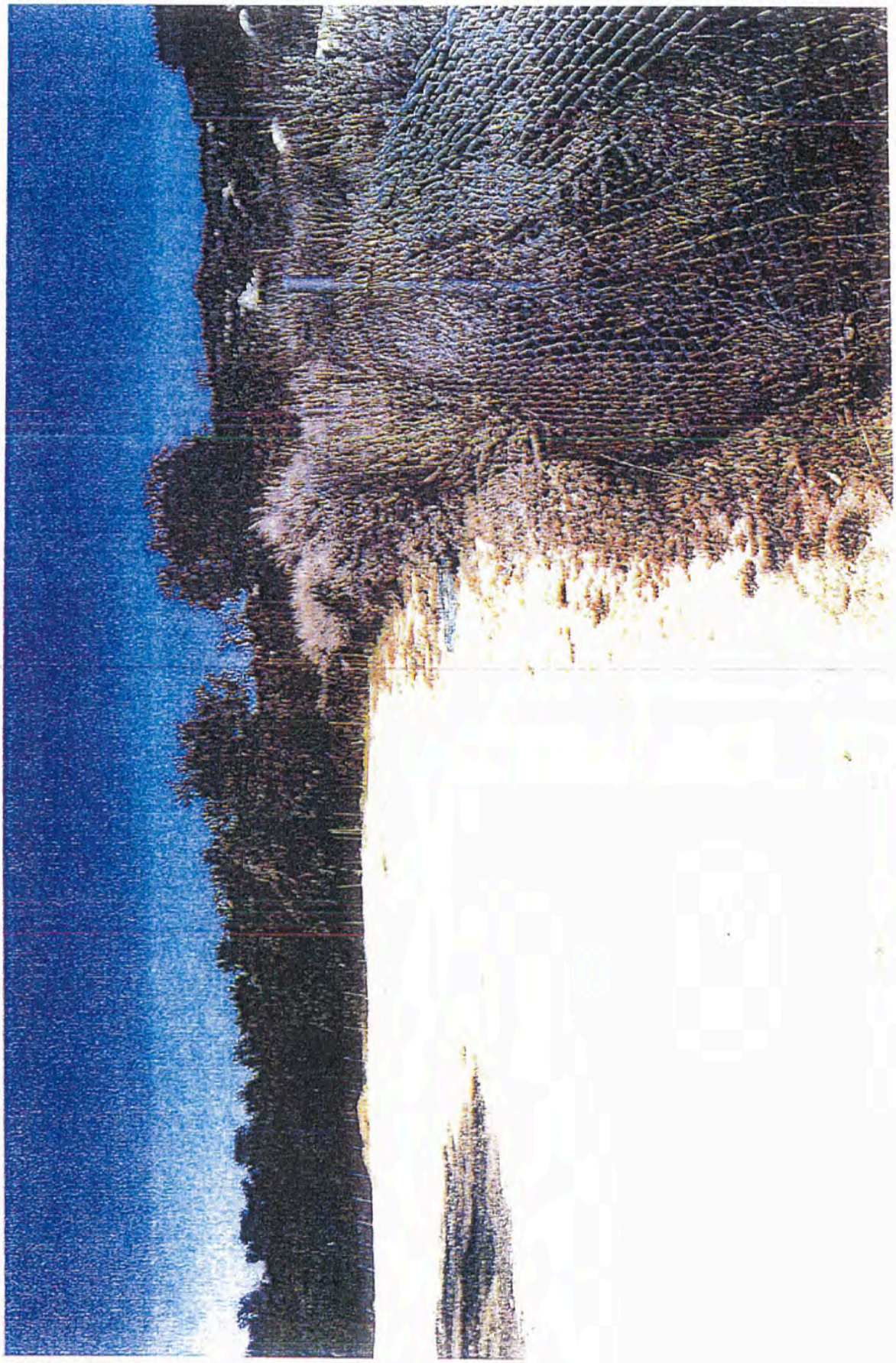
Google

Google

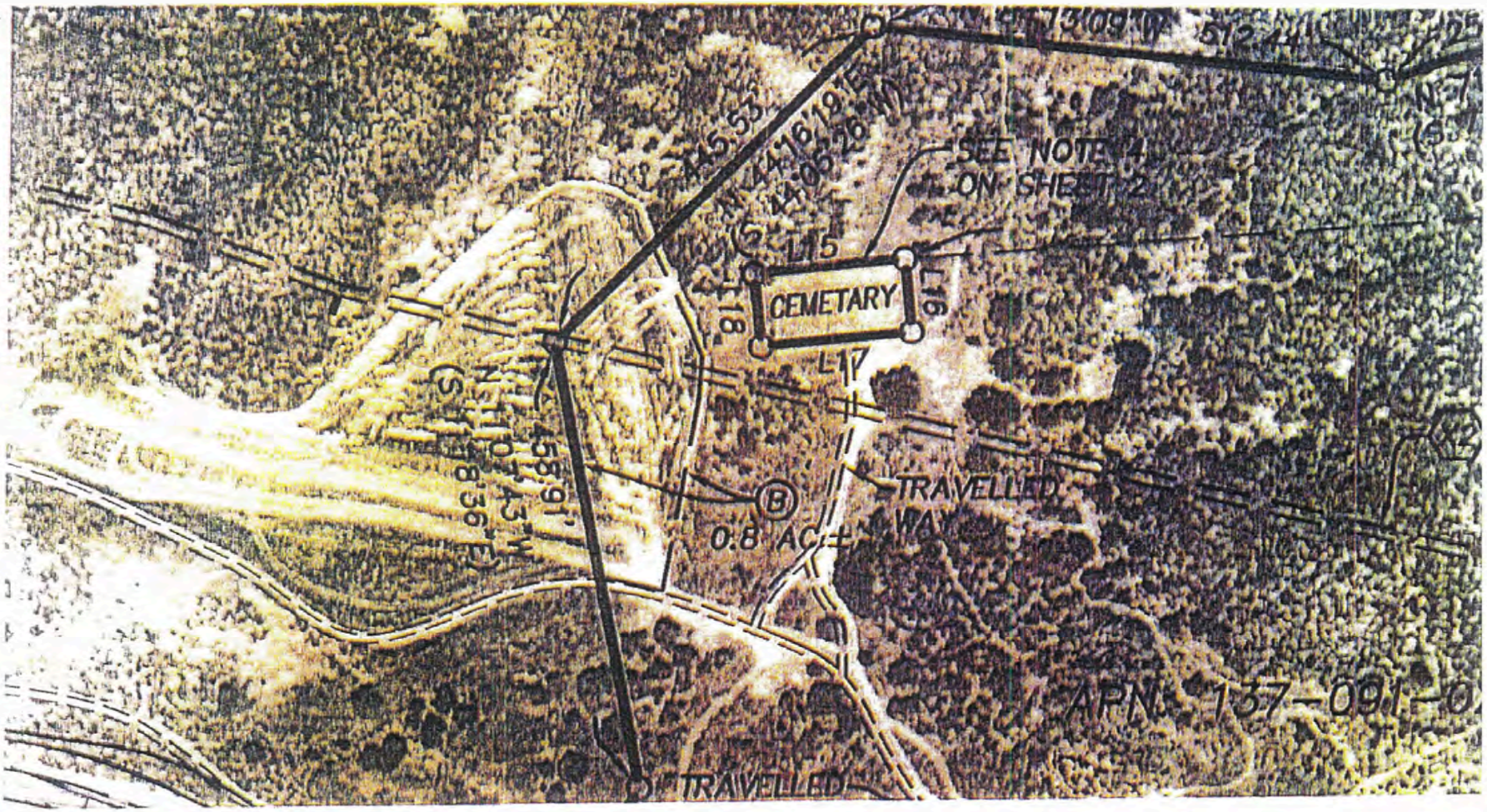
Google

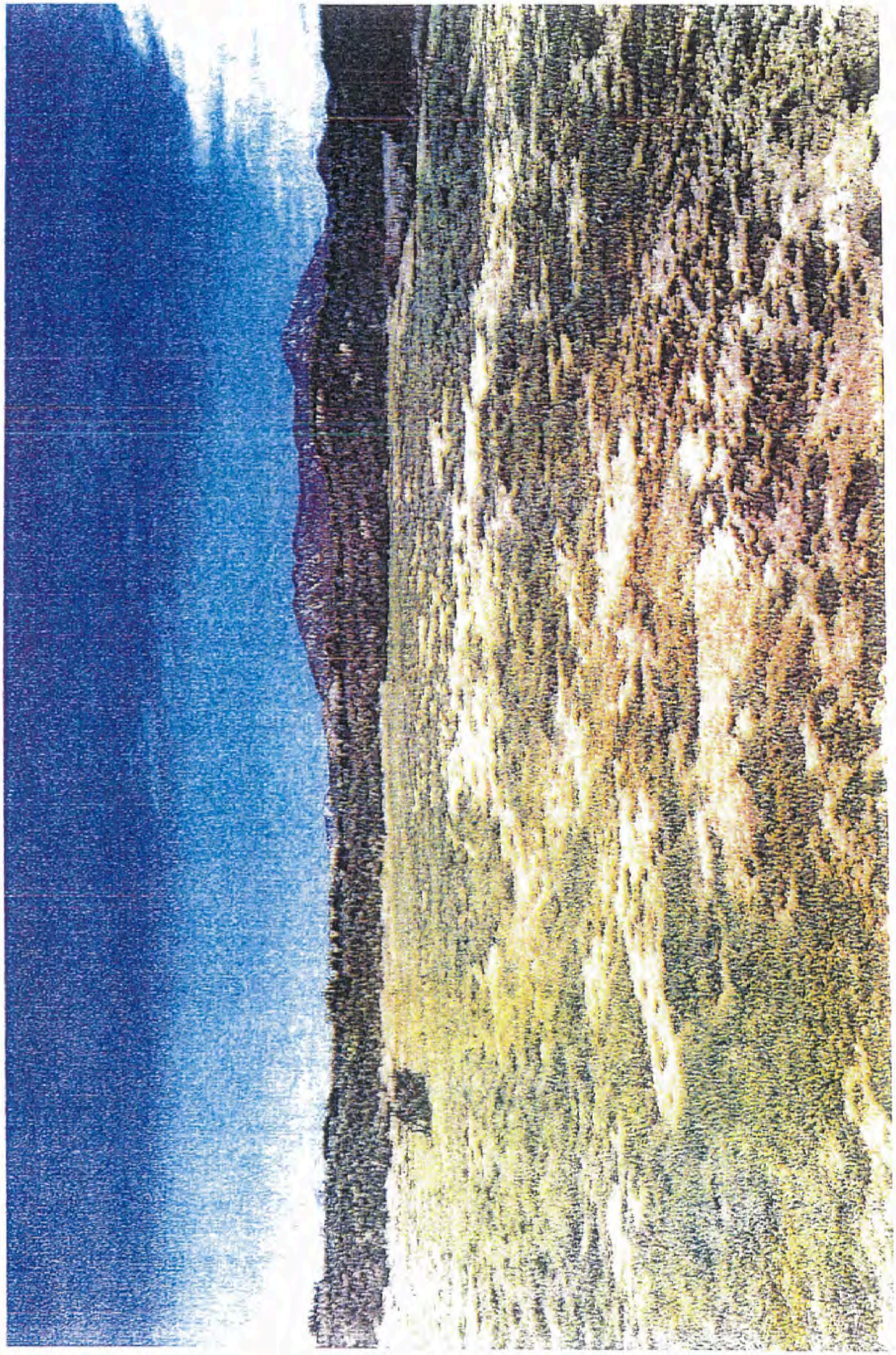


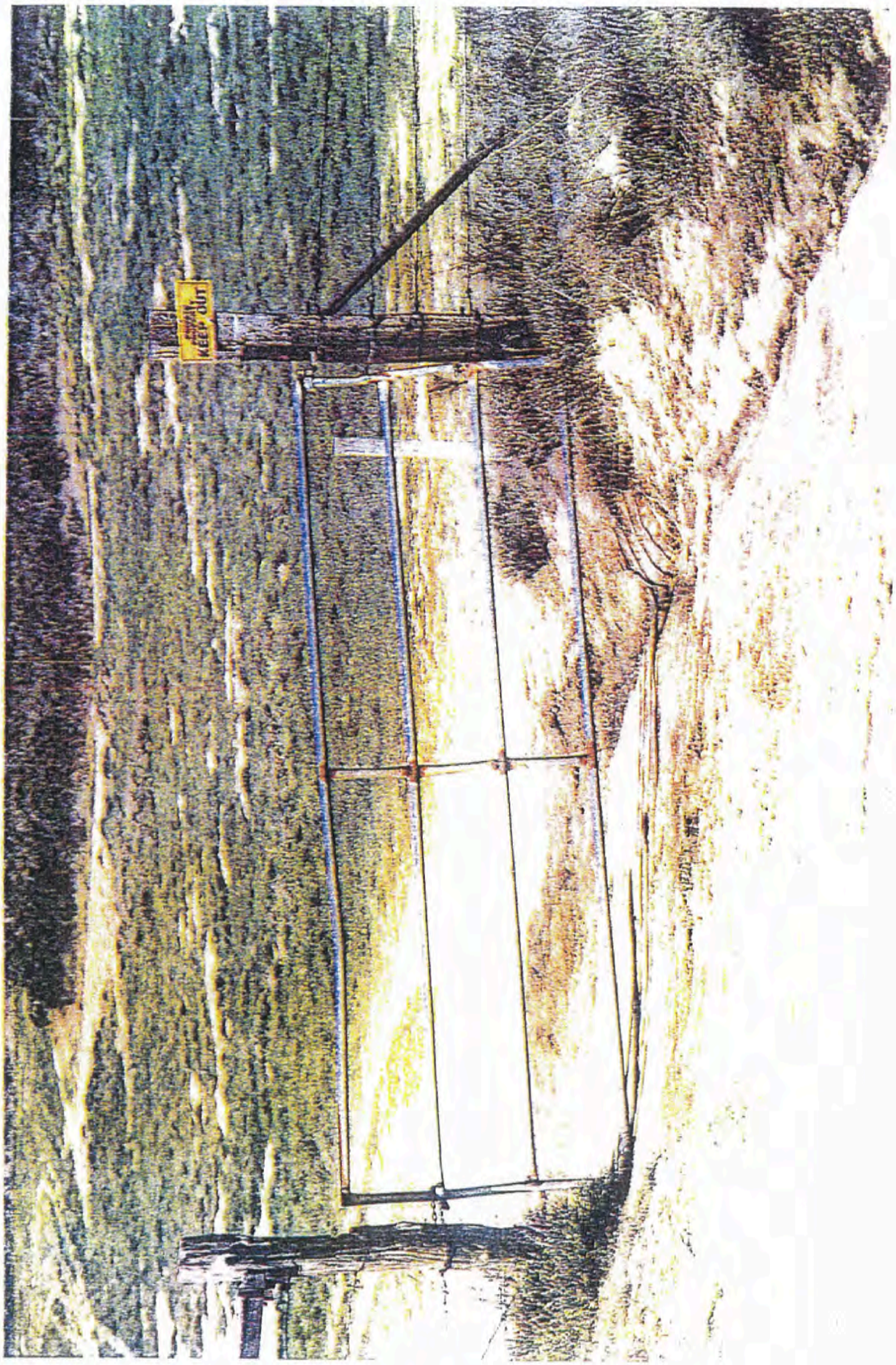




ATTACHMENT B
ENCROACHMENT AREA B

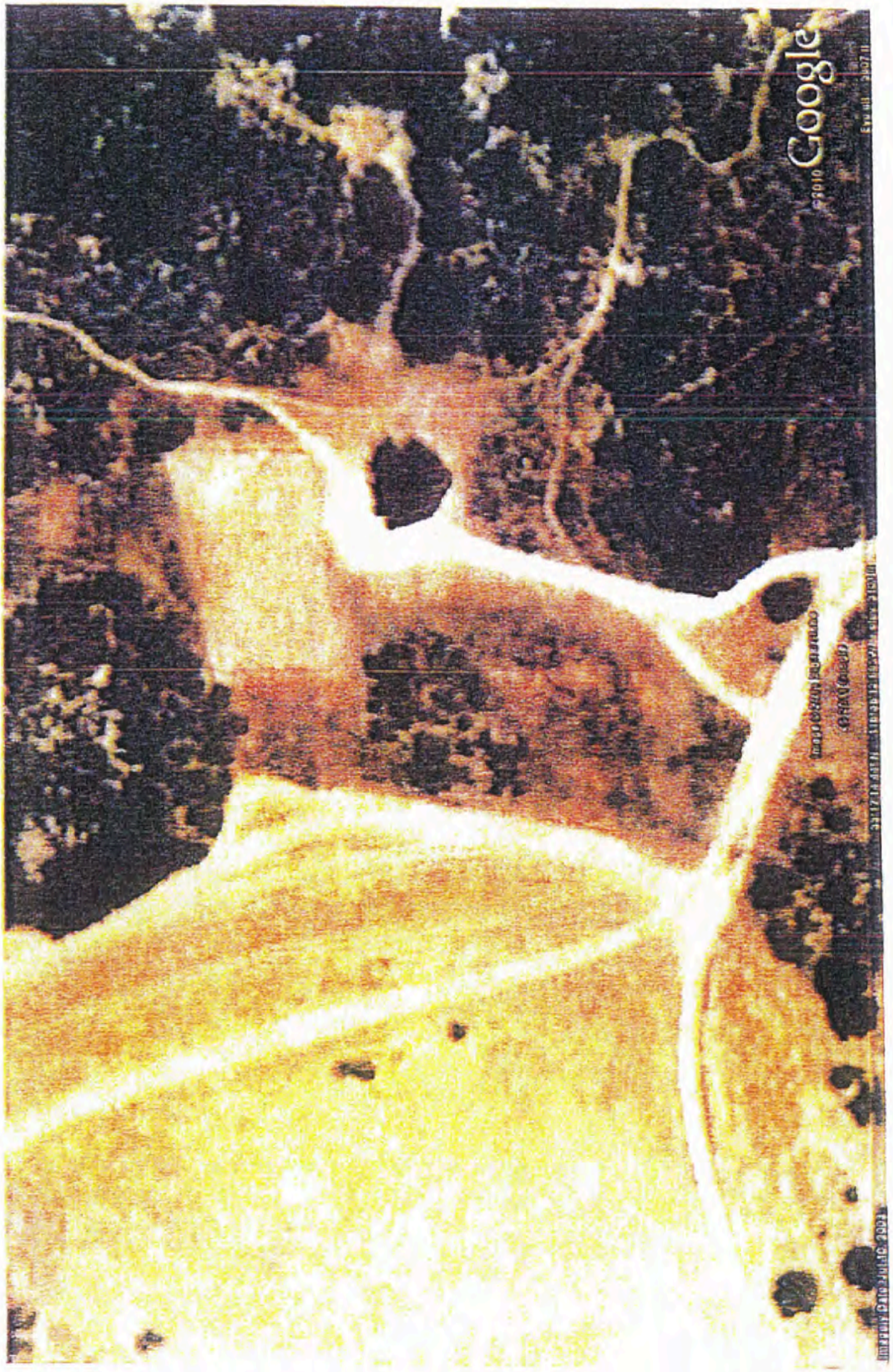

SEE NOTE 4
ON SHEET 2
L15
L16
L17
L18
CEMETARY
TRAVELLED
WAY
0.8 AC±
TRAVELLED
APN 137-091-0




KEEP OUT

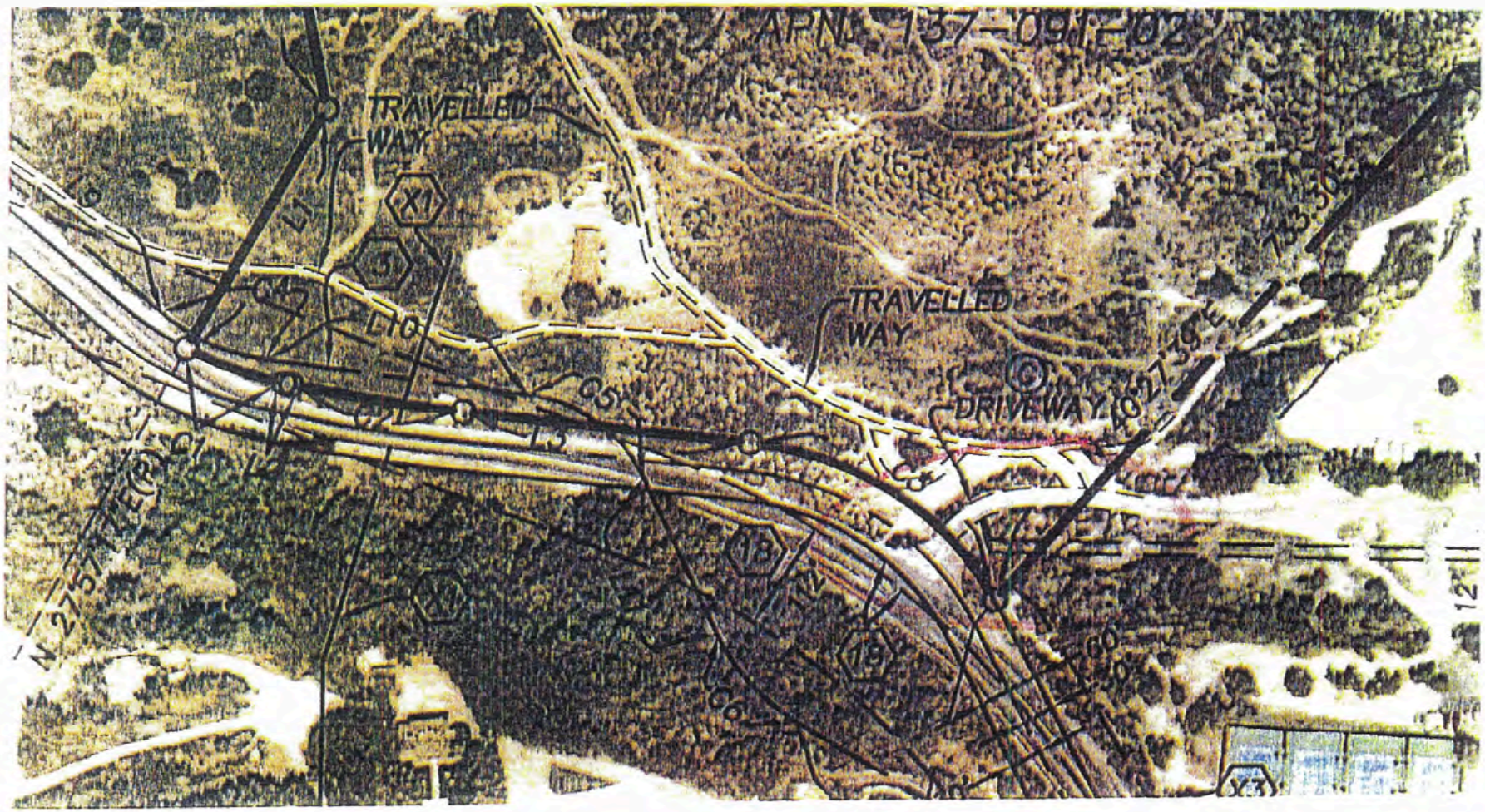
NO
TRESPASSING
OWNED BY
THE PALA BAND
OF MISSION INDIANS
760-891-3500

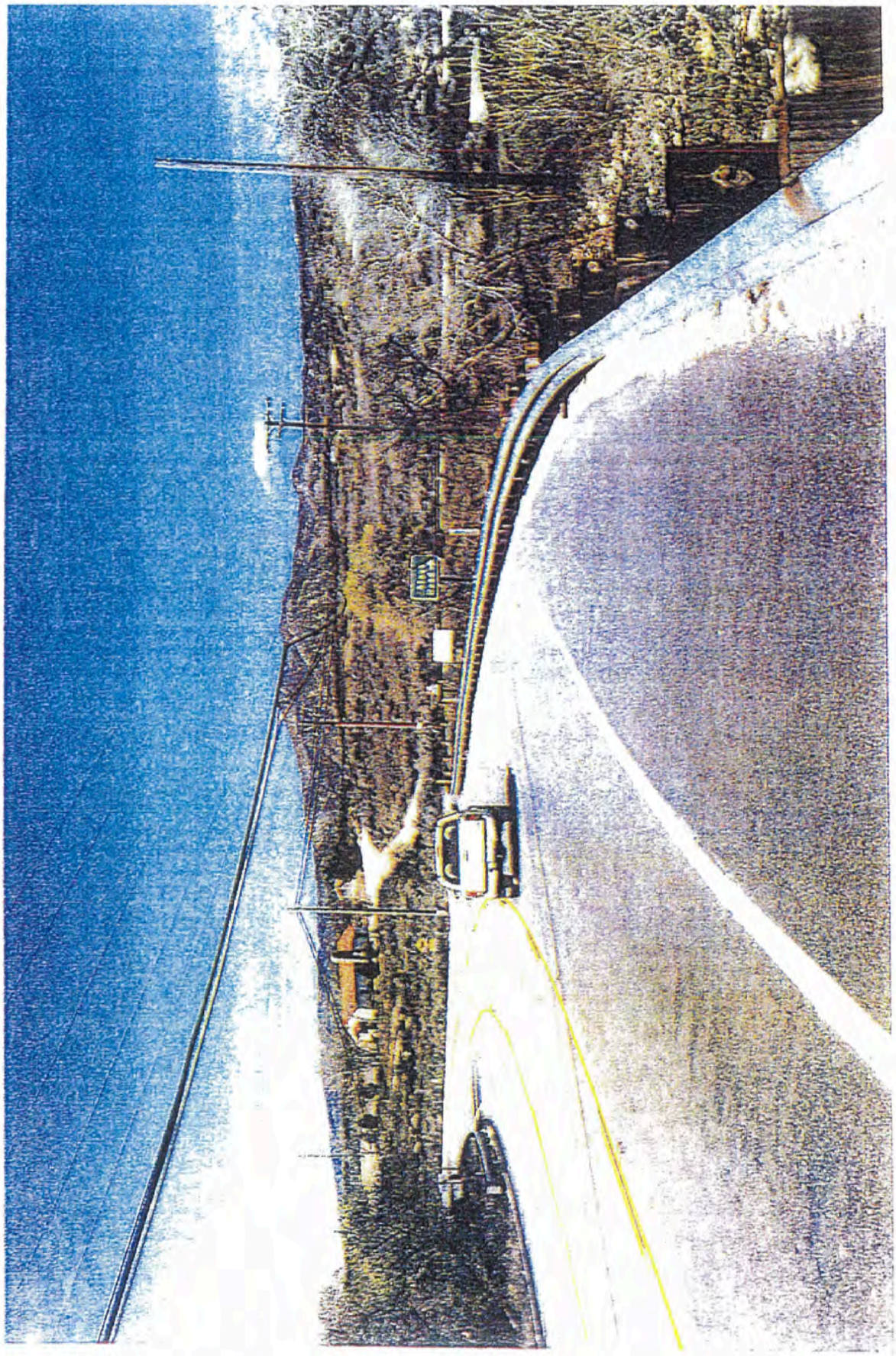
Google
earth


Google

©2010 Google

ATTACHMENT C
ENCROACHMENT AREA C


APN 137-091-02
TRAVELLED WAY
TRAVELLED WAY
DRIVEWAY
X1
3
L10
C5
18
X3
12



ATTACHMENT D
ENCROACHMENT AREA D

CAMINO
TRAVELLED WAY
DUNHILL
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT 8
LOT 9
LOT 10
LOT 11
LOT 12
LOT 13
LOT 14
LOT 15
LOT 16
LOT 17
LOT 18
LOT 19
LOT 20
LOT 21
LOT 22
LOT 23
LOT 24
LOT 25
LOT 26
LOT 27
LOT 28
LOT 29
LOT 30
LOT 31
LOT 32
LOT 33
LOT 34
LOT 35
LOT 36
LOT 37
LOT 38
LOT 39
LOT 40
LOT 41
LOT 42
LOT 43
LOT 44
LOT 45
LOT 46
LOT 47
LOT 48
LOT 49
LOT 50
LOT 51
LOT 52
LOT 53
LOT 54
LOT 55
LOT 56
LOT 57
LOT 58
LOT 59
LOT 60
LOT 61
LOT 62
LOT 63
LOT 64
LOT 65
LOT 66
LOT 67
LOT 68
LOT 69
LOT 70
LOT 71
LOT 72
LOT 73
LOT 74
LOT 75
LOT 76
LOT 77
LOT 78
LOT 79
LOT 80
LOT 81
LOT 82
LOT 83
LOT 84
LOT 85
LOT 86
LOT 87
LOT 88
LOT 89
LOT 90
LOT 91
LOT 92
LOT 93
LOT 94
LOT 95
LOT 96
LOT 97
LOT 98
LOT 99
LOT 100
LOT 101
LOT 102
LOT 103
LOT 104
LOT 105
LOT 106
LOT 107
LOT 108
LOT 109
LOT 110
LOT 111
LOT 112
LOT 113
LOT 114
LOT 115
LOT 116
LOT 117
LOT 118
LOT 119
LOT 120
LOT 121
LOT 122
LOT 123
LOT 124
LOT 125
LOT 126
LOT 127
LOT 128
LOT 129
LOT 130
LOT 131
LOT 132
LOT 133
LOT 134
LOT 135
LOT 136
LOT 137
LOT 138
LOT 139
LOT 140
LOT 141
LOT 142
LOT 143
LOT 144
LOT 145
LOT 146
LOT 147
LOT 148
LOT 149
LOT 150
LOT 151
LOT 152
LOT 153
LOT 154
LOT 155
LOT 156
LOT 157
LOT 158
LOT 159
LOT 160
LOT 161
LOT 162
LOT 163
LOT 164
LOT 165
LOT 166
LOT 167
LOT 168
LOT 169
LOT 170
LOT 171
LOT 172
LOT 173
LOT 174
LOT 175
LOT 176
LOT 177
LOT 178
LOT 179
LOT 180
LOT 181
LOT 182
LOT 183
LOT 184
LOT 185
LOT 186
LOT 187
LOT 188
LOT 189
LOT 190
LOT 191
LOT 192
LOT 193
LOT 194
LOT 195
LOT 196
LOT 197
LOT 198
LOT 199
LOT 200
LOT 201
LOT 202
LOT 203
LOT 204
LOT 205
LOT 206
LOT 207
LOT 208
LOT 209
LOT 210
LOT 211
LOT 212
LOT 213
LOT 214
LOT 215
LOT 216
LOT 217
LOT 218
LOT 219
LOT 220
LOT 221
LOT 222
LOT 223
LOT 224
LOT 225
LOT 226
LOT 227
LOT 228
LOT 229
LOT 230
LOT 231
LOT 232
LOT 233
LOT 234
LOT 235
LOT 236
LOT 237
LOT 238
LOT 239
LOT 240
LOT 241
LOT 242
LOT 243
LOT 244
LOT 245
LOT 246
LOT 247
LOT 248
LOT 249
LOT 250
LOT 251
LOT 252
LOT 253
LOT 254
LOT 255
LOT 256
LOT 257
LOT 258
LOT 259
LOT 260
LOT 261
LOT 262
LOT 263
LOT 264
LOT 265
LOT 266
LOT 267
LOT 268
LOT 269
LOT 270
LOT 271
LOT 272
LOT 273
LOT 274
LOT 275
LOT 276
LOT 277
LOT 278
LOT 279
LOT 280
LOT 281
LOT 282
LOT 283
LOT 284
LOT 285
LOT 286
LOT 287
LOT 288
LOT 289
LOT 290
LOT 291
LOT 292
LOT 293
LOT 294
LOT 295
LOT 296
LOT 297
LOT 298
LOT 299
LOT 300
LOT 301
LOT 302
LOT 303
LOT 304
LOT 305
LOT 306
LOT 307
LOT 308
LOT 309
LOT 310
LOT 311
LOT 312
LOT 313
LOT 314
LOT 315
LOT 316
LOT 317
LOT 318
LOT 319
LOT 320
LOT 321
LOT 322
LOT 323
LOT 324
LOT 325
LOT 326
LOT 327
LOT 328
LOT 329
LOT 330
LOT 331
LOT 332
LOT 333
LOT 334
LOT 335
LOT 336
LOT 337
LOT 338
LOT 339
LOT 340
LOT 341
LOT 342
LOT 343
LOT 344
LOT 345
LOT 346
LOT 347
LOT 348
LOT 349
LOT 350
LOT 351
LOT 352
LOT 353
LOT 354
LOT 355
LOT 356
LOT 357
LOT 358
LOT 359
LOT 360
LOT 361
LOT 362
LOT 363
LOT 364
LOT 365
LOT 366
LOT 367
LOT 368
LOT 369
LOT 370
LOT 371
LOT 372
LOT 373
LOT 374
LOT 375
LOT 376
LOT 377
LOT 378
LOT 379
LOT 380
LOT 381
LOT 382
LOT 383
LOT 384
LOT 385
LOT 386
LOT 387
LOT 388
LOT 389
LOT 390
LOT 391
LOT 392
LOT 393
LOT 394
LOT 395
LOT 396
LOT 397
LOT 398
LOT 399
LOT 400
LOT 401
LOT 402
LOT 403
LOT 404
LOT 405
LOT 406
LOT 407
LOT 408
LOT 409
LOT 410
LOT 411
LOT 412
LOT 413
LOT 414
LOT 415
LOT 416
LOT 417
LOT 418
LOT 419
LOT 420
LOT 421
LOT 422
LOT 423
LOT 424
LOT 425
LOT 426
LOT 427
LOT 428
LOT 429
LOT 430
LOT 431
LOT 432
LOT 433
LOT 434
LOT 435
LOT 436
LOT 437
LOT 438
LOT 439
LOT 440
LOT 441
LOT 442
LOT 443
LOT 444
LOT 445
LOT 446
LOT 447
LOT 448
LOT 449
LOT 450
LOT 451
LOT 452
LOT 453
LOT 454
LOT 455
LOT 456
LOT 457
LOT 458
LOT 459
LOT 460
LOT 461
LOT 462
LOT 463
LOT 464
LOT 465
LOT 466
LOT 467
LOT 468
LOT 469
LOT 470
LOT 471
LOT 472
LOT 473
LOT 474
LOT 475
LOT 476
LOT 477
LOT 478
LOT 479
LOT 480
LOT 481
LOT 482
LOT 483
LOT 484
LOT 485
LOT 486
LOT 487
LOT 488
LOT 489
LOT 490
LOT 491
LOT 492
LOT 493
LOT 494
LOT 495
LOT 496
LOT 497
LOT 498
LOT 499
LOT 500
LOT 501
LOT 502
LOT 503
LOT 504
LOT 505
LOT 506
LOT 507
LOT 508
LOT 509
LOT 510
LOT 511
LOT 512
LOT 513
LOT 514
LOT 515
LOT 516
LOT 517
LOT 518
LOT 519
LOT 520
LOT 521
LOT 522
LOT 523
LOT 524
LOT 525
LOT 526
LOT 527
LOT 528
LOT 529
LOT 530
LOT 531
LOT 532
LOT 533
LOT 534
LOT 535
LOT 536
LOT 537
LOT 538
LOT 539
LOT 540
LOT 541
LOT 542
LOT 543
LOT 544
LOT 545
LOT 546
LOT 547
LOT 548
LOT 549
LOT 550
LOT 551
LOT 552
LOT 553
LOT 554
LOT 555
LOT 556
LOT 557
LOT 558
LOT 559
LOT 560
LOT 561
LOT 562
LOT 563
LOT 564
LOT 565
LOT 566
LOT 567
LOT 568
LOT 569
LOT 570
LOT 571
LOT 572
LOT 573
LOT 574
LOT 575
LOT 576
LOT 577
LOT 578
LOT 579
LOT 580
LOT 581
LOT 582
LOT 583
LOT 584
LOT 585
LOT 586
LOT 587
LOT 588
LOT 589
LOT 590
LOT 591
LOT 592
LOT 593
LOT 594
LOT 595
LOT 596
LOT 597
LOT 598
LOT 599
LOT 600
LOT 601
LOT 602
LOT 603
LOT 604
LOT 605
LOT 606
LOT 607
LOT 608
LOT 609
LOT 610
LOT 611
LOT 612
LOT 613
LOT 614
LOT 615
LOT 616
LOT 617
LOT 618
LOT 619
LOT 620
LOT 621
LOT 622
LOT 623
LOT 624
LOT 625
LOT 626
LOT 627
LOT 628
LOT 629
LOT 630
LOT 631
LOT 632
LOT 633
LOT 634
LOT 635
LOT 636
LOT 637
LOT 638
LOT 639
LOT 640
LOT 641
LOT 642
LOT 643
LOT 644
LOT 645
LOT 646
LOT 647
LOT 648
LOT 649
LOT 650
LOT 651
LOT 652
LOT 653
LOT 654
LOT 655
LOT 656
LOT 657
LOT 658
LOT 659
LOT 660
LOT 661
LOT 662
LOT 663
LOT 664
LOT 665
LOT 666
LOT 667
LOT 668
LOT 669
LOT 670
LOT 671
LOT 672
LOT 673
LOT 674
LOT 675
LOT 676
LOT 677
LOT 678
LOT 679
LOT 680
LOT 681
LOT 682
LOT 683
LOT 684
LOT 685
LOT 686
LOT 687
LOT 688
LOT 689
LOT 690
LOT 691
LOT 692
LOT 693
LOT 694
LOT 695
LOT 696
LOT 697
LOT 698
LOT 699
LOT 700
LOT 701
LOT 702
LOT 703
LOT 704
LOT 705
LOT 706
LOT 707
LOT 708
LOT 709
LOT 710
LOT 711
LOT 712
LOT 713
LOT 714
LOT 715
LOT 716
LOT 717
LOT 718
LOT 719
LOT 720
LOT 721
LOT 722
LOT 723
LOT 724
LOT 725
LOT 726
LOT 727
LOT 728
LOT 729
LOT 730
LOT 731
LOT 732
LOT 733
LOT 734
LOT 735
LOT 736
LOT 737
LOT 738
LOT 739
LOT 740
LOT 741
LOT 742
LOT 743
LOT 744
LOT 745
LOT 746
LOT 747
LOT 748
LOT 749
LOT 750
LOT 751
LOT 752
LOT 753
LOT 754
LOT 755
LOT 756
LOT 757
LOT 758
LOT 759
LOT 760
LOT 761
LOT 762
LOT 763
LOT 764
LOT 765
LOT 766
LOT 767
LOT 768
LOT 769
LOT 770
LOT 771
LOT 772
LOT 773
LOT 774
LOT 775
LOT 776
LOT 777
LOT 778
LOT 779
LOT 780
LOT 781
LOT 782
LOT 783
LOT 784
LOT 785
LOT 786
LOT 787
LOT 788
LOT 789
LOT 790
LOT 791
LOT 792
LOT 793
LOT 794
LOT 795
LOT 796
LOT 797
LOT 798
LOT 799
LOT 800
LOT 801
LOT 802
LOT 803
LOT 804
LOT 805
LOT 806
LOT 807
LOT 808
LOT 809
LOT 810
LOT 811
LOT 812
LOT 813
LOT 814
LOT 815
LOT 816
LOT 817
LOT 818
LOT 819
LOT 820
LOT 821
LOT 822
LOT 823
LOT 824
LOT 825
LOT 826
LOT 827
LOT 828
LOT 829
LOT 830
LOT 831
LOT 832
LOT 833
LOT 834
LOT 835
LOT 836
LOT 837
LOT 838
LOT 839
LOT 840
LOT 841
LOT 842
LOT 843
LOT 844
LOT 845
LOT 846
LOT 847
LOT 848
LOT 849
LOT 850
LOT 851
LOT 852
LOT 853
LOT 854
LOT 855
LOT 856
LOT 857
LOT 858
LOT 859
LOT 860
LOT 861
LOT 862
LOT 863
LOT 864
LOT 865
LOT 866
LOT 867
LOT 868
LOT 869
LOT 870
LOT 871
LOT 872
LOT 873
LOT 874
LOT 875
LOT 876
LOT 877
LOT 878
LOT 879
LOT 880
LOT 881
LOT 882
LOT 883
LOT 884
LOT 885
LOT 886
LOT 887
LOT 888
LOT 889
LOT 890
LOT 891
LOT 892
LOT 893
LOT 894
LOT 895
LOT 896
LOT 897
LOT 898
LOT 899
LOT 900
LOT 901
LOT 902
LOT 903
LOT 904
LOT 905
LOT 906
LOT 907
LOT 908
LOT 909
LOT 910
LOT 911
LOT 912
LOT 913
LOT 914
LOT 915
LOT 916
LOT 917
LOT 918
LOT 919
LOT 920
LOT 921
LOT 922
LOT 923
LOT 924
LOT 925
LOT 926
LOT 927
LOT 928
LOT 929
LOT 930
LOT 931
LOT 932
LOT 933
LOT 934
LOT 935
LOT 936
LOT 937
LOT 938
LOT 939
LOT 940
LOT 941
LOT 942
LOT 943
LOT 944
LOT 945
LOT 946
LOT 947
LOT 948
LOT 949
LOT 950
LOT 951
LOT 952
LOT 953
LOT 954
LOT 955
LOT 956
LOT 957
LOT 958
LOT 959
LOT 960
LOT 961
LOT 962
LOT 963
LOT 964
LOT 965
LOT 966
LOT 967
LOT 968
LOT 969
LOT 970
LOT 971
LOT 972
LOT 973
LOT 974
LOT 975
LOT 976
LOT 977
LOT 978
LOT 979
LOT 980
LOT 981
LOT 982
LOT 983
LOT 984
LOT 985
LOT 986
LOT 987
LOT 988
LOT 989
LOT 990
LOT 991
LOT 992
LOT 993
LOT 994
LOT 995
LOT 996
LOT 997
LOT 998
LOT 999
LOT 1000

ATTACHMENT E
UNAUTHORIZED RANCH ACCESS ONTO CULTURAL TRUST PROPERTY

WANTED

Warner Springs Ranch Vista al Valle Trail Map
Indian Flats
Aqua Caliente Creek
Parking

ATTACHMENT F

Griswold, Ted J.

From: Sibbet, David <David.Sibbet@sdcounty.ca.gov>
Sent: Friday, August 30, 2013 8:33 AM
To: Griswold, Ted J.
Cc: Beddow, Donna; Valdez, Saul; Elias, Pam
Subject: RE: "H" Site Plan Requirements (Fees and Forms)

Ted; 8/30/13
That's correct. The gate across the private easement road, 50' outside the Caltrans ROW, would not cause a violation of the any County Code or Ordinance. Please double check Zoning Ordinance Section 6708e to make sure you'll meet the standards; for example, 12' height maximum, etc. We received confirmation from the fire authority that a gate in this location is allowed and have researched all entitlements in the area and they do not require that entrance to be ungated.
Thanks for double-checking

DAVID SIBBET, Planning Manager
PLANNING AND DEVELOPMENT SERVICES
5510 Overland Avenue, 3rd Floor
San Diego, CA 92123
Office (858) 694-3091
Fax (858) 694-3373

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Thursday, August 29, 2013 5:12 PM
To: Sibbet, David
Cc: 'Richard Silvera'
Subject: RE: "H" Site Plan Requirements (Fees and Forms)

David:

Thanks for the conversation today. I appreciate your confirmation that you have researched the County's Warner Springs Ranch Resort and Cultural Trust files and confirmed that there is no land use approval or other authorization for the Resort's construction and operation of the Resort's back access road through the Trust property. This matches our investigations of both the title reports for the properties and the permitting files.

As you know, the Trustee has begun erecting a fence around the Trust property including across the access road, to protect against recent trespassing activity. The County raised concerns about that fence to the extent that it crossed areas with a H Special Area Designator and that it could cause damage to a Designated Cultural Landmark or District (the erection of the fence involves no salvage, mitigation, undergrounding of utilities, trench excavation, grading, clearing, grubbing, removal of archeological features). Given that the erection of a gate on the road would occur on existing pavement and is outside of any archeological feature, the no damage would occur by erecting a gated structure across the road. In light of this situation (and as we discussed), there are no impediments to the construction of the gate on the road. The gate will be erected with a code provided to the Pastor of the adjacent church and the local fire department will be provided a key for emergency access, should such a need arise. Otherwise only the Trustee or its designees will have access through the gate.

Given this limited activity, and the immediate need for security at the site, I am sending this as confirmation that the completion of the gate structure on the already-paved portion of the access road (and outside of the Caltrans right of

way) would not be create any violation of a County Code or the current stop work notice for the other parts of the fence. We appreciate your help with this matter so that the gate can be put into place before the upcoming holiday weekend.

Best regards

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

mailgw01.procopio.com made the following annotations

Thu Aug 29 2013 17:11:55

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

ATTACHMENT G

Griswold, Ted J.

From:	Kirkland, Timothy R <Timothy.Kirkland@sdcounty.ca.gov>
Sent:	Tuesday, September 24, 2013 3:43 PM
To:	Griswold, Ted J.
Cc:	Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject:	RE: Warner Springs Ranch Cultural Site Protection

Hi Ted –

I'd like to provide you with follow-up information to our phone conversation from yesterday.

Code Compliance staff and Zoning Division staff met on Friday September 20, 2013 and discussed the issues of concern to the Trust as stated during our meeting on September 9, 2013 and also in your pervious email messages that are attached below.

1. The Fence – Although we appreciate your concern for protecting the cultural site, **the Trust may NOT continue to install the fence until a site plan is approved**. In the alternative the fence may be removed.

At the meeting held on September 9, 2013, staff advised you that they could schedule the sub-committee of the Historic Site Board to review preliminary plans. The sub-committee could provide you with input regarding the feasibility of the Site Plan. As identified during the September 9th meeting, in order to schedule the sub-committee, you will need to apply for an Initial Consultation. An Initial Consultation is based on time and materials. The initial deposit for an Initial Consultation is $990.00 The application can be found at the County's website at the following links:

http://www.sdcounty.ca.gov/pds/zoning/formfields/PDS-325-FF.pdf

http://www.sdcounty.ca.gov/pds/zoning/ZoningNumeric.html

If you have any questions regarding the application, please contact the Zoning Counter at (858) 565-5981 or toll free at (888) 267-8770.

2. The 340,000 gallon Water Tank – We researched our records and we cannot find a building permit for this water tank. We also checked with the Resort and they do not have a permit for it. A property owner is responsible for obtaining a building permit for any unpermitted structures on a property. **The corrective action is to include it on the site plan and also obtain a building permit or removed the tank** from the property. Code Compliance intends to issue an Administrative Warning to the property owner (the Trust) for this building violation.

3 Solid Waste - Although it is stated that the Resort dumped the demolition waste on Trust property, if the Trust wants the solid waste removed from their property it should be noted that it is the responsibility of the property owner (the Trust) to remove it. The cost to remove the waste would be a civil matter between the Trust and the Resort. This decision is consistent with the way we treat similar solid waste complaints and violations.

4. Clearing or Grading on Trust property - If the Trust wants to file a complaint about clearing or grading on Trust property it should be noted that it is the responsibility of the property owner to correct a clearing or grading violation. Any damages sustained because of clearing or grading would be a civil matter between the Trust and the Resort. Again, this is consistent with the way we treat other similar clearing and grading complaints and violations.

5 The only current expansion of the Resort's Equestrian Center is 2 horse corrals to the east of the permitted MUP boundary. Corrective Action is for the Resort to modify their MUP or to remove the 2 horse corrals. The Resort will be issued an Administrative Warning for the expansion of the MUP without a modification to their permit.

Since the Trust is the complainant regarding solid waste and grading/clearing that was done on their property, and since the property owner is held responsible for correcting these violations, it doesn't seem appropriate for us to open an enforcement case on these two complaints at this time. However, in the future if we receive a complaint we may open a case at that time, and the Trust would be required to remove the waste and to correct any clearing or grading violation.

If you have any questions about a building permit for the water tank please feel free to contact Chris Heidenreich at (858) 761-8997 or by email at Chris.Heidenreich@sdcounty.ca.gov

In summary, if the Trust wants to keep the fence and the water tank the first step should be to contact the Zoning Counter and request an Initial Consultation. If the Trust removes the fence and the water tank, site plan approval is not required.

We look forward to working with you in resolving these issues.

Sincerely,

Tim

Timothy R. Kirkland
Code Compliance Coordinator
Code Compliance Division
Planning & Development Services
151 E. Carmel St.
San Marcos, CA 92078
Desk: (760) 940-2855; FAX: (760) 940-2994
Email: Timothy.Kirkland@sdcounty.ca.gov

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Monday, September 23, 2013 6:16 PM
To: Sibbet, David; Beddow, Donna; Kirkland, Timothy R; Real, Sami
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'
Subject: RE: Warner Springs Ranch Cultural Site Protection

Timothy et al.

Thank you Tim for your call today confirming the meeting that the County had on Friday, September 20th discussing Pala's code enforcement complaints regarding Warner Springs Ranch and regarding Pala's response to the County's stop work order preventing Pala from completing its fencing activity at the Cultural Trust property. As you know, Pala continues to await the ability to complete the last portion of the fence/gate to protect the Warner Springs Cultural Property from trespass. While you could confirm that the County has made no decision regarding either of this matters, you could not provide any further direction at this time. I understand that the County will be further considering its intentions and get back to me later this week.

It has now been two weeks since we met to discuss these items and two weeks before that I expressed to the County Pala's concerns that cultural resources were being impacted by the lack of enforcement capability on the cultural property. I provided significant information and documentation regarding encroachments and dumping on the property and informed you of pot-hunters found on the property with shovels and back packs (second notification). The Pala Band has sought to abide by the County's request to not complete the gate-portion of the fence; however, the delay in being able to complete the action maintains the resources onsite in peril.

It is noteworthy that when the County received a complaint regarding the Pala Band's authorized construction of the fence, it did not take two weeks for the County to issue a stop work order upon the Tribal contractors. No such urgency has been shown with respect to Pala's complaints of actions that are clearly unauthorized, illegal and in violation of the Resort's land use permits. Please explain this discrepancy in responsiveness by the county.

I look forward to the County's response to our September 9 inquiry.

Best regards

Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Griswold, Ted J.
Sent: Friday, September 13, 2013 1:34 PM
To: 'Sibbet, David'; Beddow, Donna (Donna.Beddow@sdcounty.ca.gov)
Cc: 'Heidenreich, Chris'; 'Elias, Pam'
Subject: Warner Springs Ranch Cultural Site Protection

David, Donna and Pam:

Thank you for the meeting on Monday regarding the Warner Springs Resort cultural property impacts and the Pala Band's attempts to uphold its trustee responsibilities for the property and the resources. I have not heard from you following the meeting and wanted to inquire regarding follow up.

The Pala Band remains concerned about unfettered access to the site and would like to complete the construction of the gate across the illegal access road to preclude further trespass to the site. I understood from our meeting that the County was going to meet internally to determine 1) The ability of the Trustee to complete the gate over the road (given that no damage could occur to a cultural site, since the remaining structure would occur only within the paved areas); and 2) a date and location to meet with a subcommittee of the Historical Review Board to discuss the situation and develop an appropriate strategy for moving forward. I also had provided additional information regarding the Trustee's complaint regarding code violations by the Resort that have impacted the cultural resources both on the Resort property and on the Cultural Trust property. Has the County taken any action regarding these violations by the Resort?

Can you provide an update on these items?

Thank you for your assistance in this matter.

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477

ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Griswold, Ted J.
Sent: Thursday, August 29, 2013 5:53 PM
To: 'Sibbet, David'
Cc: saul.valdez@sdcounty.ca.gov; chris.heidenreich@sdcounty.ca.gov; Pam.Elias@sdcounty.ca.gov; 'Richard Silvera'
Subject: RE: "H" Site Plan Requirements (Fees and Forms)

David:

Thank you for forwarding this information detailing the Site Plan process and costs and our conversation this morning. You are correct that the costs and process associated with applying for a Site Plan for the completion of the fence are onerous (over $10,000 just for the application!). I will forward this information on to my client. We would obviously like to avoid such a wasteful and superfluous effort merely for the construction of a chainlink fence. From our read of the County Code provisions, we do not see how the erection of a 6 foot protective fence would rise to the level of "damage to an archeological feature", particularly when the County had previously authorized through the construction of horse stables, barns, riding rinks and other structures in this same designated area without the benefit of a site plan (or new specific plan). The Trustee would appreciate an explanation of this inconsistency of the application of County Codes.

Notwithstanding these objections, the extraordinary costs associated with a site plan, should one be appropriate, are properly funded by the permittee that is responsible for the mitigation requirement that the Cultural Trust be preserved. That permittee is the Resort. The Trustee is merely the vehicle for that protection, and pursuant to the Specific Plan conditions of approvals, the Resort must fund all of the activities undertaken by the Trustee in the preservation of the Cultural Trust property. If the Resort Owner refuses to fund such an effort, such refusal would be a violation of the conditions of approval for the Specific Plan and would warrant that the County rescind approvals for the Resort operations pending satisfaction of mitigation measures.

I understand that you have spoken with the Resort Owner's consultant Jim Whalen who will be calling me soon to discuss a compromise position to avoid the need for a site plan by extending the fence around the cultural sites and avoiding going through them. I look forward to speaking to him about this option. As we have previously notified you, the constructed equestrian area of the Resort property is built directly over a large cultural site and the equestrian uses and structures were unlawfully extended even further onto the Cultural Trust property. In order to avoid going through the cultural site with a fence to protect this area, the fence would need to extend around the Resort's current equestrian facility resulting in the abandonment of that facility and restoration of that area. If this is within the consideration of the Resort, the Trustee would look favorably on such a resolution. Removal of these structures and restoration of these areas (with appropriate archeological oversight) would be a positive step toward the preservation of the Cultural Trust resources.

As we have previously indicated to the County, the Resort is currently in violation of the mitigation measures for the resort, and has conducted significant unauthorized and damaging activities on the Cultural Trust property. Many of the encroachments remain on the Trust property. These violations warrant immediate code enforcement action, and should require restorative and protective action, including penalties levied against the Resort.

I look forward to the County's assistance in helping resolve these issues so that the Cultural trust property can receive its appropriate protection.

Best regards,

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail

From: Sibbet, David [mailto:David.Sibbet@sdcounty.ca.gov]
Sent: Thursday, August 29, 2013 9:32 AM
To: Griswold, Ted J.
Subject: RE: "H" Site Plan Requirements (Fees and Forms)

http://www.sdcounty.ca.gov/pds/zoning/formfields/PDS-369.pdf

http://www.sdcounty.ca.gov/pds/zoning/formfields/ESUB_STP_Standard.pdf

DAVID SIBBET, Planning Manager
PLANNING AND DEVELOPMENT SERVICES
5510 Overland Avenue, 3rd Floor
San Diego, CA 92123
Office (858) 694-3091
Fax (858) 694-3373

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Monday, August 26, 2013 2:32 PM
To: Beddow, Donna; Sibbet, David
Cc: 'Richard Silvera'; 'Shasta Gaughen'
Subject: RE: "H" Site Plan Requirements

David:

I understand that you are checking on Pala's ability to complete fencing activity that is not disturbing the ground (e.g. stand alone fencing at the road to preclude cars from intruding onto the property). Please let us know as soon as possible when we can take these actions to protect the property resources. As mentioned last week, pot hunters have been sighted on the property and the Trustee is very concerned about further damage to the Trust. It is imperative that

the area be protected physically in the absence of an active patrol presence on the site (for which there are no Trust funds available).

Thanks

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

mailgw01.procopio.com made the following annotations

Mon Aug 26 2013 14:31:41

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

---

mailgw01.procopio.com made the following annotations

Tue Sep 03 2013 17:48:06

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any

disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

---

mailgw01.procopio.com made the following annotations

Mon Sep 23 2013 18:16:05

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

ATTACHMENT H

Procopio®

www.procopio.com

Procopio, Cory, Hargreaves and Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

Theodore J. Griswold
Direct Dial: (619) 525-3277
E-Mail: ted.griswold@procopio.com

August 21, 2013

Mr. David Sibbet
County of San Diego
Department of Planning and Land Use
5510 Overland Avenue
San Diego, California 92123

Re: Warner Springs Ranch Cultural Trust Property

Dear Mr. Sibbet:

As you know, the Pala Band of Mission Indians is Trustee for the Warner Springs Cultural Trust property. The Pala Band has expressed its concerns regarding the security of the Cultural Trust Resources. Those concerns were verified on Wednesday, August 21, 2013, when Tribal representatives found two individuals on the Cultural Trust Property with metal detectors surveying and looking for artifacts and other items. They gained access to the Cultural Trust property through the back access road which the Trustee has objected to and is now fencing. The individuals were confronted and asked to leave the property which they did immediately. Because the Trustee cannot be present on the property at all hours of the day, we are concerned that this type of activity could occur regularly and lead to a destruction and loss of the Cultural Resources found on the property. This is precisely the reason why it is imperative that the Trustee fence the property and protect it from trespassing damage.

Should you have any questions, please do not hesitate to call the undersigned.

Sincerely,

Theodore J. Griswold

TJG/pat

cc: Robert H. Smith
Chairman, Pala Band of Mission Indians

ATTACHMENT I

Griswold, Ted J.

From: Sibbet, David <David.Sibbet@sdcounty.ca.gov>
Sent: Thursday, August 22, 2013 11:24 AM
To: Griswold, Ted J.
Cc: Beddow, Donna
Subject: "H" Site Plan Requirements
Attachments: 0827_001.pdf

Ted; 8/22/13
Here is the "H" Site Plan requirement for a fence through a cultural site. Also included are the relevant Specific Plan sections.
Donna's direct line is (858) 694-3656.
Thanks

DAVID SIBBET, Planning Manager
PLANNING AND DEVELOPMENT SERVICES
5510 Overland Avenue, 3rd Floor
San Diego, CA 92123
Office (858) 694-3091
Fax (858) 694-3373

From: no-reply@sdcounty.ca.gov [mailto:no-reply@sdcounty.ca.gov]
Sent: Thursday, August 22, 2013 11:21 AM
To: Sibbet, David
Subject: Attached Image

Zone Reclassifications - Warner Springs Ranch is presently zoned S-88 or Specific Plan zoning under the County zoning ordinance. To implement the proposed plan resort, residential and open space zones will be applied to the resort, rural lots and cultural preserve parcels, respectively. The new zoning on these parcels will be as follows:

CULTURAL PRESERVE PARCEL - S-88 (CULTURAL PRESERVE)/HISTORIC PRESERVATION AREA/240 ACRES

USE REGULATIONS	S-88
NEIGHBORHOOD REGS	-/R
Density	-
Lot Size	200 AC
Building Type	A
Max Flr Area	-
Flr Area Ratio	-
Height	A
Coverage	-
Setback	V
Open Space	-
SPECIAL AREA REGS	H

The Cultural Preserve will be retained as open space in order to preserve significant archeological resources onsite. The S-88 (Cultural Preserve) zone will be overlayed as an Historic District Preservation Area in order to provide specific preservation regulations to the area. The purpose of these provisions is to preserve the historic, cultural and architectural resource values of this 240 acres and, specifically, the existing church, burial grounds and archeological resources onsite. The historic district designator shall be applied in accordance with the stated purpose of the Historic District Preservation Area Regulations at Section 5700 of the County of San Diego Zoning Ordinance. As such, this parcel shall be subject to the regulations of Section 5700 through 5749, inclusive.

The above is the zoning for the parcel. Although it is within the cultural preserve, it is zoned S88 (Specific Planning Area) and does contain the "H" Special Area Designator. See comments at end regarding text in green.

Mitigation

K. Prior to Final Approval of the Specific Plan Amendment, issuance of any use and reliance or grading permits, (with exception of L0449) finalization of any maps, or issuance of any building permits the applicant shall to the satisfaction of the Director of the Department of Planning and Land Use:

(1) Apply to the County to have Figure 2 of the Cultural Resource Management Program for Warner Springs Ranch, Prehistoric and Historic Archaeological Resources, made a part of SP 83-04 to implement mitigation measures from the GPA EIR protecting archaeological sites SDI-4501A, 8619-8639, and 8779-8781 from future specific plan designs;

(2) Implement the Memorandum of Agreement, A Cultural Resource Management Program for Warner Springs Ranch, dated April 27, 1984, which required that

a) Arrange for a qualified archaeologist to monitor all earth disturbance activities (trenching, excavating, placement of utility line, etc.) and have the power and authority to close down such operations when significant prehistoric/historic resources are encountered until avoidance of salvage can be arranged.
b) The Director of the Department of Planning and Land Use be notified whenever the qualified archaeological monitor (2.a.) stops earth-moving operations to protect significant historic/prehistoric resources, so that avoidance or salvage plans may be reviewed and approved;
c) Protect all historic/prehistoric resources identified in the GPA EIR, and identified in Condition B.1. above, from damage by construction, grounds maintenance, or development in the implementation of SP 83-04 and SPA 84-03;
d) Submit professional technical reports on the salvaged and analyzed artifacts, features, and midden resources through the monitoring operations implemented under the MOA;
e) Professionally care for all artifacts, samples, notes, photographs, and other scientific data recovered in the monitoring and other archaeological work under this condition;

The Cultural Preserve was placed over the 240 acres because of the historic Cupeno Indian town of Cupa and the historic Warner's Ranch Resort, as well as several large cultural sites.

Because there is the "H" Special Area Designator on the subject parcel, the owner must comply with Sections 5700-5749 of the Zoning Ordinance. Based on the text in green above, these sections of the Zoning Ordinance apply. A critical section is 5708 that specifically states, *"No salvage mitigation, undergrounding of utilities, trench excavation, grading, clearing, grubbing, removal of archaeological features or artifacts, or any other activity or use potentially damaging to a designated Archaeological Landmark or District protected under this Ordinance shall be permitted, except by site plan review."*

I have reviewed both the PDS General and the PDS Cultural mapping applications again today. The property (137-100-01-00) is zoned S88 (Specific Planning Area) and is located within the Warner Springs Ranch Specific Plan. I have reviewed the Specific Plan and have included the appropriate sections from the document as identified below. Based on the information from the Specific Plan, the subject property is located within a cultural preserve and is designated with the "H" Special Area Designator.

SPA84-03

Open Space Element

Goal 12 - encourage the acquisition of historic sites and their immediate environs by public agencies or private organizations interested in our historical and cultural heritage.

Conformance - Warner Springs Ranch is a site of great historical significance. After experiencing some years of neglect and deterioration, this plan will allow for renovation of the existing structures and upgrading of facilities. A cultural museum is planned as part of the project to document historical and cultural information gathered onsite.

This goal applies to the lodge area of the Specific Plan in which there are historic structures. The subject parcel is not part of the lodge area.

Conservation Element

Policy 1 - The County shall take those actions which will seek to conserve and protect significant cultural resources. These actions may include land purchases, land use controls such as zoning, purchase at less than fee, ordinances prohibiting unqualified archeologists or vandals from excavating or defacing such resources, dedication of open space around cultural resources, and the formation of cultural areas to protect these fragile resources.

Conformance - A cultural preserve of 240 acres is proposed as part of the Specific Plan. This property will be retained as undisturbed land and overlayed by an Historic District Preservation Area in order to preserve significant archeological resources in this area.

The subject parcel is part of the Cultural Preserve that was developed as part of the Warner Springs Ranch Specific Plan.

Policy 4 - The County will use the Environmental Impact Report process to conserve cultural resources. Public awareness of cultural heritage will be stressed. All information and artifactual resources recovered in this process will be stored in an appropriate institution and made available for public exhibit and scientific review.

Conformance - A cultural museum will be constructed on the resort site, making cultural and historical information accessible to all interested parties. Archeological information from sites impacted by construction will be salvaged and proposed to be provided to the museum.

The museum is to be located within the lodge area. This policy does not apply to the subject parcel.

Implementation

ATTACHMENT J

Griswold, Ted J.

From: Kirkland, Timothy R <Timothy.Kirkland@sdcounty.ca.gov>
Sent: Friday, September 27, 2013 6:18 PM
To: Griswold, Ted J.
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen' (sgaughen@palatribe.com); 'Richard Silvera' (rsilvera@palacasino.com); Sibbet, David; Beddow, Donna; Real, Sami
Subject: FW: Warner Springs Ranch Cultural Site Protection

Importance: High

Hi Ted –

Thank you for your email message below.

We cannot find any authority for the County to require the Resort to fund the Trust. If you have any document(s) that requires the County to make the Resort fund the Trust please provide us with the document(s). After we receive your document(s) we'll have County Counsel review it.

Also, please be advised that the deadline for the Trust to submit a Site Plan application OR to remove the fence and the water tank is October 26, 2013.

Thank you for your interest and help in resolving these violations.

Sincerely,

Tim

Timothy R. Kirkland
Code Enforcement Coordinator
Code Enforcement Division
Planning & Development Services
151 E. Carmel St.
San Marcos, CA 92078
Desk: (760) 940-2855; FAX: (760) 940-2994
Email: Timothy.Kirkland@sdcounty.ca.gov

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Wednesday, September 25, 2013 1:33 PM
To: Kirkland, Timothy R
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject: RE: Warner Springs Ranch Cultural Site Protection

Tim:

If this is the case, then how was the Trust supposed to be funded? The owner of record is the Trust, not Pala. The Trust is penniless. There are no funds to do what you are requesting. Is it the County's position that the mitigation required (by the County) in the approvals of the Specific Plan (and General Plan Amendment) were to set aside the Cultural Trust Property without any funding source at all? If not, then what funding source did the County require?

Please explain.

Best regards

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Kirkland, Timothy R [mailto:Timothy.Kirkland@sdcounty.ca.gov]
Sent: Wednesday, September 25, 2013 12:44 PM
To: Griswold, Ted J.
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject: RE: Warner Springs Ranch Cultural Site Protection

Mr. Griswold, we have reviewed the Major Use Permit for the equestrian center and the Specific Plan and found no "direct requirement of the permit/specific Plan approvals" that provide legal authority to the County to require the Resort to fund the Trust. Further, the County is not seeking to require the Trustee to pay the cost "associated with" our action. As in all enforcement cases, the County holds the owner of record for the property that is the subject of the enforcement action responsible for resolving County Code Violations.

If you have any documents that provide specific legal authority to the County which will allow us to require the Resort to fund the trust, please provide it for our review.

Sincerely,

Tim

Timothy R. Kirkland
Code Enforcement Coordinator
Code Enforcement Division
Planning & Development Services
151 E. Carmel St.
San Marcos, CA 92078
Desk: (760) 940-2855; FAX: (760) 940-2994
Email: Timothy.Kirkland@sdcounty.ca.gov

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Tuesday, September 24, 2013 3:54 PM
To: Kirkland, Timothy R

Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject: RE: Warner Springs Ranch Cultural Site Protection

Tim:

I will discuss the County's response with my client. After a quick read, I did not see any mention of the County's action regarding the Resort's responsibility to fund the Trust as a permit requirement for the Resort. What is the County's intention in this regard?

If the County is not requiring the Resort to fund the Trust, how is the County proposing that the below required actions be funded, since they are a direct requirement of the permit/Specific Plan approvals provided to the Resort? If the County is seeking to require that the Trustee pay for the costs associated with your action, on what basis does it make such a demand? These issues are very important for the Tribe to discern its appropriate next actions.

Please provide this information as soon as possible,

Thank you
Ted

Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Kirkland, Timothy R [mailto:Timothy.Kirkland@sdcounty.ca.gov]
Sent: Tuesday, September 24, 2013 3:43 PM
To: Griswold, Ted J.
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject: RE: Warner Springs Ranch Cultural Site Protection

Hi Ted –

I'd like to provide you with follow-up information to our phone conversation from yesterday.

Code Compliance staff and Zoning Division staff met on Friday September 20, 2013 and discussed the issues of concern to the Trust as stated during our meeting on September 9, 2013 and also in your pervious email messages that are attached below.

1. The Fence – Although we appreciate your concern for protecting the cultural site, **the Trust may NOT continue to install the fence until a site plan is approved**. In the alternative the fence may be removed.

At the meeting held on September 9, 2013, staff advised you that they could schedule the sub-committee of the Historic Site Board to review preliminary plans. The sub-committee could provide you with input regarding the feasibility of the Site Plan. As identified during the September 9th meeting, in order to schedule the sub-committee, you will need to apply

for an Initial Consultation. An Initial Consultation is based on time and materials. The initial deposit for an Initial Consultation is $990.00. The application can be found at the County's website at the following links:

http://www.sdcounty.ca.gov/pds/zoning/formfields/PDS-325-FF.pdf

http://www.sdcounty.ca.gov/pds/zoning/ZoningNumeric.html

If you have any questions regarding the application, please contact the Zoning Counter at (858) 565-5981 or toll free at (888) 267-8770.

2. The 340,000 gallon Water Tank – We researched our records and we cannot find a building permit for this water tank. We also checked with the Resort and they do not have a permit for it. A property owner is responsible for obtaining a building permit for any unpermitted structures on a property. **The corrective action is to include it on the site plan and also obtain a building permit or removed the tank** from the property. Code Compliance intends to issue an Administrative Warning to the property owner (the Trust) for this building violation.

3. Solid Waste - Although it is stated that the Resort dumped the demolition waste on Trust property, if the Trust wants the solid waste removed from their property it should be noted that it is the responsibility of the property owner (the Trust) to remove it. The cost to remove the waste would be a civil matter between the Trust and the Resort. This decision is consistent with the way we treat similar solid waste complaints and violations.

4. Clearing or Grading on Trust property - If the Trust wants to file a complaint about clearing or grading on Trust property it should be noted that it is the responsibility of the property owner to correct a clearing or grading violation. Any damages sustained because of clearing or grading would be a civil matter between the Trust and the Resort. Again, this is consistent with the way we treat other similar clearing and grading complaints and violations.

5. The only current expansion of the Resort's Equestrian Center is 2 horse corrals to the east of the permitted MUP boundary. Corrective Action is for the Resort to modify their MUP or to remove the 2 horse corrals. The Resort will be issued an Administrative Warning for the expansion of the MUP without a modification to their permit.

Since the Trust is the complainant regarding solid waste and grading/clearing that was done on their property, and since the property owner is held responsible for correcting these violations, it doesn't seem appropriate for us to open an enforcement case on these two complaints at this time. However, in the future if we receive a complaint we may open a case at that time, and the Trust would be required to remove the waste and to correct any clearing or grading violation.

If you have any questions about a building permit for the water tank please feel free to contact Chris Heidenreich at (858) 761-8997 or by email at Chris.Heidenreich@sdcounty.ca.gov.

In summary, if the Trust wants to keep the fence and the water tank the first step should be to contact the Zoning Counter and request an Initial Consultation. If the Trust removes the fence and the water tank, site plan approval is not required.

We look forward to working with you in resolving these issues.

Sincerely,

Tim

Timothy R. Kirkland
Code Compliance Coordinator
Code Compliance Division
Planning & Development Services
151 E. Carmel St.
San Marcos, CA 92078
Desk: (760) 940-2855; FAX: (760) 940-2994
Email: Timothy.Kirkland@sdcounty.ca.gov

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Monday, September 23, 2013 6:16 PM
To: Sibbet, David; Beddow, Donna; Kirkland, Timothy R; Real, Sami

Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'
Subject: RE: Warner Springs Ranch Cultural Site Protection

Timothy et al.

Thank you Tim for your call today confirming the meeting that the County had on Friday, September 20th discussing Pala's code enforcement complaints regarding Warner Springs Ranch and regarding Pala's response to the County's stop work order preventing Pala from completing its fencing activity at the Cultural Trust property. As you know, Pala continues to await the ability to complete the last portion of the fence/gate to protect the Warner Springs Cultural Property from trespass. While you could confirm that the County has made no decision regarding either of this matters, you could not provide any further direction at this time. I understand that the County will be further considering its intentions and get back to me later this week.

It has now been two weeks since we met to discuss these items and two weeks before that I expressed to the County Pala's concerns that cultural resources were being impacted by the lack of enforcement capability on the cultural property. I provided significant information and documentation regarding encroachments and dumping on the property and informed you of pot-hunters found on the property with shovels and back packs (second notification). The Pala Band has sought to abide by the County's request to not complete the gate-portion of the fence; however, the delay in being able to complete the action maintains the resources onsite in peril.

It is noteworthy that when the County received a complaint regarding the Pala Band's authorized construction of the fence, it did not take two weeks for the County to issue a stop work order upon the Tribal contractors. No such urgency has been shown with respect to Pala's complaints of actions that are clearly unauthorized, illegal and in violation of the Resort's land use permits. Please explain this discrepancy in responsiveness by the county.

I look forward to the County's response to our September 9 inquiry.

Best regards

Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Griswold, Ted J.
Sent: Friday, September 13, 2013 1:34 PM
To: 'Sibbet, David'; Beddow, Donna (Donna.Beddow@sdcounty.ca.gov)
Cc: 'Heidenreich, Chris'; 'Elias, Pam'
Subject: Warner Springs Ranch Cultural Site Protection

David, Donna and Pam:

Thank you for the meeting on Monday regarding the Warner Springs Resort cultural property impacts and the Pala Band's attempts to uphold its trustee responsibilities for the property and the resources. I have not heard from you following the meeting and wanted to inquire regarding follow up.

The Pala Band remains concerned about unfettered access to the site and would like to complete the construction of the gate across the illegal access road to preclude further trespass to the site. I understood from our meeting that the County was going to meet internally to determine 1) The ability of the Trustee to complete the gate over the road (given that no damage could occur to a cultural site, since the remaining structure would occur only within the paved areas); and 2) a date and location to meet with a subcommittee of the Historical Review Board to discuss the situation and develop an appropriate strategy for moving forward. I also had provided additional information regarding the Trustee's complaint regarding code violations by the Resort that have impacted the cultural resources both on the Resort property and on the Cultural Trust property. Has the County taken any action regarding these violations by the Resort?

Can you provide an update on these items?

Thank you for your assistance in this matter.

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Griswold, Ted J.
Sent: Thursday, August 29, 2013 5:53 PM
To: 'Sibbet, David'
Cc: saul.valdez@sdcounty.ca.gov; chris.heidenreich@sdcounty.ca.gov; Pam.Elias@sdcounty.ca.gov; 'Richard Silvera'
Subject: RE: "H" Site Plan Requirements (Fees and Forms)

David:

Thank you for forwarding this information detailing the Site Plan process and costs and our conversation this morning. You are correct that the costs and process associated with applying for a Site Plan for the completion of the fence are onerous (over $10,000 just for the application!). I will forward this information on to my client. We would obviously like to avoid such a wasteful and superfluous effort merely for the construction of a chainlink fence. From our read of the County Code provisions, we do not see how the erection of a 6 foot protective fence would rise to the level of "damage to an archeological feature", particularly when the County had previously authorized through the construction of horse stables, barns, riding rinks and other structures in this same designated area without the benefit of

a site plan (or new specific plan). The Trustee would appreciate an explanation of this inconsistency of the application of County Codes.

Notwithstanding these objections, the extraordinary costs associated with a site plan, should one be appropriate, are properly funded by the permittee that is responsible for the mitigation requirement that the Cultural Trust be preserved. That permittee is the Resort. The Trustee is merely the vehicle for that protection, and pursuant to the Specific Plan conditions of approvals, the Resort must fund all of the activities undertaken by the Trustee in the preservation of the Cultural Trust property. If the Resort Owner refuses to fund such an effort, such refusal would be a violation of the conditions of approval for the Specific Plan and would warrant that the County rescind approvals for the Resort operations pending satisfaction of mitigation measures.

I understand that you have spoken with the Resort Owner's consultant Jim Whalen who will be calling me soon to discuss a compromise position to avoid the need for a site plan by extending the fence around the cultural sites and avoiding going through them. I look forward to speaking to him about this option. As we have previously notified you, the constructed equestrian area of the Resort property is built directly over a large cultural site and the equestrian uses and structures were unlawfully extended even further onto the Cultural Trust property. In order to avoid going through the cultural site with a fence to protect this area, the fence would need to extend around the Resort's current equestrian facility resulting in the abandonment of that facility and restoration of that area. If this is within the consideration of the Resort, the Trustee would look favorably on such a resolution. Removal of these structures and restoration of these areas (with appropriate archeological oversight) would be a positive step toward the preservation of the Cultural Trust resources.

As we have previously indicated to the County, the Resort is currently in violation of the mitigation measures for the resort, and has conducted significant unauthorized and damaging activities on the Cultural Trust property. Many of the encroachments remain on the Trust property. These violations warrant immediate code enforcement action, and should require restorative and protective action, including penalties levied against the Resort.

I look forward to the County's assistance in helping resolve these issues so that the Cultural trust property can receive its appropriate protection.

Best regards,

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Sibbet, David [mailto:David.Sibbet@sdcounty.ca.gov]
Sent: Thursday, August 29, 2013 9:32 AM

To: Griswold, Ted J.
Subject: RE: "H" Site Plan Requirements (Fees and Forms)

http://www.sdcounty.ca.gov/pds/zoning/formfields/PDS-369.pdf

http://www.sdcounty.ca.gov/pds/zoning/formfields/ESUB_STP_Standard.pdf

DAVID SIBBET, Planning Manager
PLANNING AND DEVELOPMENT SERVICES
5510 Overland Avenue, 3rd Floor
San Diego, CA 92123
Office (858) 694-3091
Fax (858) 694-3373

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Monday, August 26, 2013 2:32 PM
To: Beddow, Donna; Sibbet, David
Cc: 'Richard Silvera'; 'Shasta Gaughen'
Subject: RE: "H" Site Plan Requirements

David:

I understand that you are checking on Pala's ability to complete fencing activity that is not disturbing the ground (e.g. stand alone fencing at the road to preclude cars from intruding onto the property). Please let us know as soon as possible when we can take these actions to protect the property resources. As mentioned last week, pot hunters have been sighted on the property and the Trustee is very concerned about further damage to the Trust. It is imperative that the area be protected physically in the absence of an active patrol presence on the site (for which there are no Trust funds available).

Thanks

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

mailgw01.procopio.com made the following annotations

Mon Aug 26 2013 14:31:41

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

---

mailgw01.procopio.com made the following annotations

Tue Sep 03 2013 17:48:06

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

---

mailgw01.procopio.com made the following annotations

Mon Sep 23 2013 18:16:05

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

---

mailgw01.procopio.com made the following annotations

Tue Sep 24 2013 15:53:51

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

---

mailgw01.procopio.com made the following annotations

Wed Sep 25 2013 13:33:14

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

ATTACHMENT K

Griswold, Ted J.

From: Kirkland, Timothy R <Timothy.Kirkland@sdcounty.ca.gov>
Sent: Tuesday, October 15, 2013 11:54 AM
To: Griswold, Ted J.
Cc: Elias, Pam; Heidenreich, Chris; Sibbet, David; Real, Sami; Gordon, Carol
Subject: Update on Warner Springs Trust Violations - APN 137-091-02-00

Dear Mr. Griswold:

Below is an update on the Warner Springs Trust Violations, APN 137-091-02-00.

- I understand that you recently discussed the funding of the Warner Springs Trust (Trust) with County Counsel. The department could not find anything that requires the County to make the Warner Springs Ranch Resort (Resort) fund the Trust.
- You requested additional time to finish your research and we will grant you an additional 2 weeks.
- We will issue your client a new Administrative Warning that provides for a new deadline of December 2, 2013 to submit an application for site plan approval, a request for a waiver of the site plan, or to remove the fence.
- The department (PDS) will NOT require a building permit for the 340,000 gallon water tank located on Trust property. This water tank furnishes water to the Resort. It appears that the 340,000 gallon water tank located on parcel 137-091-02-00 (Warner Springs Trust) may have actually been permitted by the Warner Springs Resort about the time the Warner Springs Trust parcel was created and split from the Warner Springs Resort parcel.

- Possible permits include:

1. Class Code 25 #2-266109
2. Class Code 425 #2-266110
3. Class Code 525 #2-266111

All of the above permits were finaled on 4-10-87.

Therefore, since it is inconclusive whether a building permit for the 340,000 gallon water tank was obtained the department will not require a permit at this time. If in the future it is shown that a building permit was never obtained the property owner may be required to obtain a building permit for the 340,000 gallon tank which is currently located on parcel APN 137-091-02-00.

In an attempt to memorialize this issue we added flags in our computer data base (Accela) on APN 137-091-02-00 (Trust) and also on APN 137-092-30-00 (Resort) that contains this information.

We hope this is helpful as we continue to work with you and the Trust on the fence issue.

Sincerely,

Tim

Tim Kirkland
Code Compliance Coordinator
(760) 940-2855

Timothy R. Kirkland
Code Compliance Coordinator
Code Compliance Division
Planning & Development Services
151 E. Carmel St.
San Marcos, CA 92078
Desk: (760) 940-2855; FAX: (760) 940-2994
Email: Timothy.Kirkland@sdcounty.ca.gov

ATTACHMENT L

Procopio

Procopio, Cory, Hargreaves and Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

www.procopio.com

Theodore J. Griswold
Direct Dial: (619) 515-3277
E-Mail: ted.griswold@procopio.com

October 4, 2013

VIA EMAIL AND U.S. MAIL

Mr. Timothy R. Kirkland
Code Enforcement Coordinator
Code Enforcement Division
Planning & Development Services
County of San Diego
151 E. Carmel Street
San Marcos, CA 92078
Email: timothy.kirkland@sdcounty.ca.gov

Re: Warner Springs Ranch Cultural Site Trust; County Enforcement Action

Dear Mr. Kirkland:

As you know, our firm represents the Trustee for the Warner Springs Trust. Your office has named the Trust as the responsible party for certain code enforcement actions regarding a water tower and a protective fence. The Trustee requires guidance from the County on its ability to satisfy to the County's Code Enforcement requests without incurring liability to the Trust. This evidence was previously requested (September 29, 2013) but has not been provided.

As mentioned in my previous correspondence, the original Trustee of the Trust provided no funds with the Trust Property when it was transferred to the current Trustee in August, 1994. By your email communication on September 27th, 2013, the County has indicated that it "cannot find any authority for the County to require the Resort to fund the Trust." (A copy is attached hereto.) Based on this statement, the Trustee is seeking confirmation that it is **the County's position that the Resort has no responsibility to fund the administration of the Warner Springs Trust.** In considering your response to this request, please consider the following:

The Trust Agreement, which was approved by the County as a requirement of the Mitigation and Conditions of Approval for the Resort, makes multiple references throughout the Agreement to "Trust Funds," "other trust assets," "investment of Trust Assets," "Retain cash," "the income [from the Trust]," "disbursements," "securities, cash and other property of the trust," "the principal and income of the trust," "invest in or retain any stocks, shares, bonds, notes," "trust funds invested", hire a custodian of "funds and securities", "distribute trust income for each taxable year", and "keep any or all trust property or funds in any place." Clearly, the Trust Agreement contemplates that there was a fund created with the Trust. Where did the County understand these funds and assets were to arise from?

Procopio

The Agreement contemplates that the Trustee expend funds in the administration of the Trust to "form and organize a nonprofit corporation," "employ a bank or trust company," and "employ clerks, accountants, investment counsel, investment agents, and any special services, and to pay reasonable compensation and expenses of all such services in addition to the compensation of the trustees," and "to employ and pay attorneys, lecturers, writers, investigators, archeologists, scientists and such assistants and employees of every kind as they deem necessary." Clearly the Trust Agreement contemplates that there are costs associated with the administration of the Trust.

Notwithstanding the foregoing, the Trust Agreement specifically requires that "[n]one of the Trustees shall be required to furnish any bond or surety, and none of them shall be responsible or liable for the acts or omissions of any other of the trustees or of any predecessor or of a representative, custodian, agent, depositary, or counsel selected with reasonable care" and that the Trustee is not required to individually incur expenses for the maintenance of the Trust Property and is reimbursed for any such expenses incurred (Article XII E, F, Trust Agreement). Given that the Trust is expected to expend funds through administration, and that the Trustee is not contemplated to expend its own funds to administer the Trust, and it cannot convey the property for income, **how did the County understand that Trustee would pay for administration of the Trust?**

The Trustee is unable to begin formulating a response or to develop a course of action until we have this information from the County. The Trustee must identify a source of funds consistent with the Trust Agreement if it is going to satisfy the County's requests.

Given your request that the Trustee respond with diligence and on a specified time frame in response to your current action, I previously requested a response to these issues from the County on or before the close of business on Thursday October 3, 2013. We received no response from the County whatsoever. I hope that this clarifies some of the Trustee's concerns and that the County will become responsive, so that the Trustee can respond to your requests.

Should you have any questions regarding these requests, please do not hesitate to call the undersigned.

Very truly yours,

Theodore J. Griswold

TJG
Enclosure

Procopio

cc: Chairman Robert Smith
Dr. Shasta Gaughen
Mr. Chris Heidenreich
Mr. Richard Silvera
Mr. David Sibbet
Ms. Donna Beddow
Ms. Sami Real

Griswold, Ted J.

From: Kirkland, Timothy R <Timothy.Kirkland@sdcounty.ca.gov>
Sent: Friday, September 27, 2013 6:18 PM
To: Griswold, Ted J.
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen' (sgaughen@palatribe.com); 'Richard Silvera' (rsilvera@palacasino.com); Sibbet, David; Beddow, Donna; Real, Sami
Subject: FW: Warner Springs Ranch Cultural Site Protection

Importance: High

Hi Ted –

Thank you for your email message below.

We cannot find any authority for the County to require the Resort to fund the Trust. If you have any document(s) that requires the County to make the Resort fund the Trust please provide us with the document(s). After we receive your document(s) we'll have County Counsel review it.

Also, please be advised that the deadline for the Trust to submit a Site Plan application OR to remove the fence and the water tank is October 26, 2013.

Thank you for your interest and help in resolving these violations.

Sincerely,

Tim

Timothy R. Kirkland
Code Enforcement Coordinator
Code Enforcement Division
Planning & Development Services
151 E. Carmel St.
San Marcos, CA 92078
Desk: (760) 940-2855; FAX: (760) 940-2994
Email: Timothy.Kirkland@sdcounty.ca.gov

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Wednesday, September 25, 2013 1:33 PM
To: Kirkland, Timothy R
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject: RE: Warner Springs Ranch Cultural Site Protection

Tim:

If this is the case, then how was the Trust supposed to be funded? The owner of record is the Trust, not Pala. The Trust is penniless. There are no funds to do what you are requesting. Is it the County's position that the mitigation required (by the County) in the approvals of the Specific Plan (and General Plan Amendment) were to set aside the Cultural Trust Property without any funding source at all? If not, then what funding source did the County require?

Please explain.

Best regards

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Kirkland, Timothy R [mailto:Timothy.Kirkland@sdcounty.ca.gov]
Sent: Wednesday, September 25, 2013 12:41 PM
To: Griswold, Ted J.
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject: RE: Warner Springs Ranch Cultural Site Protection

Mr. Griswold, we have reviewed the Major Use Permit for the equestrian center and the Specific Plan and found no "direct requirement of the permit/specific Plan approvals" that provide legal authority to the County to require the Resort to fund the Trust. Further, the County is not seeking to require the Trustee to pay the cost "associated with" our action. As in all enforcement cases, the County holds the owner of record for the property that is the subject of the enforcement action responsible for resolving County Code Violations.

If you have any documents that provide specific legal authority to the County which will allow us to require the Resort to fund the trust, please provide it for our review.

Sincerely,

Tim

Timothy R. Kirkland
Code Enforcement Coordinator
Code Enforcement Division
Planning & Development Services
151 E. Carmel St.
San Marcos, CA 92078
Desk: (760) 940-2855; FAX: (760) 940-2994
Email: Timothy.Kirkland@sdcounty.ca.gov

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Tuesday, September 24, 2013 3:54 PM
To: Kirkland, Timothy R

Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject: RE: Warner Springs Ranch Cultural Site Protection

Tim:

I will discuss the County's response with my client. After a quick read, I did not see any mention of the County's action regarding the Resort's responsibility to fund the Trust as a permit requirement for the Resort. What is the County's intention in this regard?

If the County is not requiring the Resort to fund the Trust, how is the County proposing that the below required actions be funded, since they are a direct requirement of the permit/Specific Plan approvals provided to the Resort? If the County is seeking to require that the Trustee pay for the costs associated with your action, on what basis does it make such a demand? These issues are very important for the Tribe to discern its appropriate next actions.

Please provide this information as soon as possible,

Thank you
Ted

Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Kirkland, Timothy R [mailto:Timothy.Kirkland@sdcounty.ca.gov]
Sent: Tuesday, September 24, 2013 3:43 PM
To: Griswold, Ted J.
Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'; Sibbet, David; Beddow, Donna; Real, Sami
Subject: RE: Warner Springs Ranch Cultural Site Protection

Hi Ted –

I'd like to provide you with follow-up information to our phone conversation from yesterday.

Code Compliance staff and Zoning Division staff met on Friday September 20, 2013 and discussed the issues of concern to the Trust as stated during our meeting on September 9, 2013 and also in your pervious email messages that are attached below.

1. The Fence – Although we appreciate your concern for protecting the cultural site, **the Trust may NOT continue to install the fence until a site plan is approved**. In the alternative the fence may be removed.

At the meeting held on September 9, 2013, staff advised you that they could schedule the sub-committee of the Historic Site Board to review preliminary plans. The sub-committee could provide you with input regarding the feasibility of the Site Plan. As identified during the September 9th meeting, in order to schedule the sub-committee, you will need to apply

for an Initial Consultation. An Initial Consultation is based on time and materials. The initial deposit for an Initial Consultation is $990.00. The application can be found at the County's website at the following links:

http://www.sdcounty.ca.gov/pds/zoning/formfields/PDS-325-FF.pdf

http://www.sdcounty.ca.gov/pds/zoning/ZoningNumeric.html

If you have any questions regarding the application, please contact the Zoning Counter at (858) 565-5981 or toll free at (888) 267-8770.

2. The 340,000 gallon Water Tank – We researched our records and we cannot find a building permit for this water tank. We also checked with the Resort and they do not have a permit for it. A property owner is responsible for obtaining a building permit for any unpermitted structures on a property. **The corrective action is to include it on the site plan and also obtain a building permit or removed the tank** from the property. Code Compliance intends to issue an Administrative Warning to the property owner (the Trust) for this building violation.

3. Solid Waste - Although it is stated that the Resort dumped the demolition waste on Trust property, if the Trust wants the solid waste removed from their property it should be noted that it is the responsibility of the property owner (the Trust) to remove it. The cost to remove the waste would be a civil matter between the Trust and the Resort. This decision is consistent with the way we treat similar solid waste complaints and violations.

4. Clearing or Grading on Trust property - If the Trust wants to file a complaint about clearing or grading on Trust property it should be noted that it is the responsibility of the property owner to correct a clearing or grading violation. Any damages sustained because of clearing or grading would be a civil matter between the Trust and the Resort. Again, this is consistent with the way we treat other similar clearing and grading complaints and violations.

5. The only current expansion of the Resort's Equestrian Center is 2 horse corrals to the east of the permitted MUP boundary. Corrective Action is for the Resort to modify their MUP or to remove the 2 horse corrals. The Resort will be issued an Administrative Warning for the expansion of the MUP without a modification to their permit.

Since the Trust is the complainant regarding solid waste and grading/clearing that was done on their property, and since the property owner is held responsible for correcting these violations, it doesn't seem appropriate for us to open an enforcement case on these two complaints at this time. However, in the future if we receive a complaint we may open a case at that time, and the Trust would be required to remove the waste and to correct any clearing or grading violation.

If you have any questions about a building permit for the water tank please feel free to contact Chris Heidenreich at (858) 761-8997 or by email at Chris.Heidenreich@sdcounty.ca.gov.

In summary, if the Trust wants to keep the fence and the water tank the first step should be to contact the Zoning Counter and request an Initial Consultation. If the Trust removes the fence and the water tank, site plan approval is not required.

We look forward to working with you in resolving these issues.

Sincerely,

Tim

Timothy R. Kirkland
Code Compliance Coordinator
Code Compliance Division
Planning & Development Services
151 E. Carmel St.
San Marcos, CA 92078
Desk: (760) 940-2855; FAX: (760) 940-2994
Email: Timothy.Kirkland@sdcounty.ca.gov

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Monday, September 23, 2013 6:16 PM
To: Sibbet, David; Beddow, Donna; Kirkland, Timothy R; Real, Sami

Cc: Heidenreich, Chris; Elias, Pam; 'Shasta Gaughen'; 'Richard Silvera'
Subject: RE: Warner Springs Ranch Cultural Site Protection

Timothy et al.

Thank you Tim for your call today confirming the meeting that the County had on Friday, September 20th discussing Pala's code enforcement complaints regarding Warner Springs Ranch and regarding Pala's response to the County's stop work order preventing Pala from completing its fencing activity at the Cultural Trust property. As you know, Pala continues to await the ability to complete the last portion of the fence/gate to protect the Warner Springs Cultural Property from trespass. While you could confirm that the County has made no decision regarding either of this matters, you could not provide any further direction at this time. I understand that the County will be further considering its intentions and get back to me later this week.

It has now been two weeks since we met to discuss these items and two weeks before that I expressed to the County Pala's concerns that cultural resources were being impacted by the lack of enforcement capability on the cultural property. I provided significant information and documentation regarding encroachments and dumping on the property and informed you of pot-hunters found on the property with shovels and back packs (second notification). The Pala Band has sought to abide by the County's request to not complete the gate-portion of the fence; however, the delay in being able to complete the action maintains the resources onsite in peril.

It is noteworthy that when the County received a complaint regarding the Pala Band's authorized construction of the fence, it did not take two weeks for the County to issue a stop work order upon the Tribal contractors. No such urgency has been shown with respect to Pala's complaints of actions that are clearly unauthorized, illegal and in violation of the Resort's land use permits. Please explain this discrepancy in responsiveness by the county.

I look forward to the County's response to our September 9 inquiry.

Best regards

Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Griswold, Ted J.
Sent: Friday, September 13, 2013 1:34 PM
To: 'Sibbet, David'; Beddow, Donna (Donna.Beddow@sdcounty.ca.gov)
Cc: 'Heidenreich, Chris'; 'Elias, Pam'
Subject: Warner Springs Ranch Cultural Site Protection

David, Donna and Pam:

Thank you for the meeting on Monday regarding the Warner Springs Resort cultural property impacts and the Pala Band's attempts to uphold its trustee responsibilities for the property and the resources. I have not heard from you following the meeting and wanted to inquire regarding follow up.

The Pala Band remains concerned about unfettered access to the site and would like to complete the construction of the gate across the illegal access road to preclude further trespass to the site. I understood from our meeting that the County was going to meet internally to determine 1) The ability of the Trustee to complete the gate over the road (given that no damage could occur to a cultural site, since the remaining structure would occur only within the paved areas); and 2) a date and location to meet with a subcommittee of the Historical Review Board to discuss the situation and develop an appropriate strategy for moving forward. I also had provided additional information regarding the Trustee's complaint regarding code violations by the Resort that have impacted the cultural resources both on the Resort property and on the Cultural Trust property. Has the County taken any action regarding these violations by the Resort?

Can you provide an update on these items?

Thank you for your assistance in this matter.

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Griswold, Ted J.
Sent: Thursday, August 29, 2013 5:53 PM
To: 'Sibbet, David'
Cc: saul.valdez@sdcounty.ca.gov; chris.heidenreich@sdcounty.ca.gov; Pam.Elias@sdcounty.ca.gov; 'Richard Silvera'
Subject: RE: "H" Site Plan Requirements (Fees and Forms)

David:

Thank you for forwarding this information detailing the Site Plan process and costs and our conversation this morning. You are correct that the costs and process associated with applying for a Site Plan for the completion of the fence are onerous (over $10,000 just for the application!). I will forward this information on to my client. We would obviously like to avoid such a wasteful and superfluous effort merely for the construction of a chainlink fence. From our read of the County Code provisions, we do not see how the erection of a 6 foot protective fence would rise to the level of "damage to an archeological feature", particularly when the County had previously authorized through the construction of horse stables, barns, riding rinks and other structures in this same designated area without the benefit of

a site plan (or new specific plan). The Trustee would appreciate an explanation of this inconsistency of the application of County Codes.

Notwithstanding these objections, the extraordinary costs associated with a site plan, should one be appropriate, are properly funded by the permittee that is responsible for the mitigation requirement that the Cultural Trust be preserved. That permittee is the Resort. The Trustee is merely the vehicle for that protection, and pursuant to the Specific Plan conditions of approvals, the Resort must fund all of the activities undertaken by the Trustee in the preservation of the Cultural Trust property. If the Resort Owner refuses to fund such an effort, such refusal would be a violation of the conditions of approval for the Specific Plan and would warrant that the County rescind approvals for the Resort operations pending satisfaction of mitigation measures.

I understand that you have spoken with the Resort Owner's consultant Jim Whalen who will be calling me soon to discuss a compromise position to avoid the need for a site plan by extending the fence around the cultural sites and avoiding going through them. I look forward to speaking to him about this option. As we have previously notified you, the constructed equestrian area of the Resort property is built directly over a large cultural site and the equestrian uses and structures were unlawfully extended even further onto the Cultural Trust property. In order to avoid going through the cultural site with a fence to protect this area, the fence would need to extend around the Resort's current equestrian facility resulting in the abandonment of that facility and restoration of that area. If this is within the consideration of the Resort, the Trustee would look favorably on such a resolution. Removal of these structures and restoration of these areas (with appropriate archeological oversight) would be a positive step toward the preservation of the Cultural Trust resources.

As we have previously indicated to the County, the Resort is currently in violation of the mitigation measures for the resort, and has conducted significant unauthorized and damaging activities on the Cultural Trust property. Many of the encroachments remain on the Trust property. These violations warrant immediate code enforcement action, and should require restorative and protective action, including penalties levied against the Resort.

I look forward to the County's assistance in helping resolve these issues so that the Cultural trust property can receive its appropriate protection.

Best regards,

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

From: Sibbet, David [mailto:David.Sibbet@sdcounty.ca.gov]
Sent: Thursday, August 29, 2013 9:32 AM

To: Griswold, Ted J.
Subject: RE: "H" Site Plan Requirements (Fees and Forms)

http://www.sdcounty.ca.gov/pds/zoning/formfields/PDS-369.pdf

http://www.sdcounty.ca.gov/pds/zoning/formfields/ESUB_STP_Standard.pdf

DAVID SIBBET, Planning Manager
PLANNING AND DEVELOPMENT SERVICES
5510 Overland Avenue, 3rd Floor
San Diego, CA 92123
Office (858) 694-3091
Fax (858) 694-3373

From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Monday, August 26, 2013 2:32 PM
To: Beddow, Donna; Sibbet, David
Cc: 'Richard Silvera'; 'Shasta Gaughen'
Subject: RE: "H" Site Plan Requirements

David:

I understand that you are checking on Pala's ability to complete fencing activity that is not disturbing the ground (e.g. stand alone fencing at the road to preclude cars from intruding onto the property). Please let us know as soon as possible when we can take these actions to protect the property resources. As mentioned last week, pot hunters have been sighted on the property and the Trustee is very concerned about further damage to the Trust. It is imperative that the area be protected physically in the absence of an active patrol presence on the site (for which there are no Trust funds available).

Thanks

Ted
Ted J. Griswold
Partner

Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
direct dial: (619) 515-3277
direct fax: (619) 744-5477
ted.griswold@procopio.com
www.procopio.com

Please consider the environment before printing this e-mail.

mailgw01.procopio.com made the following annotations

Mon Aug 26 2013 14:31:41

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

---

mailgw01.procopio.com made the following annotations

Tue Sep 03 2013 17:48:06

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

---

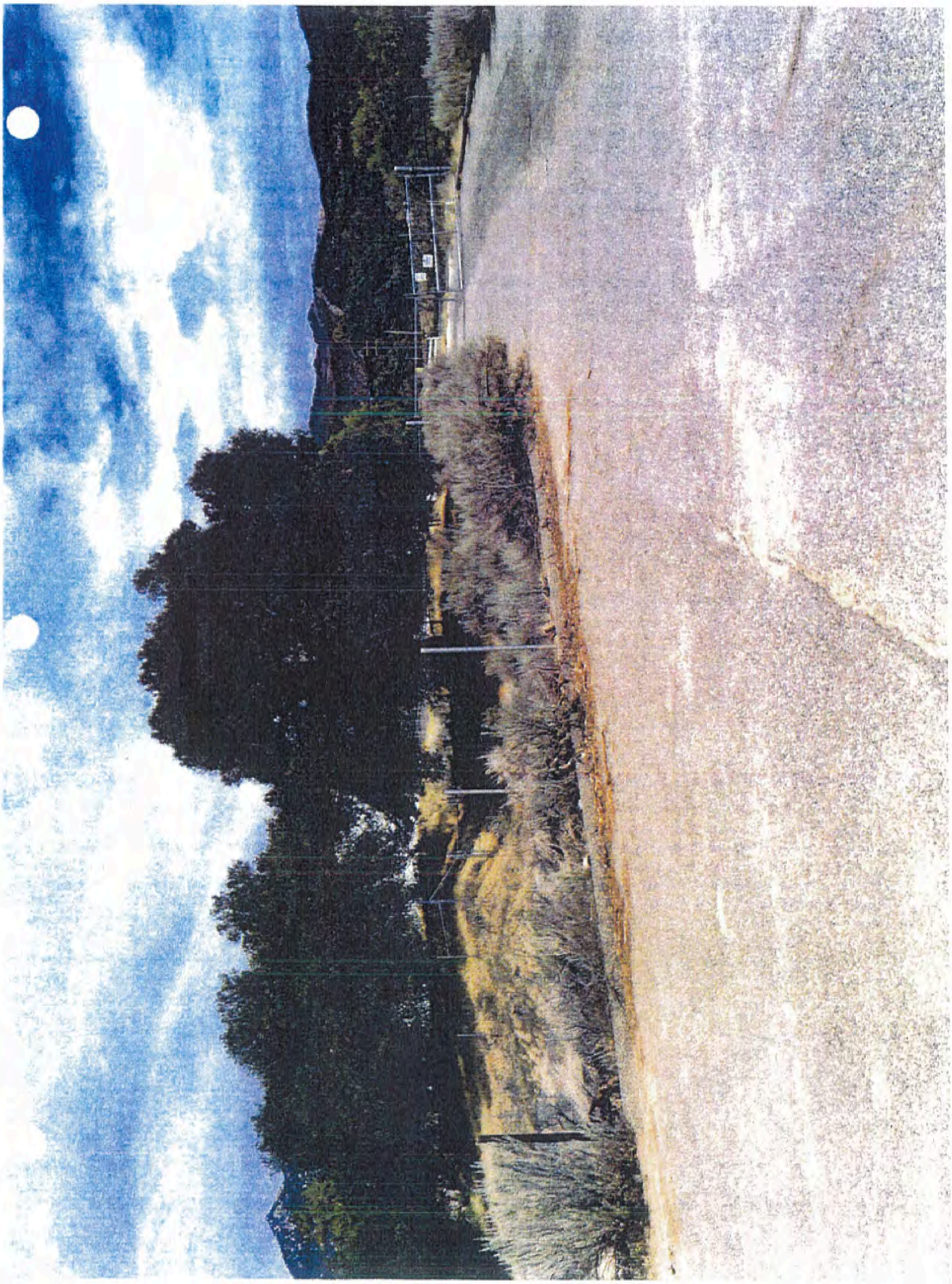
mailgw01.procopio.com made the following annotations

Mon Sep 23 2013 18:16:05

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Federal tax regulations require us to notify you that any tax advice in this electronic message was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties.

ATTACHMENT M



ATTACHMENT 3

Warner Cultural Trust Property

Encroachments, trespass, and avenues of trespass from the adjoining Tule Properties.

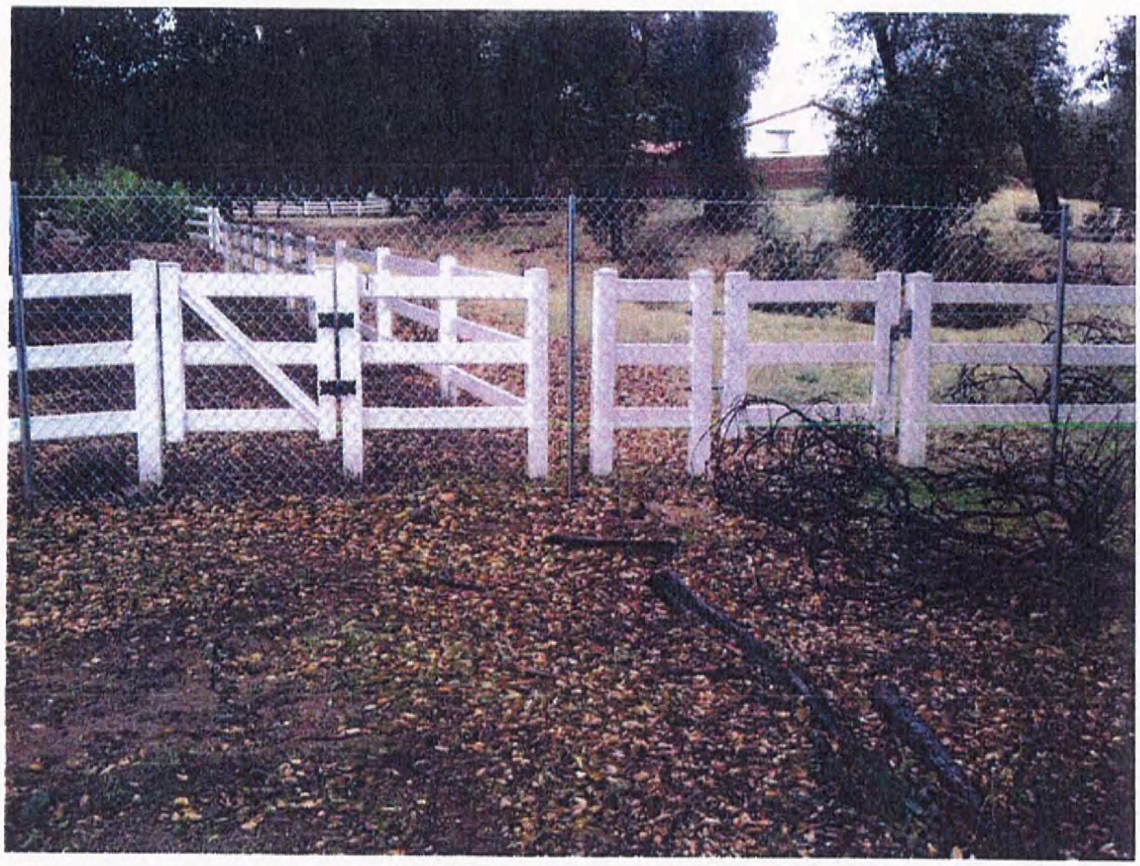


Photo 1: Two gates from backyards of the Tule Properties at 32754 Camino Moro and adjacent property. Gates are used for foot traffic. These properties are not authorized to have access to the Cultural Trust property.

Photo 2: Two gates from the backyards of two Tule Properties at 32754 Camino Moro and the adjacent property. Gates are used for foot traffic. These properties are not authorized to access the Cultural Trust property.

Photo 3: No trespassing sign on the backyard of a Tule Property, facing the Trust property, acknowledging that the amount of unauthorized activity on the Trust property is sufficient to create a trespassing concern arising from the Trust property for neighboring properties. These properties are not authorized to access the Cultural Trust property.

Photo 4: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 5: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 6: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 7: Unauthorized road into the Cultural Trust property that is graded and appears regularly travelled. Road arises from Tule Properties. These properties are not authorized to access the Cultural Trust property.

Photo 8: Unauthorized road into the Cultural Trust property that is grade and appears regularly travelled. Road arises from Tule Properties. These properties are not authorized to access the Cultural Trust property.

Photo 9: Unauthorized road into the Cultural Trust property that appears regularly travelled. Road arises from Tule Properties. These properties are not authorized to access the Cultural Trust property.

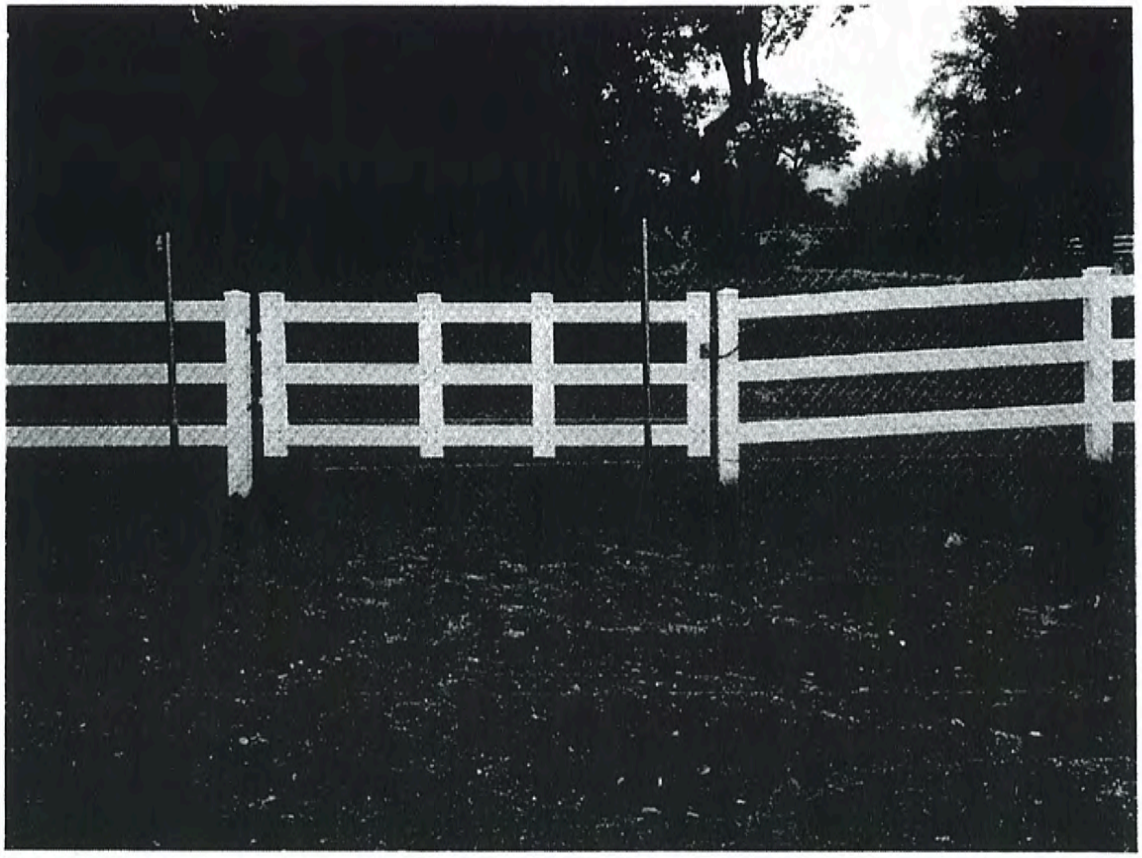


Photo 10: Unauthorized vehicle gate into the Cultural Trust property from a Tule property owner. Regular ATV activity seen nearby. These properties are not authorized to access the Cultural Trust property.

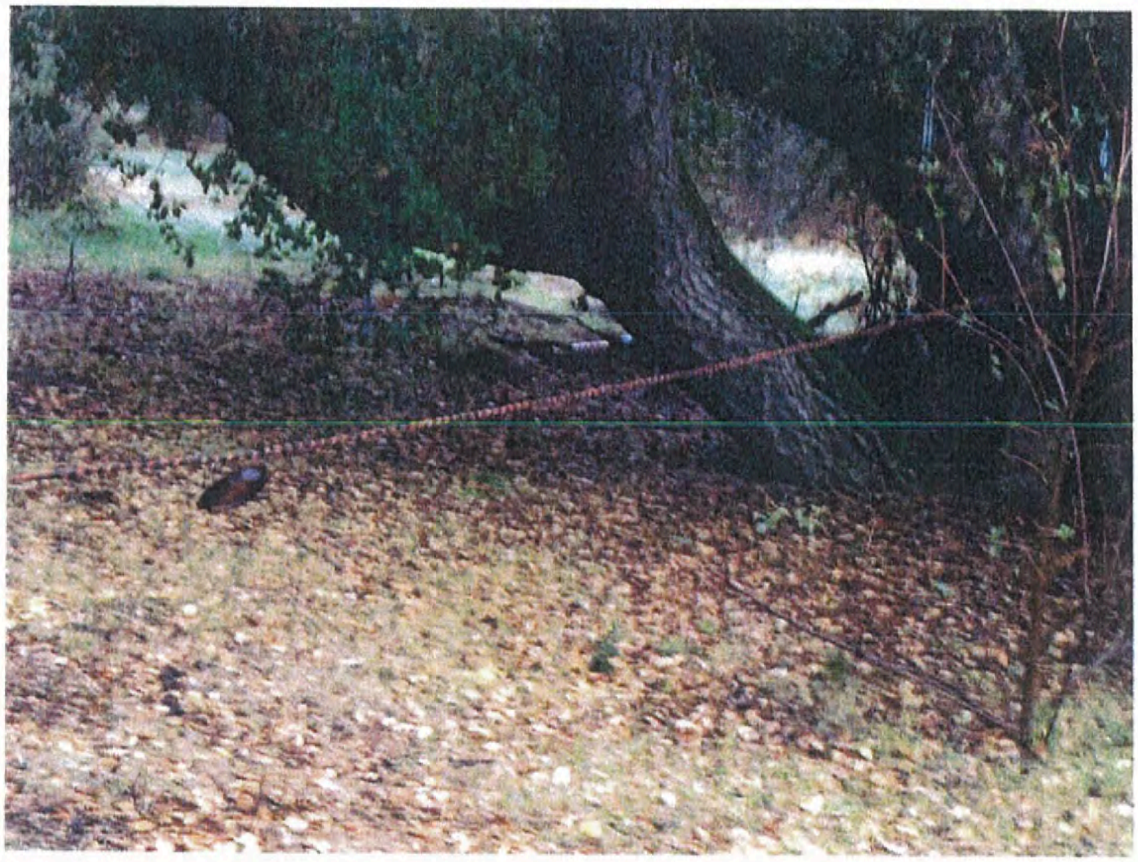


Photo 11: Unauthorized rope fence placed on Trust Property just outside of an unfenced Tule property that stretches across a well -traveled route onto the Trust property. This warning fence, acknowledges that the amount of activity on the Trust property is sufficient to create a trespassing concern for neighboring properties. These properties are not authorized to access the Cultural Trust property.

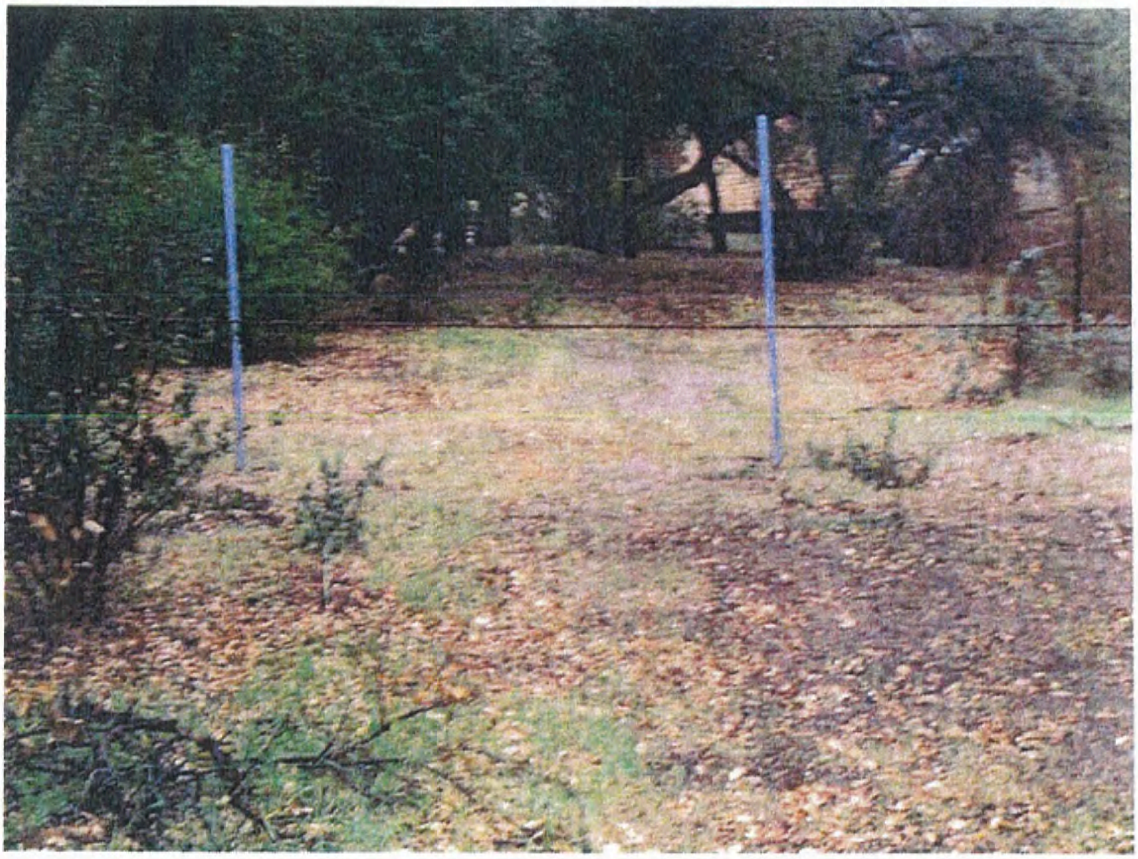


Photo 12: Unauthorized rope fence placed on Trust Property just outside of an unfenced Tule property that stretches across a well -traveled route onto the Trust property. This warning fence, acknowledges that the amount of activity on the Trust property is sufficient to create a trespassing concern for neighboring properties. These properties are not authorized to access the Cultural Trust property.

Photo 13: Unauthorized road into the Cultural Trust property that appears regularly travelled. Road arises from Tule Properties. Spur trails come from this road leading further into Trust property. These properties are not authorized to access the Cultural Trust property.

Photo 14: Unauthorized waterline and spigot on the Cultural Trust property near Tule properties. Source and use unknown. These properties are not authorized to access the Cultural Trust property.

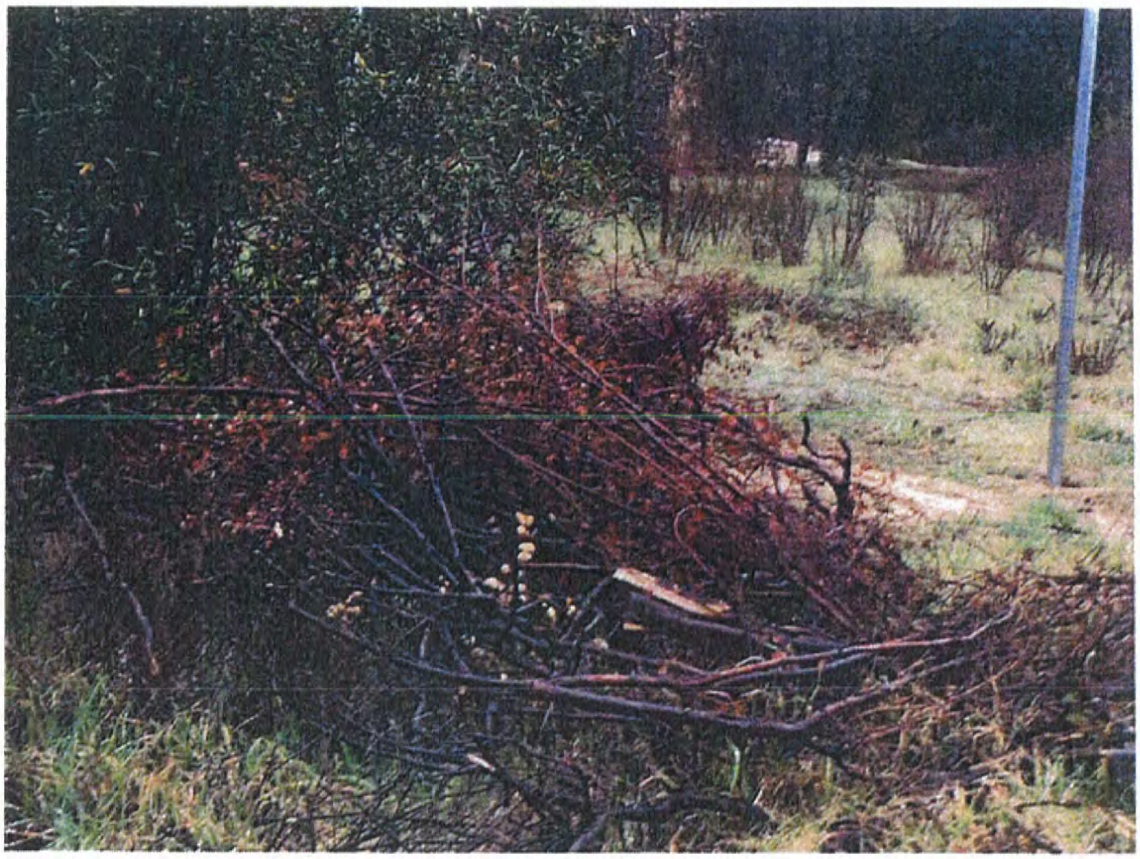


Photo 15: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 16: Drain constructed with debris from backyards of Tule Properties and draining from Tule property onto Trust property. These properties are not authorized to access the Cultural Trust property.

Photo 17: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 18: Backyards of Tule Properties that show regular access on Trust property including vegetation cleared on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 19: Backyard of Tule Properties that show regular access on Trust property including vegetation cleared and dumped on Trust property. Cuttings were NOT cut by Trustee and most of these cuttings were clearly not from Trust property vegetation--They appeared to have been trucked in and dumped behind this home, which is near the end of the unauthorized road. This same property has cleared a large area behind the home (on Trust property) and had a shed and wall encroaching on Trust property (removed at request of Trustee). These properties are not authorized to access the Cultural Trust property.

Photo 20: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 21: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 22 Debris from backyards of Tule Properties deposited on Trust property. These properties are not authorized to access the Cultural Trust property.

Photo 23: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 24: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 25: Clearing and deposits of debris from backyards of Tule Properties on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

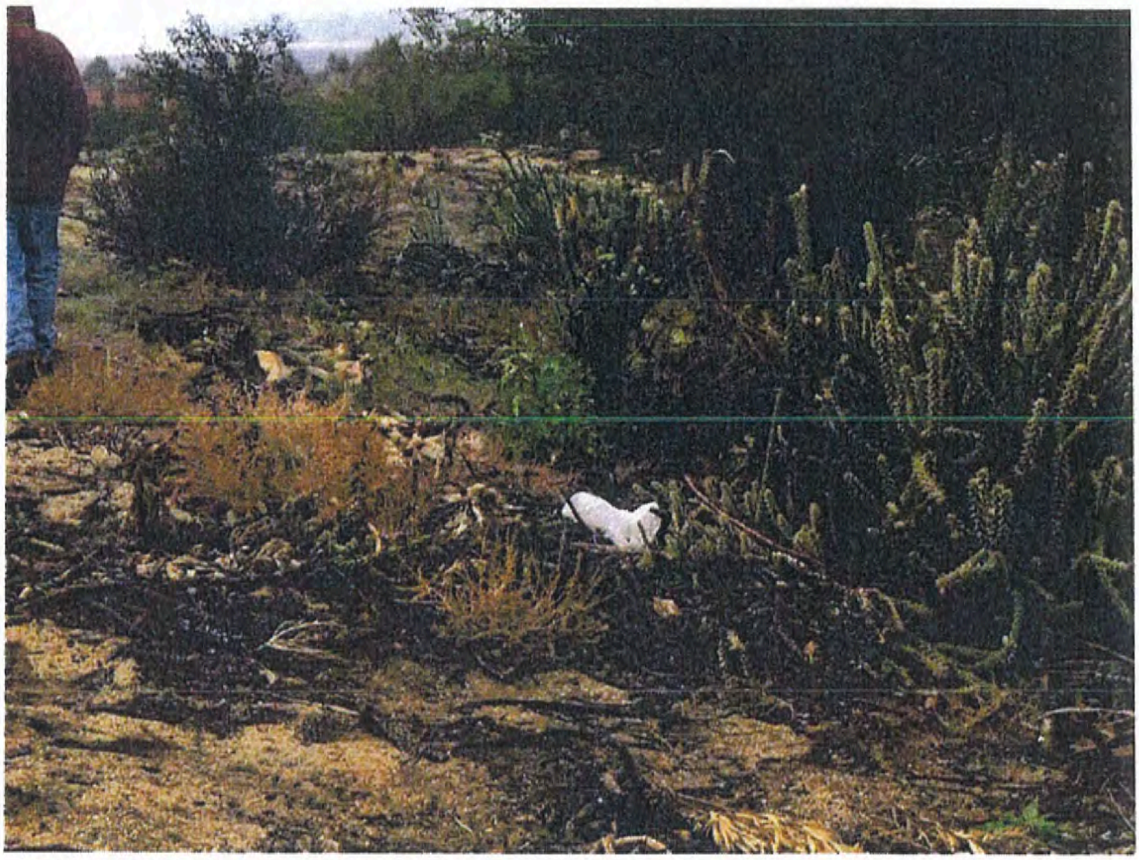


Photo 26: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 27: Debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 28: Debris from backyards of Tule Properties deposited on Trust property and significant clearing by unknown entities leading to erosion on Trust property. Clearing and cuttings were NOT conducted by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 29: Significant cleared area and debris from backyards of Tule Properties deposited on Trust property. Cuttings were NOT cut by Trustee. These properties are not authorized to access the Cultural Trust property.

Photo 30: Debris from backyards of Tule Properties deposited on Trust property. These properties are not authorized to access the Cultural Trust property.

Photo 31: No trespassing sign on Trust property, knocked down and thrown aside. Sign was placed to discourage trespassers (and obviously was ignored and removed).

Warner Cultural Trust Site Plan Waiver
Appeal of Administrative Decision

Exhibit 2

DPS Denial Letter
(Dated May 23, 2014)

County of San Diego

MARK WARDLAW
DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
www.sdcounty.ca.gov/pds

DARREN GRETLER
ASSISTANT DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

May 23, 2014

Procopio Cory Hargreaves & Savitch, LLP
Attn: Mr. Ted Griswold
525 B Street, Suite 2200
San Diego, CA 92101

RECEIVED
JUN 03 2014
Planning and
Development Services

RE: Warner Cultural Trust Site Plan Waiver

Dear Mr. Griswold:

This letter is in response to your request for a Site Plan Waiver filed on January 9, 2014 for the installation of two miles of chain link fencing on the Warner Cultural Trust (WCT) property in the Warner Springs community, within the jurisdiction of the County of San Diego. The request for a waiver has been considered and evaluated, and a decision has been rendered on your request. The request for a Site Plan Waiver is denied. Below is a description of the project chronology related to the chain link fence, as well as concerns that have been identified, meetings and field inspections that have taken place, and an analysis of the findings that are required in order to grant a Site Plan Waiver.

The Warner Cultural Trust property is zoned with the "H" Special Area Designator (Historic/Archaeological Landmark). The Special Area Designator requires the approval of a Site Plan for the installation of any structure. (Zoning Ordinance (ZO) Section 5700 et seq.) On August 21, 2013, a Stop Work Order and Administrative Warning were issued as a result of the installation of a chain link fence without benefit of permit and for the water course violation. Measures offered to correct the violation were to stop the installation of the fence and apply for a Site Plan or Site Plan Waiver, or remove the fence. On January 9, 2014, WCT applied for a Site Plan Waiver. The Site Plan Waiver was heard at the Historic Site Board on January 27, 2014 and a recommendation to deny the request was made by the Historic Site Board. This recommendation was forwarded to the Director of Planning & Development Services (PDS) for consideration.

The Director and staff met with you and the Trustee of the WCT on February 19, 2014. At that meeting, the Trustee expressed concern for the protection and preservation of the cultural resources on the site. At that meeting, the Trustee explained that unauthorized activities had occurred onsite including trespassing, dumping of manure, pot hunting/vandalism, and encroachments for equine use. The Trustee concluded that these activities have negatively impacted the integrity of the onsite cultural resources. This concern was the primary reason given for the installation of the fence.

The Director and staff also met with the surrounding homeowners, Warner Springs Resort, and Save Our Heritage Organization (SOHO) on March 26, 2014. At that meeting, the representatives identified concerns about the placement of the fencing related to biological resources, cultural resources, fire hazards, watercourse disturbance, visual quality and community character, trespassing onto adjacent properties by the staff installing the fence, questions concerning using security that patrols Warner Springs Resort, and the lack of access to Stage Road, trails, and other property features. In addition, those in attendance identified that one of the primary uses of the Trust property, as outlined in the Trust Agreement, was the scenic enjoyment of the open space area for the general public.

Several site visits were made to the Trust property by the County. PDS conducted field visits on March 7, 2014 (Donna Beddow, Shasta Gaughen - WCT) and May 9, 2014 (Mark Wardlaw, Donna Beddow, Shasta Gaughen - WCT, Ted Griswold - WCT, David Bantz – Los Tules). These site visits were conducted to assess conditions and to understand the concerns and issues provided in previous meetings with the Trustee and with the general public. The Department of Public Works (Lawrence Cuatico) conducted two site investigations on November 4, 2013 and December 19, 2013. The purpose of these site visits was to investigate the original complaint of a water course violation, and follow up with the Trustee to determine the appropriate steps to remediate issues identified in the complaint. The Department of Parks and Recreation (Maryanne Vancio) met at the subject property with California State Parks (Alexandra Stehl) on April 24, 2014 to confirm the location of the California Riding and Hiking Trail. It was determined that the trail easement granted to California State Parks crosses the Trust property and is currently blocked by the chain link fence.

In order to approve a Site Plan Waiver, specific findings under the County's Zoning Ordinance (§5710a) must be made. An exemption from the requirement to process a Site Plan permit pursuant to section 5709 may be granted by the Director under the following circumstances:

> *If it is determined that the nature of the proposed project is such that subjecting it to the Site Plan review process would not materially contribute to district or landmark preservation objectives. In making a decision on such a Site Plan permit exemption due consideration must be given to the recommendation of the applicable Historic District Review Board or the San Diego County Historic Site Board, or both, as specified in Section 5745.*

Based on the information obtained from the Historic Site Board recommendation, meetings with interested parties, site inspections and review of the appropriate regulations (ZO §5700 et seq.,), the Director has determined that a Site Plan permit waiver or exemption cannot be granted for the chain link fence for the following reasons. The Director finds that a Site Plan review would materially contribute to the preservation objectives for the Warner Cultural Trust property by placing conditions that would provide protection for the on-site resources. The Site Plan is the process in which to determine the appropriate location for the fence, conduct environmental review, condition the project to ensure the protection and preservation of the on-site resources, and provide for public input. The Site Plan review would evaluate the placement of the fence in relation to the historic chapel, cultural sites, and trails. This review would also analyze visual resources and how the fence fits with the surrounding community.

A Site Plan is required to authorize the existing fence, therefore PDS requests an application for a Site Plan be filed within 45 days from the date of this letter. The application materials for a Site Plan can be found on the County's website at http://www.sdcounty.ca.gov/pds/zoning/formfields/ESUB_STP_Standard.pdf. If a Site Plan application is not filed, PDS will require the fence be removed within 60 days from the date of this letter or enforcement action will be taken.

The decision to deny the Site Plan Waiver may be appealed to the Planning Commission in accordance with Section 7200 et.seq. of the Zoning Ordinance. The appeal application can be found on the County's website at http://www.sdcounty.ca.gov/pds/zoning/formfields/ESUB_APPEAL_Admin_Decision.pdf. The appeal application must be filed with the Secretary of the Planning Commission within ten (10) calendar days of the date of this decision and must be accompanied by *a deposit (not a fee)* as prescribed in the Department's fee schedule, PDS Form #369, pursuant to Section 362 of the San Diego County Administrative Code. If the tenth day falls on a weekend or County holiday, an appeal will be accepted until 4:00 p.m. on the following day the County is open for business. Filing of an appeal will stay the decision of the Director until a hearing on your application is held and action is taken by the Planning Commission.

Please contact Donna Beddow at (858) 694-3656 or at donna.beddow@sdcounty.ca.gov should you have any questions.

Sincerely,

for: MARK WARDLAW, Director

MW:SR:db

cc: Robert Smith, Chairperson, Pala Band of Mission Indians, 35008 Pala Temecula Road, PMB 50, Pala, CA 92059
Shasta Gaughen, Ph.D., Pala Band of Mission Indians, 35008 Pala Temecula Road, PMB 445, Pala, CA 92059
David Bantz, P.O. Box 4, Warner Springs, CA 92086
Don Burgess, P.O. Box 38, Warner Springs, CA 92086
Bruce & Alana Coons (SOHO), 2475 San Diego Avenue, San Diego, CA 92110
Gerald & Kathy Fishkin, P.O. Box 14, Warner Springs, CA 92086
Deborah Hauser, 2156 Via Tiempo, Cardiff, CA 92007
Oliver Hefler, P.O. Box 4, Warner Springs, CA 92086
George Kettenurg, 32659 Camino Orta, Warner Springs, CA 92086
Charles & Janie Meyer, P.O. Box 155, Warner Springs, CA 92086
Warner Springs Historical Society, P.O. Box 188, Warner Springs, CA 92086
Lawrence Peabody, 26420 Paradise Valley Road, Warner Springs, CA 92086

email cc: Rick Lantis, Chief, Department of Public Works, PDCI
Pam Elias, Chief, Planning & Development Services, Code Enforcement
Steve Murray, Coordinator, Planning & Development Services, Code Enforcement
Glen Gundert, Senior Civil Engineer, Department of Public Works, PDCI

Theresa Nieto, Pala Band of Mission Indians
Howard Maxcy Jr., Pala Band of Mission Indians
Rick Silvera, Pala Band of Mission Indians
Marcus Orozco, Pala Band of Mission Indians
Joseph Blonski
Corey Buhrer
Gene Doxey
Jon Goldenbaum
Kathryn Fletcher
David Hemelstrand
Diane Hemelstrand
David Langley
Jim & Susan Laslavic
Steve Monfort
Brian Mooney, Warner Springs Resort
Los Tules Property Owners Association

Attachment D
Environmental Documentation

NOTICE OF EXEMPTION

TO: Recorder/County Clerk
Attn: James Scott
1600 Pacific Highway, M.S. A33
San Diego, CA 92101

FROM: County of San Diego
Planning & Development Services, M.S. O650
Attn: Project Planning Division Section Secretary

SUBJECT: FILING OF NOTICE OF EXEMPTION IN COMPLIANCE WITH PUBLIC RESOURCES CODE SECTION 21108 OR 21152

Project Name: Warner Springs Cultural Trust, C/O Pala Band of Mission Indians, Trustee, PMB 50, 35008 Pala Temecula Road, Pala, CA 92059

Project Location: State Route 79, north of Warner Springs Resort, Warner Springs, CA; (APN137-091-02, and 137-100-01)

Project Applicant: Pala Band of Mission Indians, Trustee Address: PMB 50, 35008 Pala Temecula Road, Pala, CA 92059 Telephone Number: (760) 891-3515

Project Description:

Agency Approving Project: County of San Diego

County Contact Person: Donna Beddow Telephone Number: (858) 694-3656

Date Form Completed: September 23, 2014

This is to advise that the County of San Diego, Planning Commission has approved the above described project on October 10, 2014/Item #1 and found the project to be exempt from the CEQA under the following criteria:

1. Exempt status and applicable section of the CEQA ("C") and/or State CEQA Guidelines ("G"): (check only one)
   - ☐ Declared Emergency [C 21080(b)(3); G 15269(a)]
   - ☐ Emergency Project [C 21080(b)(4); G 15269(b)(c)]
   - ☐ Statutory Exemption. C Section:
   - ☐ Categorical Exemption. G Section:
   - ☐ G 15061(b)(3) - It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and the activity is not subject to the CEQA.
   - ☐ G 15182 – Residential Projects Pursuant to a Specific Plan
   - ☐ G 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning
   - ☒ Activity is exempt from the CEQA because it is not a project as defined in Section 15378.
2. Mitigation measures ☐ were ☐ were not made a condition of the approval of the project.
3. A Mitigation reporting or monitoring plan ☐ was ☐ was not adopted for this project.

Statement of reasons why project is exempt: Activity is exempt from the CEQA because it is not a project as defined in Section 15378.

The following is to be filled in only upon formal project approval by the appropriate County of San Diego decision-making body.

Signature: _____ Telephone: (858) 694-3656

Name (Print): Donna Beddow Title: Planning Manager

This Notice of Exemption has been signed and filed by the County of San Diego.

This notice must be filed with the Recorder/County Clerk as soon as possible after project approval by the decision-making body. The Recorder/County Clerk must post this notice within 24 hours of receipt and for a period of not less than 30 days. At the termination of the posting period, the Recorder/County Clerk must return this notice to the Department address listed above along with evidence of the posting period. The originating Department must then retain the returned notice for a period of not less than twelve months. Reference: CEQA Guidelines Section 15062.

Attachment E
Public Documentation

HISTORIC SITE BOARD ACTIONS

Hearing Date: January 27, 2014 **Compiled by:** Donna Beddow

Agenda Item.	Case Name/ Number	Public Testimony		Historic Site Board Action			Planning Commission Motion(s)	Historic Site Board Votes							Project Mgr
		Support	Oppose	App	Deny	Con't		JE Y N A R	HO Y N A R	KW Y N A R	SM Y N A R	JR Y N A R	PJ Y N A R	AS Y N A R	
A	Roll Call	--	--	--	--	--		--	--	--	A	--	--	--	--
B	Conflict of Interest	--	--	--	--	--		--	--	--	--	--	--	--	--
C	Reports	--	--	--	--	--	Appointments – D3 – Kiley Wallace	--	--	--	--	--	--	--	--
D	Announcements	--	--	--	--	--		--	--	--	--	--	--	--	--
E	Consent Calendar	--	--	--	--	--		--	--	--	--	--	--	--	--
2	Public Comments	--	--	--	--	--		--	--	--	--	--	--	--	--
3	2014 Election of Officers	--	--	--	--	--	Item 3 (Action): S.Moomjian, Chairman; Motion to Approve: P.Johnson, 2nd J.Esposito, 6-0 -1 J.Royle, Vice-Chairman; Motion to Approve: P.Johnson, 2nd H.Ofield, 6-0-1	Y	Y	Y	A	Y	Y	Y	DB
4	Merriam House; PDS2013-3911-10-005 (MAA)						Item 4 (Action); Designate the Merriam House (incl Pepper Trees) as historic pursuant to Vb(2) and Vb(3) of the Local Register. Motion to Approve: J.Royle, 2nd H.Ofield, 5-0-1-1	Y	Y	Y	A	Y	R	Y	DB
5	Warner Cultural Trust; Site Plan Waiver						Item 5 (Action); Request for Site Plan Waiver for fence installed without permit. Motion to Deny: P.Johnson, 2nd J.Esposito, 4-1-1-1	Y	Y	Y	A	N	Y	R	DB
6	CLG Annual Report						Item 6 (Action); Consider the 2012-2013 CLG Annual Report for submittal to OHP. Motion to Approve: H.Ofield, 2nd J.Royle, 6-0-1	Y	Y	Y	A	Y	Y	Y	DB

Agenda Item.	Case Name/ Number	Public Testimony		Historic Site Board Action			Planning Commission Motion(s)	Historic Site Board Votes							Project Mgr
		Support	Oppose	App	Deny	Con't		JE Y N A R	HO Y N A R	KW Y N A R	SM Y N A R	JR Y N A R	PJ Y N A R	AS Y N A R	
7	Mt. Helix Historic Rock Wall; PDS2013-STP-13-021						Item 7 (Discussion); Update status of Site Plan and components that apply.	--	--	--	--	--	--	--	DB
8	2014 Historic Site Board Goals						Item 8 (Discussion); Update goals for 2014 Continued to 4/21/2014	--	--	--	--	--	--	--	DB
9	Future Agenda Items							--	--	--	--	--	--	--	--
10	Scheduled Mtgs	--	--	--	--	--	Next Meeting: Monday, April 21, 2014	--	--	--	--	--	--	--	--

PJ = Paul Johnson; SM = Scott Moomjian; HO = Helen Ofield; JR = Jim Royle; 2 Vacancies
Y = Yes Vote; N = No Vote; A = Absent; AB = Abstain; R = Recused; VAC = Vacant

Beddow, Donna

From: Vancio, Maryanne
Sent: Tuesday, May 06, 2014 5:08 PM
To: Beddow, Donna
Subject: FW: Warner Springs - CRHT

Donna:

Please see email below from Alex. Let me know if this is sufficient or if you need something more formal from her.

Thanks.

Happy and safe trails,

Maryanne Vancio, County Trails Program Coordinator
County of San Diego Department of Parks and Recreation
5500 Overland Avenue, Suite 410, MS O-29
San Diego, CA 92123
Office: 858-966-1372; Fax: 858-495-5841
Email: maryanne.vancio@sdcounty.ca.gov
Website: www.sdparks.org

From: Stehl, Alexandra@Parks [mailto:Alexandra.Stehl@parks.ca.gov]
Sent: Tuesday, May 06, 2014 5:06 PM
To: Vancio, Maryanne
Subject: RE: Warner Springs - CRHT

Hi Maryanne,

I confirm that this agreement does identify the easement for the California Riding and Hiking Trail through the Trust property APN 137-09-102. This easement is currently being illegally blocked with a chain link fence. This illegal encroachment needs to be removed to restore access. Please let me know if you need a formal letter from my office or if this email will suffice.

I do appreciate your assistance
Alexandra Stehl

Alexandra Stehl
California State Parks
Facilities Management Division
Statewide Trails Manager
704 O Street
Sacramento, CA 95814
916-324-0322

Alexandra.Stehl@parks.ca.gov

Please note that my contact information has changed...all of it!

From: Vancio, Maryanne [mailto:Maryanne.Vancio@sdcounty.ca.gov]
Sent: Monday, May 05, 2014 11:26 AM
To: Stehl, Alexandra@Parks
Subject: FW: Warner Springs - CRHT

Alex:

Are you able to have someone confirm this agreement depicts the original alignment of the CRHT we saw on our tour. Our Planning and Development Services needs to know if the alignment is on the Trust property or with SR-79 ROW. I cannot tell by the document's description.

I think what we will need is a letter/email from you stating the CRHT is on the Warner Springs Trust APN 137-09-102 and the fence blocking the alignment needs to be removed.

Let me know how you want to proceed. Thanks.

Maryanne

From: Beddow, Donna
Sent: Monday, May 05, 2014 8:55 AM
To: Vancio, Maryanne
Subject: RE: Warner Springs

Did the State identify the location of the trail? The issue I am facing is that the opponents state that it is on the trust property and the applicant states that is suppose to be located along SR-79.

Thanks,

Donna Beddow

County of San Diego
Planning and Development Services
(858) 694-3656

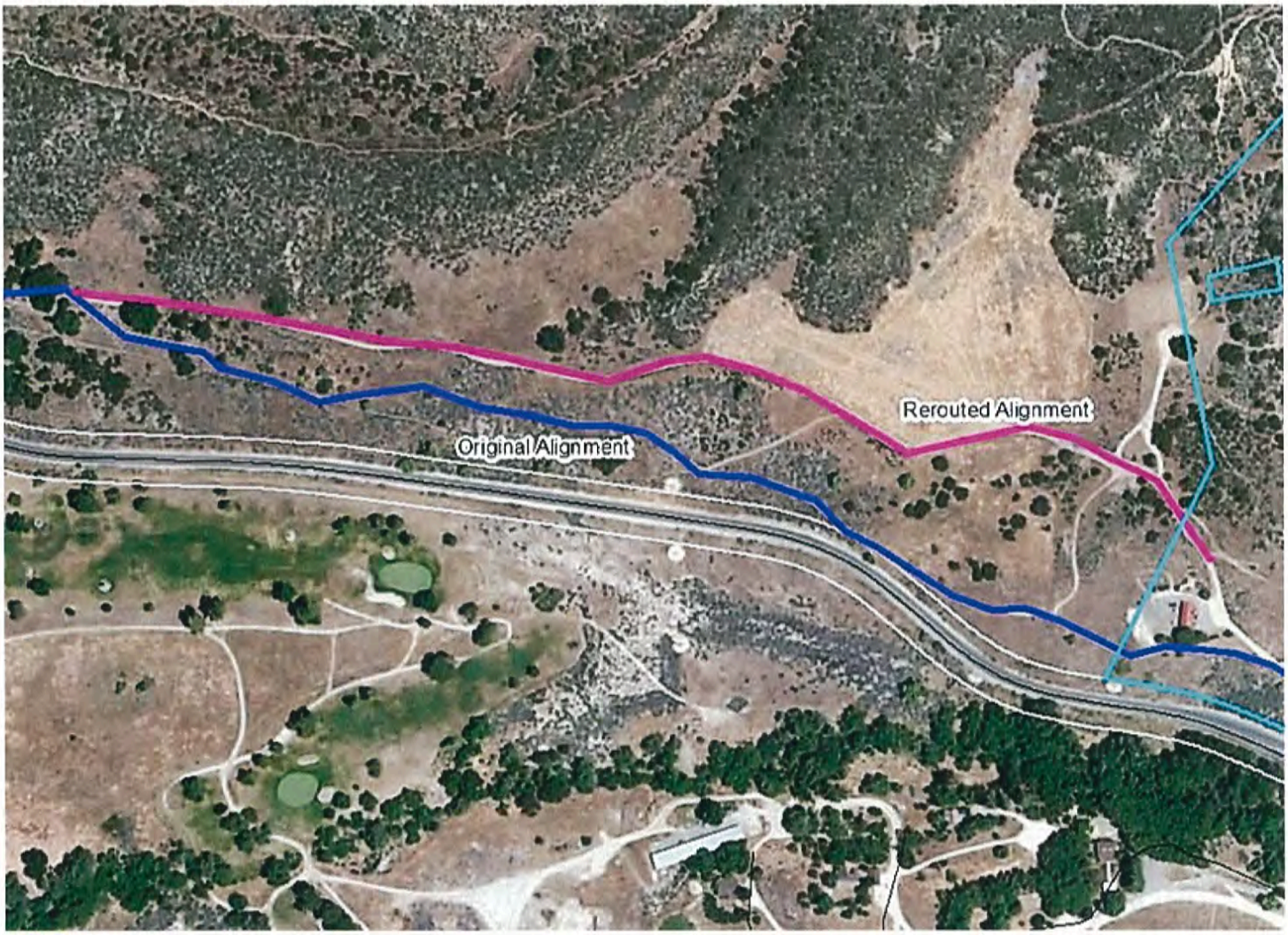
5510 Overland Ave, 3rd Floor, Room 310,
San Diego, CA 92123.

Beddow, Donna

From: Vancio, Maryanne
Sent: Monday, May 05, 2014 12:04 PM
To: Beddow, Donna
Subject: RE: Warner Springs
Attachments: OriginalAlignment.jpg; ReroutedAlignment.jpg; Hole-in-Fence.jpg; 4866_001.pdf

Donna:

I asked the state to confirm the location we were shown on our "tour" (see below). Both alignments are blocked although someone cut a hole in the chainlink fence on the rerouted alignment. The reroute from what I was told was a request by Warner Ranch a number of years back. Alex said she will try to get something out to us in the next couple of days. You may have noticed the agreement was dated 1949—it is difficult for me to determine its exact alignment by the document.



Happy and safe trails,

Maryanne Vancio, County Trails Program Coordinator

County of San Diego Department of Parks and Recreation
5500 Overland Avenue, Suite 410, MS O-29
San Diego, CA 92123
Office: 858-966-1372; Fax: 858-495-5841
Email: maryanne.vancio@sdcounty.ca.gov
Website: www.sdparks.org

From: Beddow, Donna
Sent: Monday, May 05, 2014 8:55 AM
To: Vancio, Maryanne
Subject: RE: Warner Springs

Did the State identify the location of the trail? The issue I am facing is that the opponents state that it is on the trust property and the applicant states that is suppose to be located along SR-79.

Thanks,

Donna Beddow

County of San Diego
Planning and Development Services
(858) 694-3656

5510 Overland Ave, 3rd Floor, Room 310,
San Diego, CA 92123.

From: Vancio, Maryanne
Sent: Monday, May 05, 2014 8:54 AM
To: Beddow, Donna
Subject: FW: Warner Springs

Donna:

According to Fred Grand, President/Partner, the trail is on the Trust property and provided the attached document. The fence is blocking the historical route of the trail. He also mentioned the Warner Cultural Trust is a "public trust". Not sure what that means and if it is relevant. The fence surrounds the property and is quite unattractive. As soon as I can find my photos, I will send them.

Happy and safe trails,

Maryanne Vancio, County Trails Program Coordinator
County of San Diego Department of Parks and Recreation
5500 Overland Avenue, Suite 410, MS O-29
San Diego, CA 92123
Office: 858-966-1372; Fax: 858-495-5841
Email: maryanne.vancio@sdcounty.ca.gov

Website: www.sdparks.org

From: Laurie Pidgeon [mailto:LPidgeon@phgcorp.com]
Sent: Friday, April 25, 2014 9:53 AM
To: Alexandra.Stehl@parks.ca.gov; Vancio, Maryanne
Subject: Warner Springs

Good Morning Ms. Stehl and Ms. Vancio:

At the request of Fred Grand please see attached Parcel Map and the California Riding and Hiking trail that goes through the Warner Springs Trust.

Best regards,
Laurie Pidgeon
Pacific Hospitality Group, Inc.
DESIGN DEVELOPMENT MANAGEMENT
Pacific Hospitality Group, Inc.
11250 El Camino Real, Ste. 100
San Diego, CA 92130
(858) 481-2476 x 314
(858) 481-2998 Fax

From: copier@phgcorp.com [mailto:copier@phgcorp.com]
Sent: Friday, April 25, 2014 9:55 AM
To: Laurie Pidgeon
Subject: Attached Image

Attachment F
Ownership Disclosure

County of San Diego, Planning & Development Services

APPLICANT'S DISCLOSURE OF OWNERSHIP INTERESTS ON APPLICATION FOR ZONING PERMITS/ APPROVALS

ZONING DIVISION

Record ID(s) _____

Assessor's Parcel Number(s) 137-091-02 and 137-100-01

Ordinance No. 4544 (N.S.) requires that the following information must be disclosed at the time of filing of this discretionary permit. The application shall be signed by all owners of the property subject to the application or the authorized agent(s) of the owner(s), pursuant to Section 7017 of the Zoning Ordinance. **NOTE:** Attach additional pages if necessary.

A. List the names of all persons having any *ownership interest* in the property involved.

Warner Springs Trust, dated 11/17/1983

B. If any person identified pursuant to (A) above is a corporation or partnership, list the names of all individuals owning more than 10% of the shares in the corporation or owning any partnership interest in the partnership.

N/A

C. If any person identified pursuant to (A) above is a non-profit organization or a trust, list the names of any persons serving as director of the non-profit organization or as trustee or beneficiary or trustor of the trust.

The Pala Band of Mission Indians, Trustee

"general public," beneficiaries

"Indians," beneficiaries

NOTE: **Section 1127 of The Zoning Ordinance defines *Person* as:** "Any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver syndicate, this and any other county, city and county, city, municipality, district or other political subdivision, or any other group or combination acting as a unit."

Signature of Applicant

Robert Smith

Print Name

9-2-2014

Date

--- OFFICIAL USE ONLY ---

Attachment G
Proponent Communications

Procopio®

www.procopio.com

Procopio, Cory, Hargreaves and Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
T. 619.238.1900
F. 619.235.0398

Kevin M. Davis
Direct Dial: (619) 515-3293
E-Mail: kevin.davis@procopio.com

June 13, 2014

VIA U.S. MAIL & E-MAIL (DONNA.BEDDOW@SDCOUNTY.CA.GOV)

Ms. Donna Beddow
County of San Diego Department of Planning and Development Services
5510 Overland Avenue, Suite 310
San Diego, CA 92123

VIA U.S. MAIL & E-MAIL (ALEXANDRA.STEHL@PARKS.CA.GOV)

Ms. Alexandra Stehl
California Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296

Re: *California Riding and Hiking Trail*

Dear Ms. Beddow and Ms. Stehl:

Thank you for your assistance in responding to our Public Records Act requests, submitted to the California Department of Parks and Recreation ("State Parks") and the County of San Diego Department of Planning and Development Services ("County PDS") on May 23, 2014.

Based on our initial review of the response documents, and per my discussion with Ms. Beddow on June 11, 2014, we understand that State Parks informed County PDS that the California Riding and Hiking Trail (the "Trail") is identified as Number 22 on the attached map (Attachment A). We also understand that it is the position of State Parks and County PDS that the Number 22 trail is legally described in the Agreement by Warner Resort Company, Inc. dated July 26, 1949 ("1949 Agreement") (Attachment B), and the recorded attachment to the 1949 Agreement dated May 2, 1950 ("1950 Agreement") (Attachment C).

The 1949 Agreement provides the following legal description for the Trail:

> Beginning at a point approximately 1750 feet west of the southeast corner of said sectional lot 25 of the Rancho San Jose del Valle, thence in a northwesterly direction to the junction of the Las Tunas road with Highway 79, thence along the easterly and northerly line of Highway 79 past the Warner Hot Springs Resort through the northeast Quarter of said sectional lot 26 and along the northerly line of said State Highway 79 through the South Half of said sectional lot 23 and said sectional lot 22 to the junction of the Cleveland Highway Forest Fire Truck Trail with Highway 79, thence in a northerly direction to a point where said Forest Fire Truck Trail leaves said sectional lot 22 in the northwesterly boundary of the above described property. It

Procopio

> is understood and agreed that the center line of the trail or roadway as constructed will be the final location of the center line of the said 20 foot permit and right of way.

The 1950 Agreement adds the following legal description to the Trail:

> Attached to and being part of an Agreement dated 26th day, July, 1949 by and between the Warner Resort Company, Inc., of San Diego County and the State of California, Division of Beaches and Parks, Riding and Hiking Trail. Permission is hereby given that the description of the Riding and Hiking Trail as it traverses section 25, Township 10 South, Range 3 East SRB&M Rancho San Jose Del Valle corrected to read as follows, towit: Beginning at a point in the Southerly line of section 26 Township 10 south, Range 3 East SRB&M said point being the continuation of said Riding and Hiking Trail as it leaves the northerly line of section 35 Rancho San Jose Del Valle; thence northerly to the southerly line of the Warner Dist. School; thence easterly along the southerly line of the school property and the old Vineyard upon an existing riding trail; thence along the easterly side of the Vineyard to the intersection of State Highway No. 79. The reminder of said trail being the same as described in said agreement.

We have separated and numbered each segment of the Trail from the 1949 Agreement and 1950 Agreement legal descriptions (Attachment D), and then placed the numbered segments onto a USGS topographical map for your review (Attachment E).

The legal descriptions clearly state that the Trail occurs "along the easterly and northerly line of Highway 79 past the Warner Hot Springs Resort" and then continues "along the northerly line of said State Highway 79" through Sections 22 and 23 of the map. It was quite typical for the Trail to follow alongside state routes and highways during the period these documents were executed and recorded shortly after the California Riding and Hiking Trail Act was enacted. These legal descriptions do not provide for the Trail to cross through the Warner Springs Cultural Trust property as the Number 22 trail shows. The trustee knows of no documentation that provides for the Trail in a location other than that provided in the 1949 Agreement and 1950 Agreement, which place the Trail along Highway 79. Please let us know if you have documents to support your position.

Thank you for your prompt attention to this matter, we look forward to your response.

Sincerely,

Kevin M. Davis

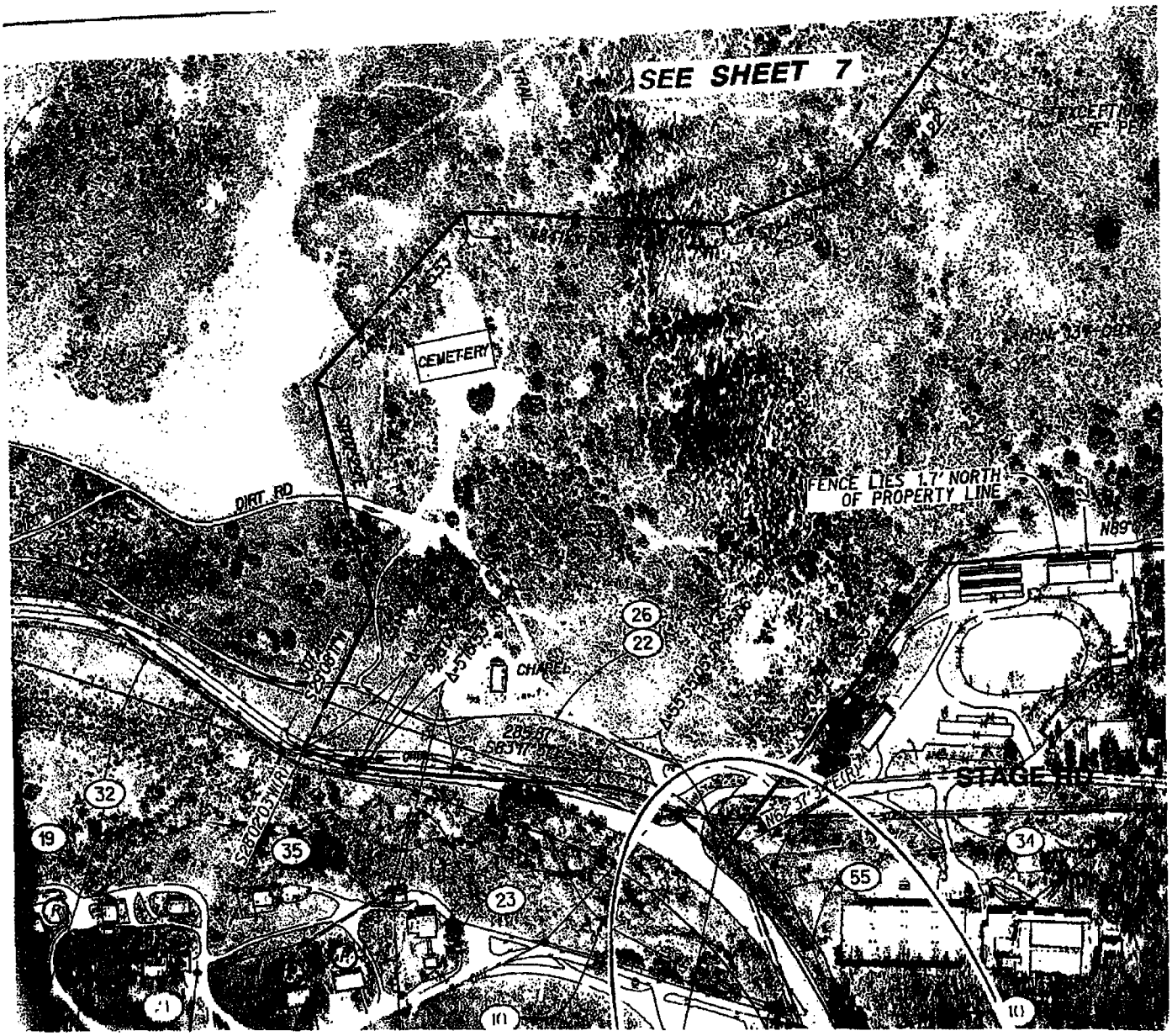
KMD/hs

cc: Chairman Robert Smith, Pala Band of Mission Indians
Shasta Gaughen, Environmental Director, Pala Band of Mission Indians
Maryanne Vancio, County of San Diego Department of Parks and Recreation

Procopio

Attachment A

Map Showing Trail Number 22



NUMBER 22 IS THE CALIFORNIA RIDING AND HIKING TRAIL

Procopio

Attachment B

1949 Agreement

BOOK 3605 PAGE 117

Project Name Riding & Hiking Trails

Project No. Tract 74 County San Diego

AGREEMENT

(Right of Way Form prepared by Attorney General's Office and approved by the Department of Finance)

THIS AGREEMENT, executed in quadruplicate the 26th day of July 19 49, by and between

WARNER RESORT COMPANY, INC.

of the County of San Diego, State of California, hereinafter called the Licensor, and the State of California, through its Chief of Division of Beaches and Parks, with the approval of the Director of the Department of Natural Resources and the Director of the Department of Finance, hereinafter called the Licensee;

Witnesseth: That in consideration of the mutual undertaking, promises, agreements and the mutual benefits to accrue to the parties hereto, and subject to the conditions herein contained, the parties hereto for themselves, their heirs, successors and assigns, mutually agree as follows:

The Licensor being the legal owner or the lawful authorized agent for the owner of the following described real property, situate, lying and being in the County of San Diego, State of California, and more particularly described as follows, to wit:

Sectional lots 23, 23, 25 and 26, township 10 south, range 3 east, Rancho San Jose del Valle, San Bernardino Base and Meridian

does hereby license to the Licensee an easement or right of way for the purpose of constructing, maintaining, and using a segment of the "California Riding and Hiking Trail", as authorized by the California Riding and Trails law, over and across the above described property. Said easement or right of way [illegible] feet in width and to traverse the above described premises according to the following general courses and distances, to wit: Beginning at a point approximately 1750 feet west of the southeast corner of said sectional lot 25 of the Rancho San Jose del Valle, thence in a northwesterly direction to the junction of the Los Tunas road with Highway 79, thence along the easterly and northerly line of Highway 79 past the Warner Hot Springs Resort through the northeast Quarter of said sectional lot 26 and along the northerly line of said State Highway 79 through the South Half of said sectional lot 23 and said sectional lot 22 to the junction of the Cleveland Highway Forest Fire Truck Trail with Highway 79, thence in a northerly direction to a point where said Forest Fire Truck Trail leaves said sectional lot 22 in the northwesterly boundary of the above described property. It is understood and agreed that the center line of the trail or roadway as constructed will be the final location of the center line of the said 20 foot permit and right of way.

The Licensee shall have the right of ingress upon, along and within said property, easement or right of way, necessary for all purposes connected with the proper construction, maintenance, use, operation, repair, reconstruction and patrolling thereof, for all of the purposes and uses herein specified, and the Licensee shall, at its own cost, keep said easement or right of way in good repair. This license shall be effective only so long as said easement or right of way shall be used for the purposes above enumerated by the Licensee, and so long as the same shall be maintained and kept in repair by the Licensee, and all rights conveyed hereunder shall revert to the owner of the land if and when the said use shall be abandoned or discontinued for a period of two or more years.

It is mutually understood and agreed that no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on any of the parties hereto.

BOOK 3605 PAGE 118

This agreement may be terminated or amended by mutual consent of the parties hereto and is made on condition

That the permittor has the right to amend or terminate this agreement at the expiration of five years from date hereof, by giving permittee ninety days (90) written notice.

In Witness Whereof, The parties hereto have executed this agreement the day and year first above written.

WARNER RESORT COMPANY

Vice President & General Manager

STATE OF CALIFORNIA

By Deputy Director-Comptroller

Director, Department of Natural Resource

Deputy Chief of Division of Beaches and Parks

(Agreement to be made in quadruplicate and forwarded to Division of Beaches and Parks, Sacramento. After it has been approved by State Officials, copies will be sent to Licensor)

DEPARTMENT OF FINANCE
APPROVED
APR 7 1950
JAMES S. DEAN, Director

BOOK 3605 PAGE 119

STATE OF CALIFORNIA }
COUNTY OF } ss.

On this _____ day of _____, 19____,
before me, _____, a Notary Public in and for said
County, duly commissioned, personally appeared _____
_____
_____
known to me to be the person____whose name_____
subscribed to the foregoing instrument, and acknowledged to me that
____he_____executed the same.

WITNESS my hand and official seal:

_____
Notary Public in and for the County
of_____

_____
State of California

BE IT RESOLVED that Earl P. Hanson and John A. Hennessey be, and they are each hereby, authorized to accept in writing deeds or grants conveying to the State of California, as Grantee, real estate or any interest therein, or easements thereon, the purchase of which is authorized by the State Park Commission, and thereby consent, for and on behalf of said Grantee, to the recordation thereof in accordance with the provisions of Section 1158 of the Civil Code of the State of California.

I HEREBY CERTIFY the foregoing is a full, true and correct copy of the resolution adopted by the California State Park Commission at its meeting held March 17, 1950.

J. H. Crumpton
Secretary

In accordance with the foregoing resolution, I, the undersigned, hereby accept the conveyance hereto attached from

WARNER RESORT COMPANY, INC.

to the State of California 30th day of March, 1950.

Earl P. Hanson

BOOK 3605 PAGE 120

ACKNOWLEDGEMENT - CORPORATION

State of California.....)
County of Los Angeles.....) ss.

On this 24th day of July in the year one thousand nine hundred and Forty-Nine, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared R. A. Gaethale and known to me to be the Vice President & General Manager respectively, of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal at my office in the Los Angeles County of California the day and year in this certificate first above written.

Marjorie Harmon
NOTARY PUBLIC in and for the County of
Los Angeles State of
California

(Seal)

My Commission expires My Commission Expires December 18, 1949.

- 4 -

Procopio

Attachment C

1950 Agreement

BOOK 3605 PAGE 121

Tract 74
Riding & Hiking Trail
San Diego County

Attached to and being part of an Agreement dated 26th day, July, 1949 by and between the Warner Resort Company, Inc., of San Diego County and the State of California, Division of Beaches and Parks, Riding and Hiking Trail. Permission is hereby given that the description of the Riding and Hiking Trail as it traverses section 25, Township 10 South, Range 3 East SRB&M Rancho San Jose Del Valle corrected to read as follows, towit: Beginning at a point in the Southerly line of section 26, Township 10 south, Range 3 East SRB&M said point being the continuation of said Riding and Hiking trail as it leaves the northerly line of section 35 Rancho San Jose Del Valle; thence northerly to the southerly line of the Warner Dist. School; thence easterly along the southerly line of the school property and the old Vineyard upon an existing riding trail; thence along the easterly side of the Vineyard to the intersection of State Highway No. 79. The remainder of said trail being the same as described in said agreement.

DOCUMENT NO. 4958
RECORDED AT REQUEST OF
State of Calif
Dept of Finance
MAY 2 1950
at 10 minutes Past 3
BOOK 3605 PAGE 117
OFFICIAL RECORDS
San Diego County, California
ROGER H. HOWE, County Recorder

no + 18

INDEXED

WARNER RESORT COMPANY, INC.

BY: [signature] Vice pres.

Attachment D

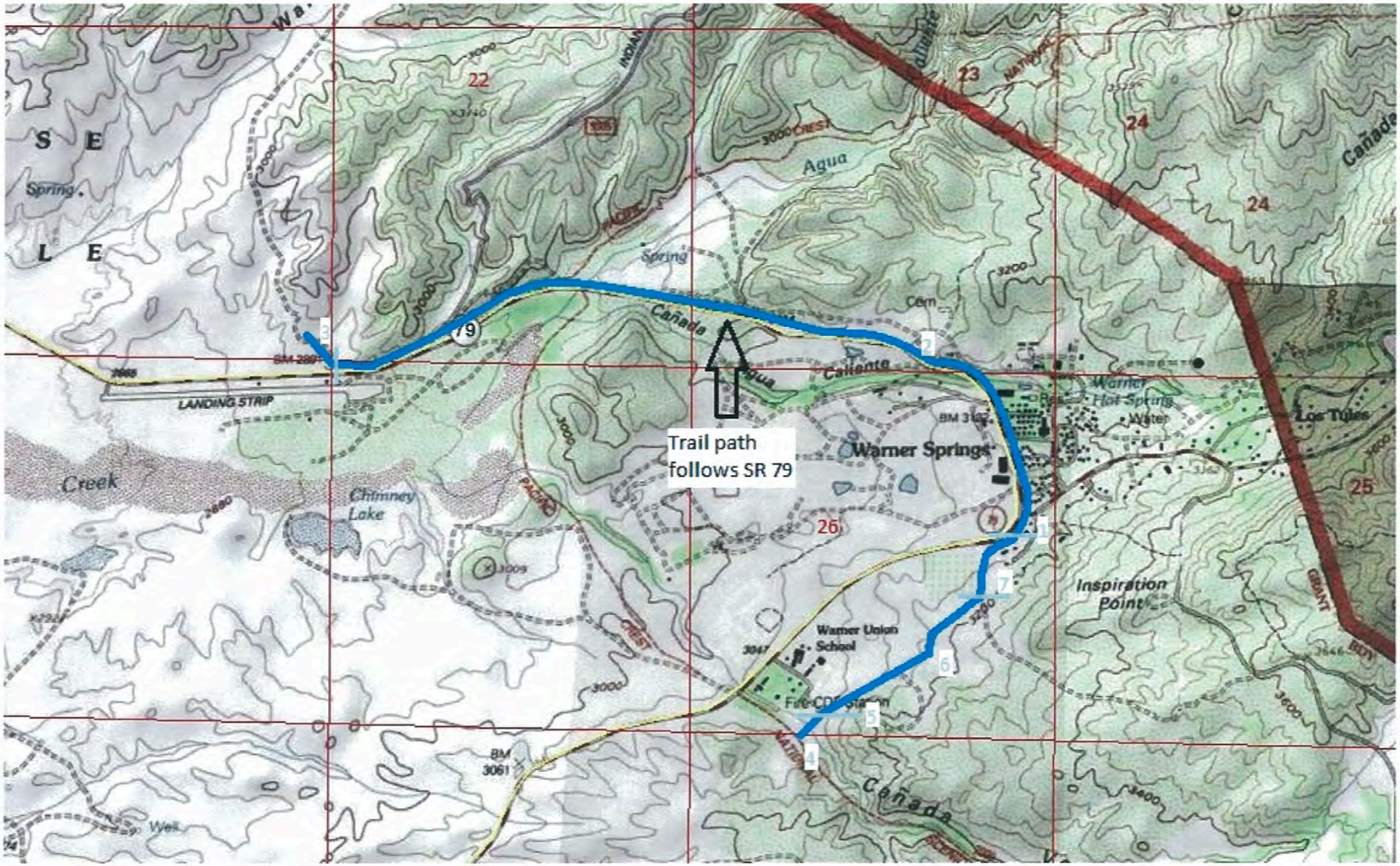
Trail Segments from 1949 Agreement and 1950 Agreement Legal Descriptions

Segment	Legal Description
1949 Agreement	
1	Beginning at a point approximately 1750 feet west of the southeast corner of said sectional lot 25 of the Rancho San Jose del Valle, thence in a northwesterly direction to the junction of the Las Tunas road with Highway 79,
2	thence along the easterly and northerly line of Highway 79 past the Warner Hot Springs Resort through the northeast Quarter of said sectional lot 26 and along the northerly line of said State Highway 79 through the South Half of said sectional lot 23 and said sectional lot 22 to the junction of the Cleveland Highway Forest Fire Truck Trail with Highway 79,
3	thence in a northerly direction to a point where said Forest Fire Truck Trail leaves said sectional lot 22 in the northwesterly boundary of the above described property.
1950 Agreement	
4	Beginning at a point in the Southerly line of section 26 Township 10 south, Range 3 East SRB&M said point being the continuation of said Riding and Hiking Trail as it leaves the northerly line of section 35 Rancho San Jose Del Valle;
5	thence northerly to the southerly line of the Warner Dist. School;
6	thence easterly along the southerly line of the school property and the old Vineyard upon an existing riding trail;
7	thence along the easterly side of the Vineyard to the intersection of State Highway No. 79.

Procopio

Attachment E

USGS Topographical Map of the Trail


Trail path
follows SR 79
Warner Springs
Warner Union School
Inspiration Point
Los Tules
Warner Hot Spring
Chimney Lake
Creek
LANDING STRIP
Agua
Caliente
Cañada
Spring
Cem
Fire CDF Station
Well
22
23
24
25
26
79
1
2
3
4
5
6
7

PALA BAND OF MISSION INDIANS

PMB 50, 35008 Pala Temecula Road
Pala, CA 92059
Phone 760-891-3500 | Fax 760-742-1411

January 29, 2014

Via Federal Express and LeapFile (email)

Mr. Mark Wardlow
Director
Planning and Development Services
County of San Diego
5510 Overland Avenue
San Diego, CA 92123

Re: Request for Waiver of "H" Designator Design Review, Site Plan Requirement
Warner Cultural Trust Fence Project, Warner Springs, CA

Dear Mr. Wardlow:

On January 27, 2014, the County Historic Site Board considered the request of the Pala Band of Mission Indians, acting as Trustee for the Warner Springs Cultural Trust ("Trustee") for a waiver of the Site Plan requirements for a partial protective fence along portions of the Cultural Trust Property near the Warner Springs Resort area. The Board voted 4-1 not to recommend that the Development Services Director (Director) approve a waiver of the site plan requirement, following testimony from area neighbors that they would be disappointed with the fence, because they would no longer be able to access the Trust property for their own recreational purposes. Pursuant to County Zoning Ordinance Section 7156(b), the ultimate decision to grant a waiver or exemption from the site plan requirements must come from your office. By this letter, the Trustee is requesting that you review all pertinent information and grant the requested waiver on the appropriate grounds that requiring a site plan would not materially contribute to the historic preservation objectives (SDCZO 5710(a)). The Trustee would also like to meet with you regarding the waiver request and the Trustee's role in protecting cultural resources on the Trust property.

Approvals to construct the 6' chain link fence in question were sought last summer when the Trustee inquired to both the County Building Department and Planning and Development Services ("PDS") and was told by both departments that no permit was required for the proposed fence. The Trustee was given the green light to construct the fence in order to stop ongoing trespass and illegal access to the property, and construction began in August. When the fence was approximately 90% complete, the County issued a stop-work order, as another part of the

County discovered that portions of the Trust (and the neighboring Resort) had an "H Designation." The County PDS had apparently made a mistake when they authorized the construction of the fence[a].

The "H Designator" normally would require Historic Site Board review and potentially preparation of a site plan before ground-disturbing work could occur. However, by the time the H-designation was discovered, all ground disturbing activity (putting in fence posts) had already been completed for the length of the fence. Moreover, the purpose of the fence was to protect the Resources on the property from access and damage—apparently the same purpose as the H designation.

The purpose of the Warner Cultural Trust is to preserve the cultural resources on the property. The establishment and parameters of the Trust Property and its administration are governed by a 1983 Trust Agreement, which was required as part of the County's 1983 approval for the Warner Springs Resort Specific Plan. (Copy of that Trust Agreement attached hereto). As noted by the acting Chairman of the Historic Site Board, Mr. Royles, the Trust Agreement was created for the preservation of the cultural resources on the property and does not authorize any public access for recreational use, hiking, equestrian use or other uses. In the Specific Plan approval documents the County (and the Specific Plan) clearly stated that the property was to be left undisturbed.

Notwithstanding the purpose of the Trust, over the years and without permits or Trustee authorization, the neighboring Resort graded and built acres of equestrian uses on the Trust property on archeologically sensitive areas (H-designated), dumped tons of horse manure on Trust Resources, constructed an unpermitted access road through the Trust Property, and actively ran equestrian and hiking tours through the property on unauthorized trails for its vacationers. In addition, neighboring property owners, many of whom were also on the governing Board of the Warner Springs Ranch Owners (which ran the Resort that trespassed and built on the Trust property), regularly and systematically extended their back yards out onto the Trust property with gates and extended uses. These same neighboring property owners testified to the Historic Site Board that they have actively used (trespassed on) the Trust property for years and did not want the construction of the fence to be allowed, as it would keep them from using the Trust Property for their own personal purpose.

However, the Trust was not created for the purpose of the neighbors' personal enjoyment, or for the resort's financial gains through use. It was created in order to preserve the cultural heritage of the Native American people that once resided on the site and were forcibly removed. As Trustee, we have the fiduciary obligation to uphold that purpose. We recognize that the neighbors are disappointed that their unauthorized use must stop, as they have become accustomed to the area as an extension of their back yards. But for the benefit of the resources on the Trust Property, their access, and access by the Resort and other intruders must stop. The propriety and reasonableness of using a fence to provide protection from further damage is addressed in our Request for the Waiver to the County, a copy of which is attached.

---

[a] Historic Site Board Vice Chairman Royles indicated that his investigation following receipt of the waiver request in January 2014, also showed no H-designation in the records available to him. (See January 27, 2014 Historic Site Board Hearing. Transcript pending.)

The Historic Site Board's recommendation to you failed to consider that the Trust Property was created to remain undisturbed and without public access. The only Board member that stated and understood this point was Mr. Royles, who voted in opposition to the recommendation. We respectfully ask for your leadership as Director to review the materials, recognize that the Trust was in fact intended to be protected from access and not used for recreation, and issue the exemption to allow the fence to be completed.

Prior to your rendering such a decision, I would appreciate meeting with you to discuss this matter so you can fully understand the importance of the Trust land to the people whose heritage and history has been damaged by the trespassing events.

Best Regards,

Robert H. Smith
Pala Band of Mission Indians,
Trustee for the Warner Cultural Trust

RHS:ct
Enclosures

cc: (Via email only; w/o encl.)
Ms. Donna Beddow, PDS
Dr. Shasta Gaughen
Theodore J. Griswold, Esq.

Beddow, Donna

From: Shasta Gaughen <sgaughen@palatribe.com>
Sent: Friday, February 14, 2014 1:31 PM
To: Wardlaw, Mark
Cc: Beddow, Donna; Griswold, Ted J.
Subject: Warner Springs Cultural Trust fence
Attachments: Claims Submitted by Tule Property Owners.doc; PED Letter re Warner Cultural Trust fence 021414.doc

Dear Mr. Wardlaw,

Attached please find a letter concerning the requested site plan waiver for the fence constructed around the Warner Springs Ranch cultural trust. Also attached is a table with responses to comments from Los Tules residents who object to the fence. I look forward to meeting you on Wednesday, February 19. Please feel free to contact me before then with any questions.

Best regards,
Shasta Gaughen

SHASTA C. GAUGHEN, PHD
ENVIRONMENTAL DIRECTOR/THPO
PALA ENVIRONMENTAL DEPARTMENT/
TRIBAL HISTORIC PRESERVATION OFFICE
PMB 50
35008 PALA TEMECULA RD.
PALA, CA 92059
760-891-3515
SGAUGHEN@PALATRIBE.COM

PALA ENVIRONMENTAL DEPARTMENT
PALA BAND OF MISSION INDIANS
PMB 50, 35008 Pala Temecula Road | Pala, CA 92059
Phone 760-891-3510 | Fax 760-742-3189

February 14, 2014

VIA EMAIL ONLY

Mr. Mark Wardlaw
Director
Planning and Development Services
County of San Diego
5510 Overland Avenue
San Diego, CA 92123

Re: Request for Waiver of "H" Designator Design Review,
Site Plan Requirement
Warner Cultural Trust Fence Project, Warner Springs, CA

Dear Mr. Wardlaw:

On January 27, 2014, the County Historic Site Board considered the request of the Pala Band of Mission Indians, acting as Trustee for the Warner Springs Cultural Trust ("Trustee") for a waiver of the Site Plan requirements for a partial protective fence along portions of the Cultural Trust Property near the Warner Springs Resort area. At this hearing, the Trustee was provided the opportunity to provide its rationale for its request for the waiver at the outset of the hearing, which was followed by testimony from neighbors of the Trust Property in opposition. The Trustee was not provided the opportunity to respond to or rebut any of the statements made by the neighbors to the Board, and were not provided copies of the materials submitted by them to the Board. It became apparent in the discussion of the Board that some of the information and materials provided by the neighbors was relied upon by the Board in its decision making.

Following the hearing, the Trustee requested copies of all documents submitted to the Board at the hearing so we could understand the information that was submitted by the neighbors and relied upon by the Board in its recommendation. We recently received those documents from the County and immediately became concerned regarding the accuracy and misleading nature of much of the information provided. Given that your office must weigh the importance of the recommendation of the Board and you may consider some of the information provided at the hearing, we felt that it is important to provide a brief response to the material submitted. We have compiled that response in table format, attached. Given that many of the claims were similar and repetitive, the responses are listed by claim, with citations to the claim source.

Please take particular note that there are no authorized trails whatsoever on the Trust Property, yet the Property is riddled with renegade trails that must be stopped. The County has a Trail Master Plan and

Ordinance that both provides a process to create public trails and protects property owners from the creation of renegade trails that damage property and threaten resources.

I know that the Trustee looks forward to meeting with you to discuss these issues.

Best Regards,

Shasta Gaughen, Ph.D.
Tribal Historic Preservation Office
Pala Band of Mission Indians

SG:ct
Enclosures

cc: (Via email only)
Ms. Donna Beddow, PDS
Theodore J. Griswold, Esq.

Claims submitted by Tule Property Owners and WS Resort at Historic Site Board Hearing Jan 27, 2014

Claim	Correction
The Fence "blocks many riding and hiking trails" "fence blocks CA Riding & Hiking Trail" "Purpose of Cultural Trust" is [to] accommodate California Riding and Hiking Trail" (2, 3, 4) [1]	There are no easements on the property that provide any authority for riding or hiking trails. The County has a Master Trails Program, which is supported by the County Trails Ordinance No. 9702 (2005), neither of which depict or authorize any trails on the Cultural Trust Property. As depicted in Figure RTP-1 Regional Trails Map in the County Master Plan, the California Riding and Hiking Trail and the Pacific Crest National Scenic Trail BOTH follow a path to the west of the Trust Property, across the Resort property. A significant part of the Resort's trespass on the Trust Property, is an unauthorized access road that was created by the Resort to bring equestrian riders through the Trust Property to the CA R&H Trail. (see Photo # 4, Fletcher submission)
"This property was meant to be an open space . . . .leaving it open to the public," "the preserve area[should be] re-opened to the general public for its's enjoyment" (1, 2, 5)	Trust was created for the preservation of cultural resources and was designated by the Specific Plan to remain undisturbed. HSB Vice Chair Royle acknowledged that access was NOT part of Trust Agreement. The ONLY public use intended was for "scenic views". NO recreational uses, or opening to the general public for its enjoyment were contemplated in the Trust creation.
The "fence is "an eyesore" "unsightly" "blocks view from 79 and homes bordering preserve and is out of character for the area" (1, 2, 3)	The fence runs primarily behind existing homes and the Resort and is not visible from the street (other than the section along SR 79--about 10% of the fence). Neighbors and the Resort ignore the fact that each of their properties and the Resort are also fenced (the Resort fenced with chain link and barbed wire). Even the roadside Tule development open space adjacent to their homes is completely fenced (adjacent to Goldenbaum residence). Fencing is not unusual for the area.

[1] See Exhibit List Located at End of Chart.

Claim	Correction
The fence "obstructs access to the CDF for Fire Protection" (1, 2)	Prior to designing and construction the fence, the Trustee worked with CDF, Warner Fire Department, and the Catholic Church to provide access codes to the gate into the fence for their use. That gate has not yet been constructed due to the stop work order. Fire Protection access is not impeded.
"Cut brush [from the construction of the fence] that was not removed now causes a fire hazard" (1,2, 5,6)	Prior to construction of the fence, the Trustee found significant areas on the Trust property adjacent to back yards and the Resort where vegetation and debris was dumped apparently from fire clearing on private and Trust property by other parties had occurred on the Trust property. This was one of the concerns leading to the fence. The construction of the fence required some very minor clearing for post holes. Where materials remains, Trustee was precluded from doing any further action on the site pending the resolution of the Stop Work Order
The "fence will block runoff" "causes flash flood dangers" (1,2,5)	Trustee has developed a resolution for stream crossings acceptable to Public Works and Code Enforcement and is awaiting resolution of Stop Work Order to implement that resolution. No storm flow is affected by the fence resolution.
The "fence is intended to protect against graffiti and metal detectors" (1)	Fence is designed to preclude access from significant sources of damage and dumping--the Resort, equestrians, neighboring property owners, pot hunters and random access from public curiosity (via unauthorized access roads).
The "fence surrounds 240 acre Cultural Preserve" and "meanders the backcountry" (1, 3)	The fence only extends along the side of the Trust property that abuts direct access points from human sources.
"As neighbors abutting the land we take pride in keeping it beautiful" "For years my family has enjoyed serene walks [on the Trust property] and I have enjoyed showing others the property [and resources]" (1, 5)	These admissions of trespass support the Trustee's concerns regarding Trespass and unauthorized activities. The Homeowners and the Resort see the Trust Property as "theirs" and believe that, as an [false] extension of their back yards, it is for their recreation and enjoyment, and they are authorized to take management steps for

Claim	Correction
	the property in their own interest. Homeowners repeatedly admit to the trespass "for many years". The cultural resources on the property are the heritage of the Cupa people, and the intrusion of trespassing individuals created direct and incidental damage to the resources.
Neighbors have "never seen illegal trespass" on the Trust property (1)	This is not supported by their actions. Nearly all of the homes abutting the Trust property either have fences with locked gates leading to the Trust property, and/or have "no trespassing" signs facing the Trust property--a clear acknowledgment that there is significant foot traffic on the property that they are concerned about. This same rampant access is causing damage to the Trust resources.
The fence is "unlawful and illegal" (2)	The fence was authorized by County PDS prior to construction. Upon correction of information by PDS, it was determined that the fence may have to go through the current process prior to construction due to the (now known) presence of H-Designated areas. In fact, only a small portion of the fence crosses H-Designated areas--these areas are where the Resort built the Equestrian facility onto the Trust property and where the Trust dumped tons of horse manure on the Trust Property. The remainder of the fence does NOT cross H-Designated areas and should be allowed by right to protect the property.
The fence "impact is disrupting wildlife" (1, 2)	The fence only protects against intrusion from the urbanized portion of the property along one side. All of the periphery which abuts open space lands is not fenced. Wildlife access on the property is not impeded.
Fence "mars the view of the St Francis Chapel" (2, 3 (slide 6))	Fence along the 79 ROW is significantly below the profile of the Chapel and does not block the view of Chapel (see #3, Slide 6).

Claim	Correction
"The Preserve is a fire hazard," "The preserve area should be cleared" (2, 5)	Vegetative cover is important for the long term preservation of cultural resources. Clearing through brush management, controlled burns or other clearing activities exposes artifacts to discovery and degradation. Such activity is the inconsistent with the Trust purpose. Notwithstanding these impacts, property owners testified at the hearing that they went onto the Trust property and conducted brush management without Trust permission, and are requesting that such be done on a large scale throughout the Property. Such activity is contrary to the Trust purpose.
"2006 fire swept through the preserve" due to uncleared brush, causing fire damage.(5,7)	The 2006 fire was apparently started in an unauthorized building constructed on the Trust property by one of the Tule property owners, behind her home. The unauthorized building was destroyed in the fire. Pursuant to County Fire Management requirements, vegetation clearing for fire management is allowed only within 100 feet of a structure on the property. Adjacent property owners are responsible for vegetation management on their own property. Given that the trust property is not developed with structures, no vegetation control for fire management is warranted, authorized or requested.
"Stage Road is legal access to the Resort." (3)	Chicago Title and PDS Staff have confirmed that there are no easements, permits or other authorizations for the construction and operation of an access road where "Stage Road" is located on the Trust Property. This access has been a source for much of the unauthorized access. The road is an illegal intrusion on the Trust property. Continued access to the Chapel has already been arranged with the Catholic Diocese, with the fence and gate structure, once completed. Authorized access would not be impeded by the gate.

Claim	Correction
"Pala have not been stewards of the property because they built a bathroom behind the Chapel and over-watered the Chapel, damaging the historic building" (8)	Mr. Coons is poorly informed. Both activities at the Chapel were done many years ago by the Catholic Church which operates the Chapel. Pala has allowed the Church the discretion to manage its building, where it holds regular services. Mr. Coons should raise his concerns with the Chapel Priest and the Catholic Diocese (and retract his statements regarding the Pala Band of Mission Indians).

Exhibit Reference List

1 Diane Hemelstrand email dated January 24, 2014.

2 Kathryn Fletcher Warner Springs Historical Society, Letter dated January 27, 2014

3 Unknown source, Powerpoint with photos of fence and Trust property

4 Brian Mooney Power Point (on behalf of Resort)

5 Jon Goldenbaum letter dated Oct 6, 2013.

6 Unknown source, series of photos (4 pp)

7 Diane Helmested, Letter dated January 27, 2014

8 Testimony of Bruce Coons, SOHO at January 27, 2014 Hearing

Beddow, Donna

From: Shasta Gaughen <sgaughen@palatribe.com>
Sent: Friday, March 14, 2014 11:27 AM
To: Beddow, Donna
Subject: RE: Field Trip Follow Up
Attachments: 39779.pdf; WSR trust new fence alignment.pdf

Hi Donna – I have attached a map showing that neither the Pacific Crest Trail nor the CA Riding and Hiking Trail are impacted by the fence around the Warner Springs cultural trust. In fact, the CA R&H Trail apparently no longer exists. I will forward you some emails with explanations from Ted Griswold.

I have also attached a map with a suggested new fence line that allows access to the chapel. The Trustee approves of this change so you may present it as an option. Please let me know if you have any questions – thanks!

-Shasta

SHASTA C. GAUGHEN, PHD
ENVIRONMENTAL DIRECTOR/THPO
PALA ENVIRONMENTAL DEPARTMENT/
TRIBAL HISTORIC PRESERVATION OFFICE
PMB 50
35008 PALA TEMECULA RD.
PALA, CA 92059
760-891-3515
SGAUGHEN@PALATRIBE.COM

From: Beddow, Donna [mailto:Donna.Beddow@sdcounty.ca.gov]
Sent: Monday, March 10, 2014 10:03 AM
To: Shasta Gaughen
Subject: Field Trip Follow Up

Shasta –

Thanks for accompanying me on the field trip. Could you let me know the Trust's opinion of moving the fence behind the chapel. We will be meeting with the opponent's on March 26th.

Thanks,

Donna Beddow

County of San Diego
Planning and Development Services
(858) 694-3656

5510 Overland Ave, 3rd Floor, Room 310,
San Diego, CA 92123.

SECTION 10

Regional Trails Plan

Connecting Communities Regionally

The County fulfills a dual role as both a provider of local services to the unincorporated area, and as the provider of regional services to the entire County. The trails program addresses regional trail facilities that affect areas not within the County's land use jurisdiction. For these regional trails, many policies involve coordination and cooperation with the regions cities on trail planning, siting and funding.

Countywide Policy 2.3:
Participate in completing missing segments of regional trails to satisfy the need for long-range trail opportunities.

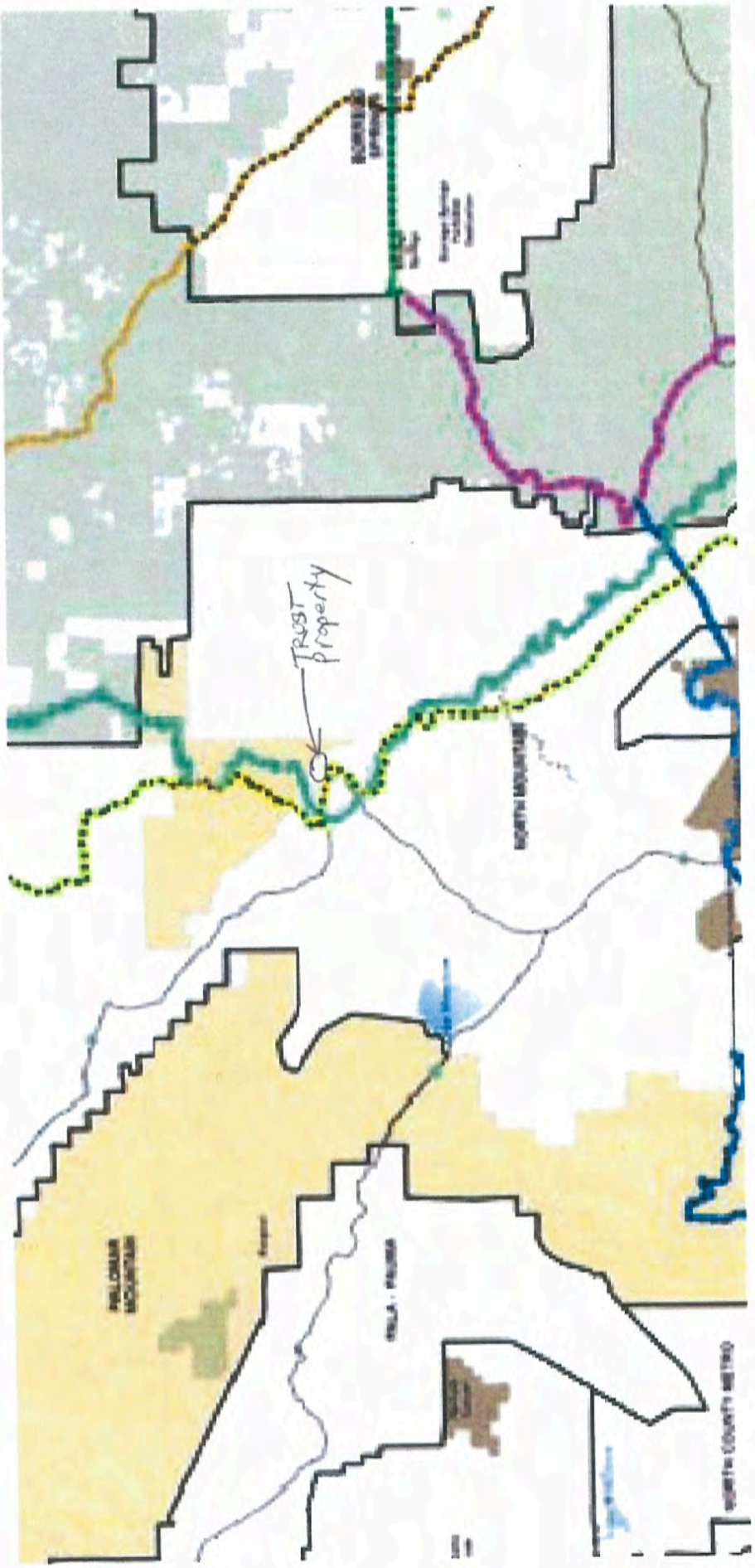
Regional trails are significant on a countywide, state or national level. The Regional Trails Map was included in the Public Facilities Element of the General Plan because of its importance to the County and to the region as a whole. It provides the necessary mandate that these trails are important, desirable, provide a public benefit, serve as the backbone for a larger trail network, provide connectivity to existing trails, and provide an overall significant regional resource worthy of consideration for various forms of future funding.

The Regional Trails Map identifies approved general alignment corridors of regional trails in the County. These trails have characteristics and conditions that serve a regional function by covering long linear distances, transcending community and/or municipal borders, having state or national significance, or providing important connections to existing parks and open space preserves. Many of these trails are fairly well established and/or are in the later stages of planning and implementation.

- Pacific Crest Trail
- San Diego River Park Regional Trail
- Sweetwater River and Loop Trail
- Trans-County Trail

Additional existing trail segments and proposed reroutes for portions of some of the regional trails are also identified on the Regional Trails Map.

Figure RTP-1: Regional Trails Map


TRUST
Property

APN: 137-081-02
TRAVELLED WAY
DRIVEWAY
SEE NOTE 4 ON SHEET 2
CEMETARY
L16
L17
L18
L15
0.8 AC
458.91'
N 11°07'43"W
(S 11°18'36"E)

CALIFORNIA RECREATIONAL TRAILS PLAN

Providing Vision and Direction for California Trails

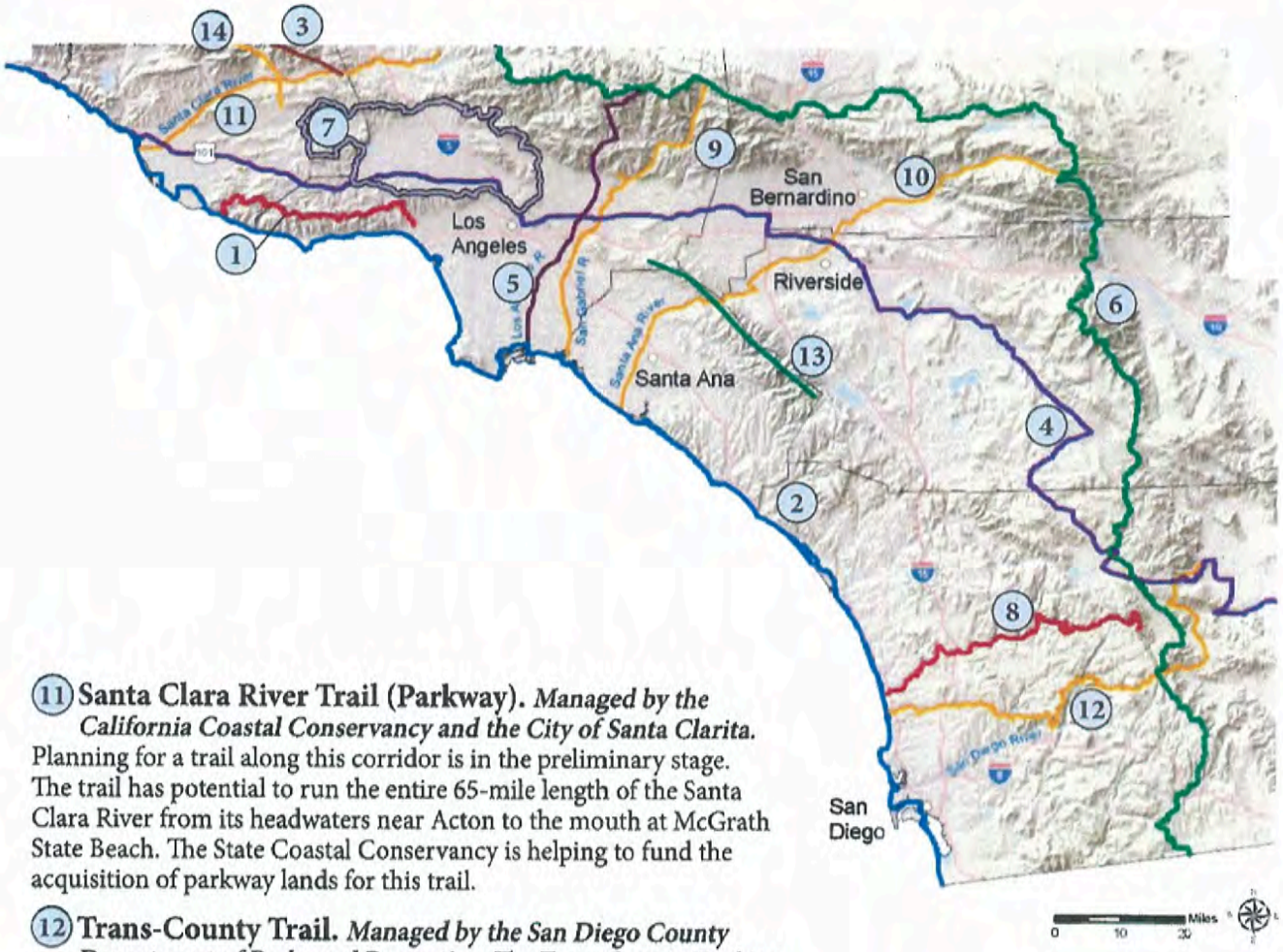
Executive Summary Progress Report 2011

California State Parks
Planning Division
Statewide Trails Section
www.parks.ca.gov/trails/trailsplan

Southern California Trail Corridor Progress

Trail descriptions and current status

1. **Backbone Trail.** ***Managed by NPS's Santa Monica Mountains National Recreation Area.*** This trail is a patchwork of fire roads, existing and new trails. It provides unique opportunities for long-distance trail use for citizens within the metropolitan Los Angeles area. 60 of the planned 65 miles are open to the public. Recently, a 2.6-mile segment of the trail alignment completed a pathway for the full Backbone Trail System, leaving only the need to secure a public right-of-way for 0.6 miles of the 65-mile trail.
2. **California Coastal Trail.** See page 8.
3. **Condor Trail.** See page 8.
4. **Juan Bautista De Anza National Historic Trail.** See page 8.
5. **Los Angeles River Trail.** ***Managed by the Los Angeles County Department of Parks and Recreation.*** This planned 26-mile multi-use trail will begin at the Whittier Narrows Dam and continue along the Rio Hondo River to the confluence of the Los Angeles River and end at the Pacific Ocean. 10 miles of trail are open to the public.
6. **Pacific Crest National Scenic Trail.** See page 8.
7. **Rim of the Valley Trail.** ***Managed by NPS's Santa Monica Mountains Conservancy, USFS and CSP.*** About 80 of 200 planned miles are completed and open to the public; 5.7 miles are currently signed as belonging to the Rim of the Valley trail system, with the remainder associated with other trail systems. Recently, 16 miles of trail have been constructed and four new miles of right-of-way were acquired. NPS is evaluating this corridor's future.
8. **San Dieguito River Park Coast to Crest Trail.** ***Managed by the San Dieguito River Valley Regional Open Space Park Joint Powers Authority.*** Partners include San Diego County, cities of Del Mar, Escondido, Poway, San Diego and Solana Beach. The planned length of this trail is 70 miles. Approximately 33 miles of trail are complete.
9. **San Gabriel River Trail.** ***Managed by the Los Angeles County Parks and Recreation and the Rivers and Mountains Conservancy.*** This 40-mile, multi-use trail along the San Gabriel River extends from Azusa to Seal Beach along the channel's levee road and the adjacent frontage road. Minor trail realignment has taken place near the Santa Fe Dam.
10. **Santa Ana River Trail.** ***Managed by the Santa Ana Watershed Project Authority.*** This trail connects with 22 other trails. The total planned length of the trail is 100 miles. Of this, 73 miles are completed, including 30 in the San Bernardino National Forest, and 27 miles are in the design and/or construction phases, which should be completed in the next three years.

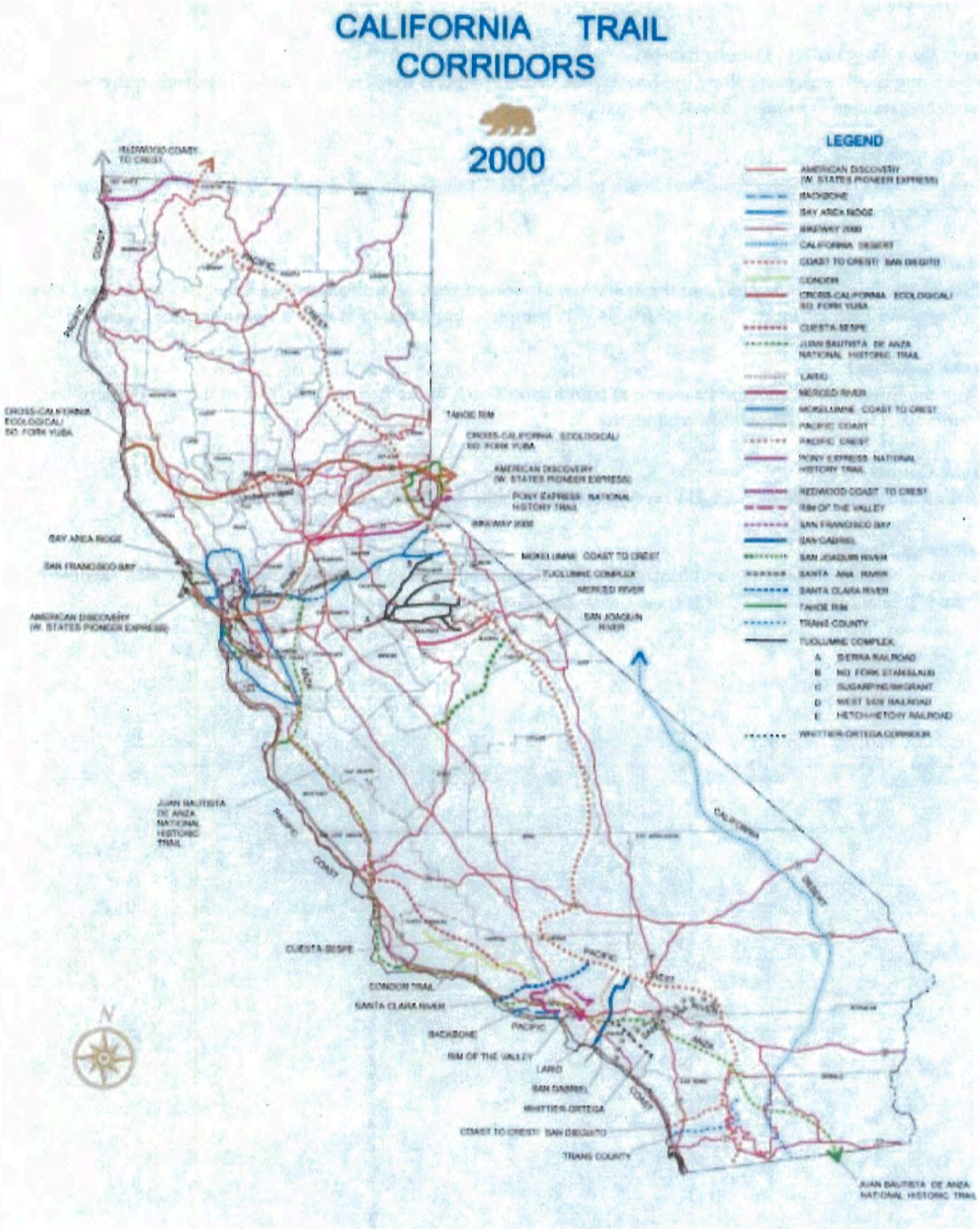


(11) Santa Clara River Trail (Parkway). ***Managed by the California Coastal Conservancy and the City of Santa Clarita.*** Planning for a trail along this corridor is in the preliminary stage. The trail has potential to run the entire 65-mile length of the Santa Clara River from its headwaters near Acton to the mouth at McGrath State Beach. The State Coastal Conservancy is helping to fund the acquisition of parkway lands for this trail.

(12) Trans-County Trail. ***Managed by the San Diego County Department of Parks and Recreation.*** The Trans County Trail is a planned 115-mile east-west route in San Diego County that connects many cities and unincorporated communities. Nearly 75% of this route consists of existing trails that are currently used by the public. Acquisition and construction is still required for the remainder of the trail.

(13) Whittier-Ortega Trail. ***No current manager.*** Also known as the Coal Canyon Trail or the Main Divide Trail. It begins in the Whittier Narrows Recreation Area, near the communities of South El Monte and Montebello in Los Angeles County. The connectivity after this point to Chino Hills State Park is poorly documented, going through regional parks, open space and private property. From Chino Hills State Park the trail passes through the Department of Fish and Game's Coal Canyon Ecological Preserve into Cleveland National Forest.

(14) Cuesta to Sespe Trail. See page 8.


CALIFORNIA TRAIL CORRIDORS
2000
LEGEND
AMERICAN DISCOVERY (W. STATES PIONEER EXPRESS)
BACKBONE
BAY AREA RIDGE
BIKEWAY 2000
CALIFORNIA DESERT
COAST TO CREST/ SAN DIEGUITO
CONDOR
CROSS-CALIFORNIA ECOLOGICAL/ SO. FORK YUBA
CUESTA-SESPE
JUAN BAUTISTA DE ANZA NATIONAL HISTORIC TRAIL
LARIO
MERCED RIVER
MOKELUMNE COAST TO CREST
PACIFIC COAST
PACIFIC CREST
PONY EXPRESS NATIONAL HISTORY TRAIL
REDWOOD COAST TO CREST
RIM OF THE VALLEY
SAN FRANCISCO BAY
SAN GABRIEL
SAN JOAQUIN RIVER
SANTA ANA RIVER
SANTA CLARA RIVER
TAHOE RIM
TRANS COUNTY
TUOLUMNE COMPLEX
A SIERRA RAILROAD
B NO. FORK STANISLAUS
C SUGAR PINE/ MI-WUK GRANT
D WEST SIDE RAILROAD
E HETCH-HETCHY RAILROAD
WHITTIER-ORTEGA CONNEXION
REDWOOD COAST TO CREST
CROSS-CALIFORNIA ECOLOGICAL/ SO. FORK YUBA
TAHOE RIM
AMERICAN DISCOVERY (W. STATES PIONEER EXPRESS)
PONY EXPRESS NATIONAL HISTORY TRAIL
BIKEWAY 2000
BAY AREA RIDGE
SAN FRANCISCO BAY
MOKELUMNE COAST TO CREST
TUOLUMNE COMPLEX
MERCED RIVER
AMERICAN DISCOVERY (W. STATES PIONEER EXPRESS)
SAN JOAQUIN RIVER
JUAN BAUTISTA DE ANZA NATIONAL HISTORIC TRAIL
CUESTA-SESPE
CONDOR TRAIL
SANTA CLARA RIVER
BACKBONE
RIM OF THE VALLEY
LARIO
SAN GABRIEL
WHITTIER-ORTEGA
COAST TO CREST/ SAN DIEGUITO
TRANS COUNTY
JUAN BAUTISTA DE ANZA NATIONAL HISTORIC TRAIL
N

Appendix C

Original California Riding and Hiking Trail Conceptual Map

Beddow, Donna

From: Shasta Gaughen <sgaughen@palatribe.com>
Sent: Monday, April 14, 2014 3:34 PM
To: Beddow, Donna
Subject: Warner Springs Cultural Trust fence vandalism
Attachments: image.jpeg; image.jpeg

Hello Donna - attached are pictures of newly discovered vandalism of the cultural trust fence on the cemetery side. Additional pictures will follow in a separate email. As you can see in the pictures, whoever vandalized the fence posted what they believe to be legal justification for their actions. As you know, the CA Riding and Hiking Trail does not go through the trust property, but instead follows the route of Highway 79.

I filed an incident report on the vandalism to the part of the fence in the Los Tules neighborhood with Deputy Alvin Vasquez of the SD Sheriff's department. The report is number E1574483. I have asked Deputy Vasquez to include this additional vandalism in the report as well. If a new report number is generated I will be sure to forward it to you.

Thank you,
Shasta

Shasta C. Gaughen, PhD
Environmental Director/THPO
Pala Environmental Department/
Tribal Historic Preservation Office
PMB 50
35008 Pala Temecula Rd.
Pala, CA 92059
760-891-3515
sgaughen@palatribe.com

Beddow, Donna

From: Shasta Gaughen <sgaughen@palatribe.com>
Sent: Monday, April 21, 2014 9:28 AM
To: Wardlaw, Mark
Cc: Griswold, Ted J.; Richard Silvera (rsilvera@palacasino.com); Robert Smith; Beddow, Donna
Subject: FW: Warner Springs--Research on the Pub. Trails Enf. Task Force/ SD Trails Council
Attachments: image001.png; mg_info.txt

Good morning Mr. Wardlaw - as you may be aware, the Trustee of the Warner Springs Cultural Trust has discovered and reported vandalism to the partially completed fence erected around the property in Warner Springs. An incident report was filed with the SD County Sheriff's Department on Friday, April 11, 2014 (#E1574483). As detailed in the email below, more vandalism was discovered by a member of Pala Tribal Law Enforcement near the traditional tribal cemetery. This vandalism was added to the incident report. The vandalism was accompanied by signs posted on the fence purporting to represent official organizations related to public trails. Again, as detailed in the email below, these representations are false.

We wanted to bring these matters to your attention as you continue to consider our requested Site Plan Waiver to complete the fence. As you can see, the Cultural Trust continues to be subject to illegal trespass and damage. I understand that you would like to visit the site personally. I am happy to facilitate that visit at your convenience. Please feel free to contact me with any questions or concerns.

Best regards,
Shasta

Shasta C. Gaughen, PhD
Environmental Director/THPO
Pala Environmental Department/
Tribal Historic Preservation Office
PMB 50
35008 Pala Temecula Rd.
Pala, CA 92059
760-891-3515
sgaughen@palatribe.com

-----Original Message-----
From: Griswold, Ted J. [mailto:ted.griswold@procopio.com]
Sent: Monday, April 21, 2014 9:05 AM
To: Rick Silvera; Robert Smith; Shasta Gaughen
Cc: Tally, Clariece A.
Subject: Warner Springs--Research on the Pub. Trails Enf. Task Force/ SD Trails Council

Shasta:

As you discovered last week, the fence on the Warner Springs Cultural Trust Property was once again cut open and vandalized on or about April 11-13, 2014. In addition, some unknown person came onto the Trust property and posted flyers and signs purporting to label the trail that runs between the cemetery and the church as "California Riding and Hiking Trail" with signs similar to those found in State Parks. The flyers claim to be posted by the "Public Trails Right-of-

Way Enforcement Task Force" ("Task Force") and the "San Diego Trails Council," a nonprofit organization ("SDTC"), and state that the "Task Force" will be taking legal action to keep the "trail" open for the public.

The postings were made under the false pretense that they are official, accurate, and carrying the weight of law and purport that there is a public right-of-way through the Trust Property, and the "public" hiking and riding trails is welcome and authorized thereon. None of these representations is true.

In order to determine he source of these postings and vandalism, we investigated to two stated entities. Indeed, neither the Task Force nor the SDTC is a legal entity in the State of California and neither is a registered nonprofit organization.

Research on The Task Force resulted in no confirmation that this is an official nonprofit organization:

* A "Google" search resulted in no pertinent information regarding the "Task Force." In fact, there were no resulting website(s) for this alleged organization.

* A search for nonprofit organizations by the name "Task Force," as defined above, does NOT appear on GuideStar's list of registered nonprofit organizations. http://www.guidestar.org/rxg/products/nonprofit-data-solutions/guidestar-data-sets.aspx?sitelink=1-GuideStar%20General&linktitle=Nonprofit%20Lists&gclid=CMWv5eG76r0CFdKGfgod7REAhw

* The Internal Revenue Service's ("IRS") list of organizations eligible to receive tax-deductible charitable contributions (Pub. 78 Data) does NOT list any organizations named "Task Force." http://apps.irs.gov/app/eos/forwardToPub78Download.do

* The IRS Exempt Organizations Business Master File Extract ("EO BMF") does NOT list the "Task Force." http://www.irs.gov/uac/SOI-Tax-Stats-Exempt-Organizations-Business-Master-File-Extract-(EO-BMF)

Research on the SDTC similarly resulted in no official record to demonstrate that it is an official nonprofit organization:

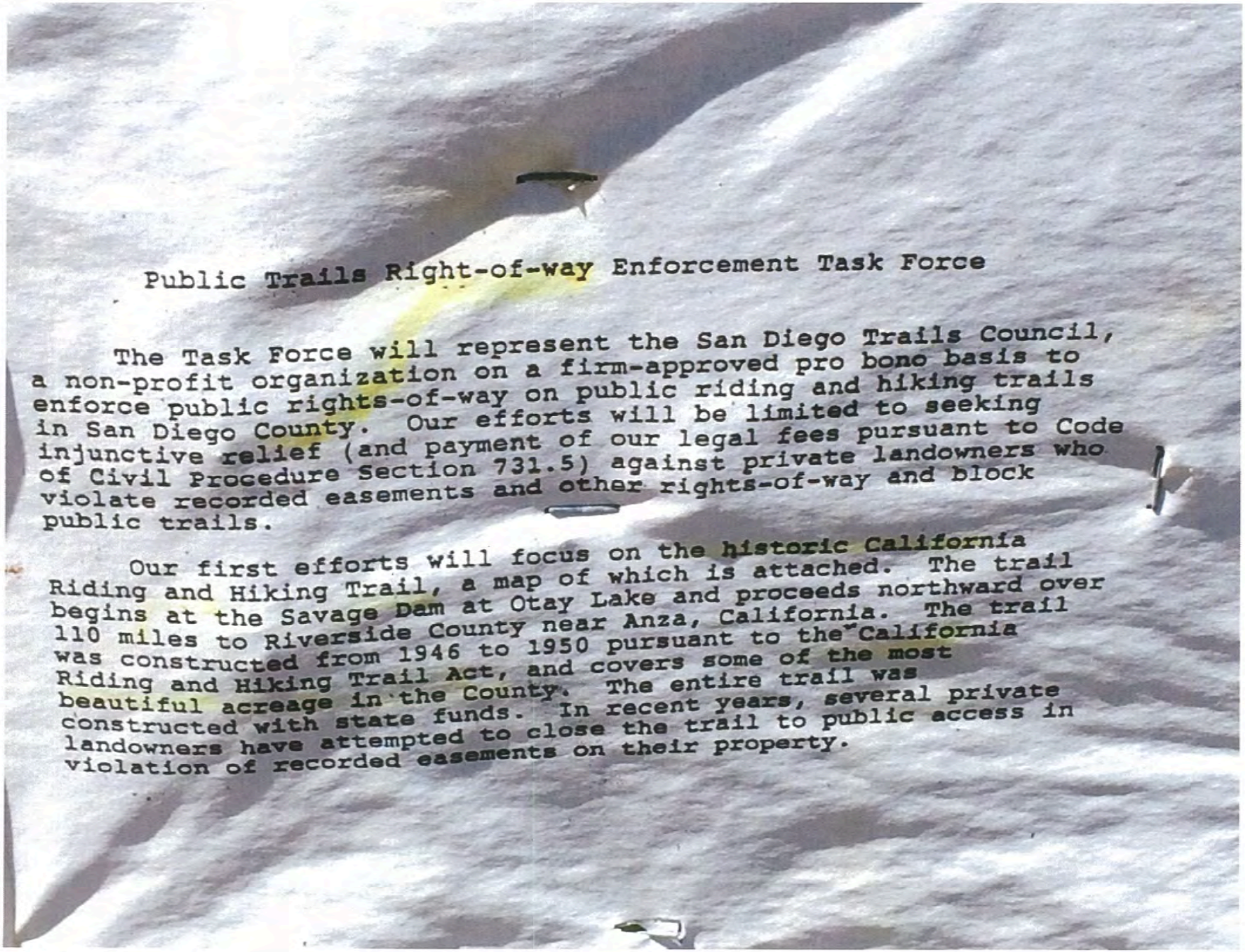
* The website http://www.sdctc.com/ leads to an announcement that "the web page cannot be found"; and provides a list of hiking trails in San Diego, hiking videos, and hiking gear.

* An archived webpage for the SDTC indicates that the organization is inactive. The last event for the SDTC was scheduled six years ago, in May of 2008. http://web.archive.org/web/20080509073743/http://www.sdctc.com/calendar/calendar.php<http://web.archive.org/web/20080509073743/http:/www.sdctc.com/calendar/calendar.php>

* The inactive status of the SDTC is further evidenced by the fact it is listed as a former nonprofit. Its exempt status was revoked by the IRS on June 9, 2011 for failure to file a Form 990, 990-EZ, 990-N, or 990-PF for three consecutive years. (San Diego Trails PDF, attached).

* A search for nonprofit organizations by the name "SDTC," as defined above, is NOT listed as GuideStar's list of registered nonprofit organizations. http://www.guidestar.org/rxg/products/nonprofit-data-solutions/guidestar-data-sets.aspx?sitelink=1-GuideStar%20General&linktitle=Nonprofit%20Lists&gclid=CMWv5eG76r0CFdKGfgod7REAhw

* The IRS list of organizations eligible to receive tax-deductible charitable contributions (Pub. 78 Data) does NOT list any organizations by the name "SDTC." http://apps.irs.gov/app/eos/forwardToPub78Download.do



Public Trails Right-of-way Enforcement Task Force

The Task Force will represent the San Diego Trails Council, a non-profit organization on a firm-approved pro bono basis to enforce public rights-of-way on public riding and hiking trails in San Diego County. Our efforts will be limited to seeking injunctive relief (and payment of our legal fees pursuant to Code of Civil Procedure Section 731.5) against private landowners who violate recorded easements and other rights-of-way and block public trails.

Our first efforts will focus on the historic California Riding and Hiking Trail, a map of which is attached. The trail begins at the Savage Dam at Otay Lake and proceeds northward over 110 miles to Riverside County near Anza, California. The trail was constructed from 1946 to 1950 pursuant to the California Riding and Hiking Trail Act, and covers some of the most beautiful acreage in the County. The entire trail was constructed with state funds. In recent years, several private landowners have attempted to close the trail to public access in violation of recorded easements on their property.

Calif. Civil Code

§731.5. Action to Enjoin Closure of Public Trail.

Whenever any person unlawfully closes any public trail, any person who uses such trail or would use such trail, and any association, corporation or other entity whose membership as a whole is adversely affected by such closure may bring an action to enjoin such closure.

The prevailing party in such action shall be entitled to recover reasonable attorney's fees, in addition to court costs.

As used in this section, a public trail is any trail to which the public in general has a right of access; which right is established pursuant to a recorded document conveying to a political corporation or governmental agency, specifying the nature of such public trail, specifically describing the location thereof, and naming the record owners of the real property over which such trail exists, if created by a license, permit, or easement. It includes, but is not limited to, pedestrian, equestrian, and boating trails, but does not include any public street, road, or highway. Leg.H. 1979 ch. 682.

PUBLIC RESOURCES CODE SECTION 5070-5077.8

5075.4. No adjoining property owner is liable for any actions of any type resulting from, or caused by, trail users trespassing on adjoining property, and no adjoining property owner is liable for any actions of any type started on, or taking place within, the boundaries of the trail arising out of the activities of other parties.

20'
WIDE

CALIF.
RIDING
&
HIKING
TRAIL

Warner Cultural Trust Site Plan Waiver

- Warner Cultural Trust

- Established 1983 pursuant to
  - 1981 Warner Springs Ranch General Plan Amendment EIR Mitigation
  - 1983 Warner Springs Ranch Specific Plan

  - Trustee – Pala Band Of Mission Indians

What is the Trust?

- Trust was set up as a required element of the Specific Plan to be preserve important cultural resources.

  - "In an effort **to preserve the cultural integrity** of the area and at the same time incorporate this area into the project design, a cultural preserve totaling 240 acres within the Ranch Boundaries is proposed. . . This area, which includes the St. Francis Chapel and Native American cemeteries, **will remain undisturbed**." (1983 Specific Plan, p.8)

Who is the Trustee?

- Original Trustee—Owner of the Warner Springs Resort
- Pursuant to Specific Plan, Trustee was designated to:
  - Place the Property in Trust
  - Place Trust and Property into nonprofit status
  - Develop and Staff Cultural Museum
  - Allow research. Obtain research grants
  - Add to the Cultural Preserve

How did Pala become the Trustee?

- Trust was never funded by the Resort.
- Taxes not paid on the Property and put up for a tax sale.
- Pala rescued property from tax sale by paying delinquent taxes.
- Original Trustee assigned trusteeship to Pala Band.
- Trustee assumed fiduciary duty to protect the resources.

Why is the Fence necessary?

- Pala learned of extensive trespass by resort, it users and neighbors.
- Encountered pot-hunters on multiple locations.
- Unauthorized access road encourages trespass.
- Past actions clearly indicate resources in peril of abuse.

Dangers of Public Access

Distance to Roads

	≤ 100 m	101-400 m	401-800 m	0.8-1.6 km	over 1.6 km	
Vandalized	12 (86%)	11 (38%)	12 (33%)	4 (27%)	1 (100%)	40 (42%)
Unvandalized	2 (14%)	18 (62%)	24 (67%)	11 (73%)	0 (0)	55 (58%)
	14	29	36	15	1	95

$x^2 = 15.22$ df = 4 $p < .01$

- Nickens study examined the relationship between ease of access to cultural sites and the frequency of incidental and intentional vandalism.
  - Ease of access had a tremendous adverse effect on site vandalism.
  - Shorter distances between roads and cultural sites significantly increase the likelihood of damage to the cultural site.
  - Private lands, rather than public lands, are the most susceptible to destruction due to lack of federal regulatory oversight.

- Nickens, Paul, A Study of Access and Other Factors Affecting Vandalism to Archaeological Sites in Southwestern Colorado, Cultural Resource Series, Bureau of Land Management, July 1981 (http://archive.org/details/surveyofvandalis00nick).

Dangers of Public Access: Many Other Experts Agree

- "*destructive actions can be divided into two subcategories: incidental and intentional.. . . .both are extremely damaging*"
  - **Considerations For Protecting Archaeological Sites On Private Lands,** excerpt from "Protecting Archeological Sites on Private Lands", publication of the National Park Service's Cultural Resource Training Initiative, August 2000

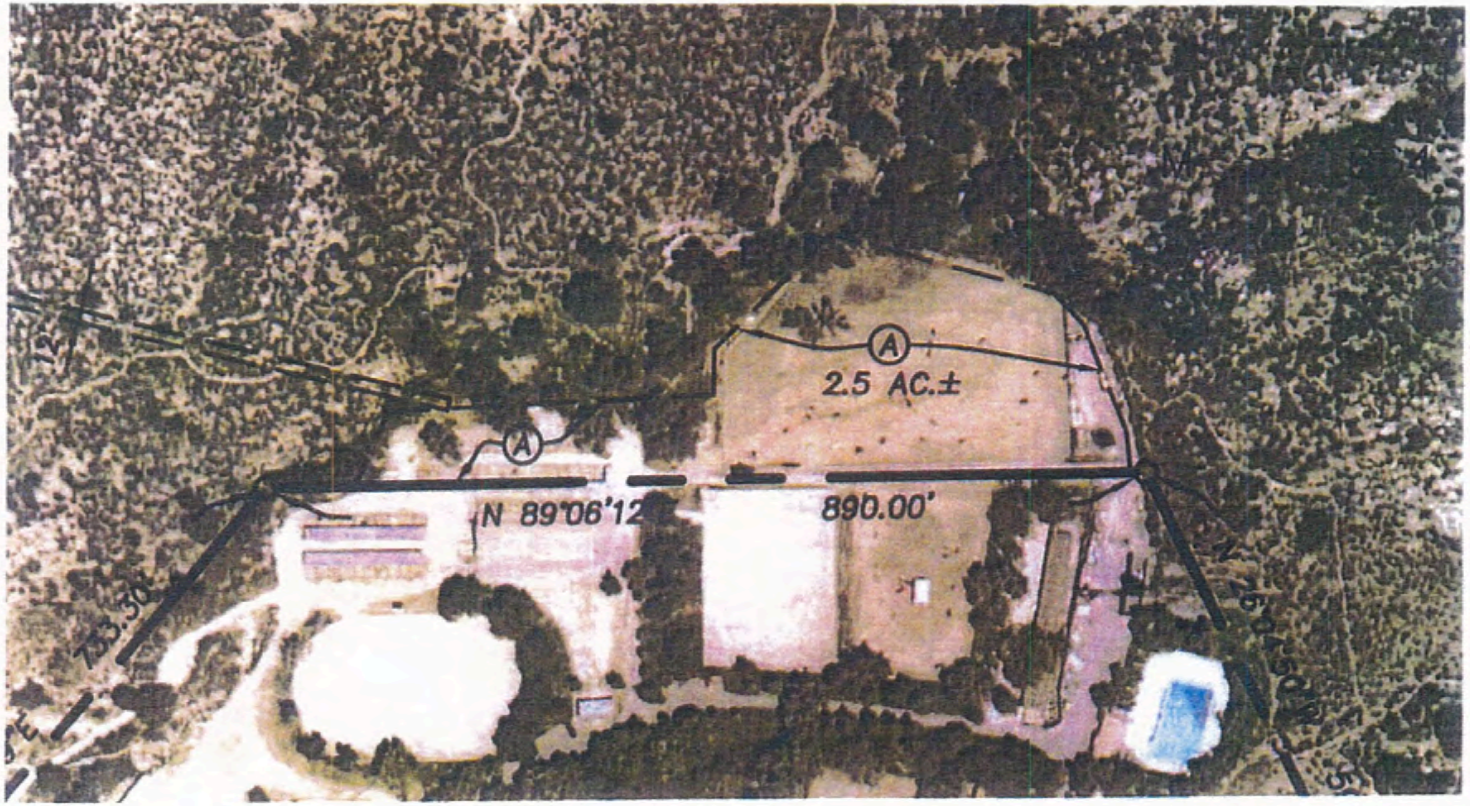
Dangers of Public Access: Many Other Experts Agree

- SUWA Challenges BLM's Failure to Protect Cuotural Resources. Southern Utah Wilderness Association. January 2014.
- Ancient Artifacts stolen, desecrated near Bishop. The Inyo Register. Nov, 19, 2012.
- Impacts: Damage to Cultural Resources in the California Desert (M. Lyneis, D. Weide & E. Warren) BLM Publication, Contract CA-960-CT9-109, 1980)
- Fincham, Derek, Looting and Criminal Sentencing in the Four Corners, Illicit Cultural Property, May 5, 2011

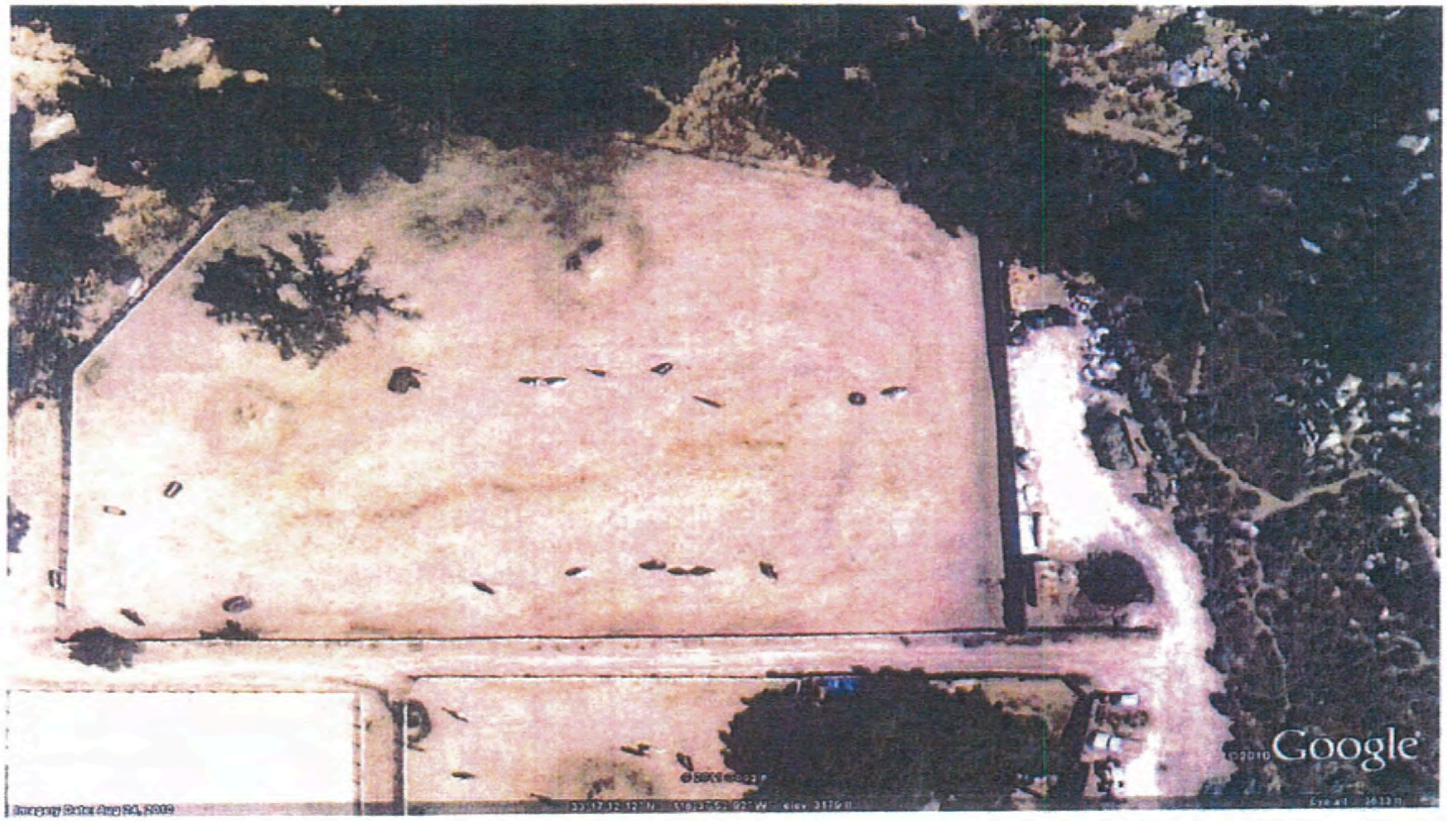
Why is the Fence necessary?

- So what are we really talking about at the Cultural Trust Property?

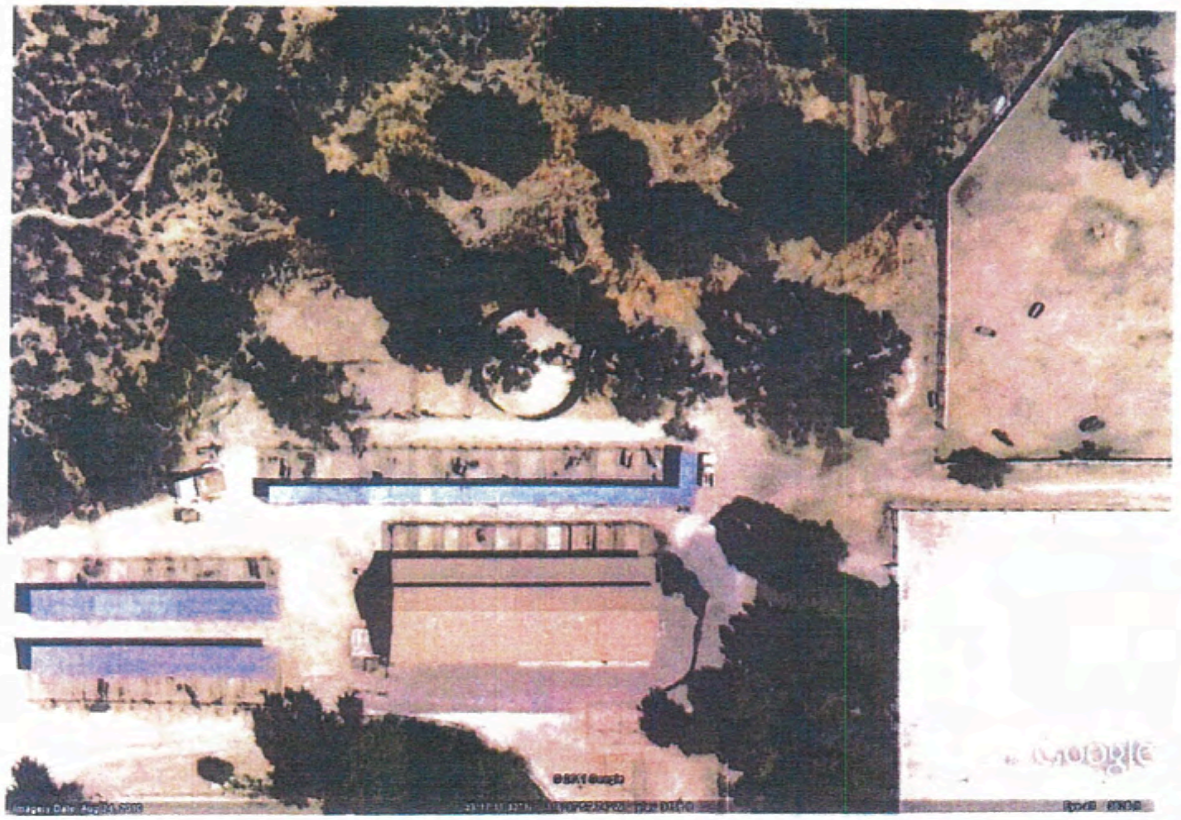
Aerial 1



Aerial 2



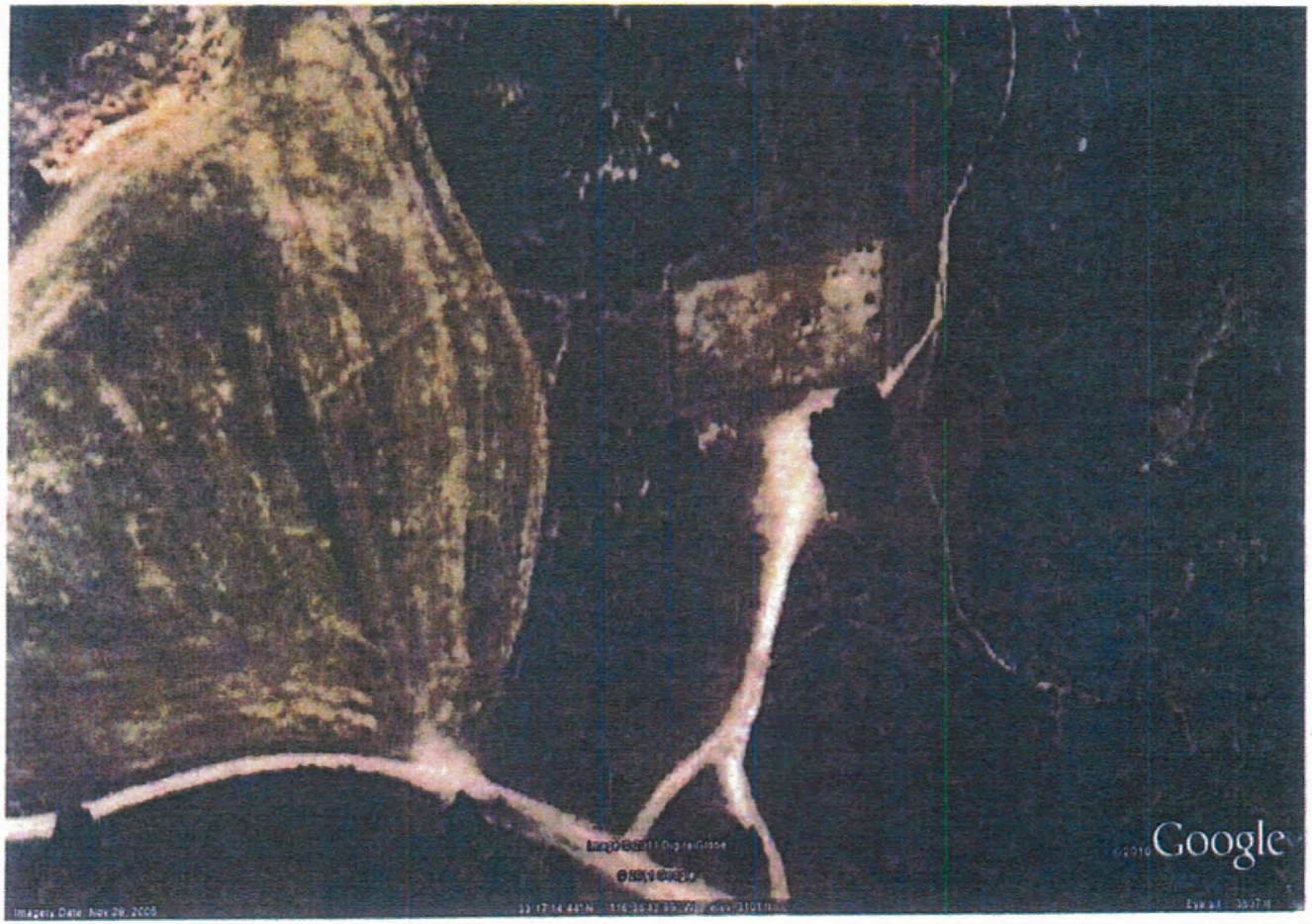
Aerial 3



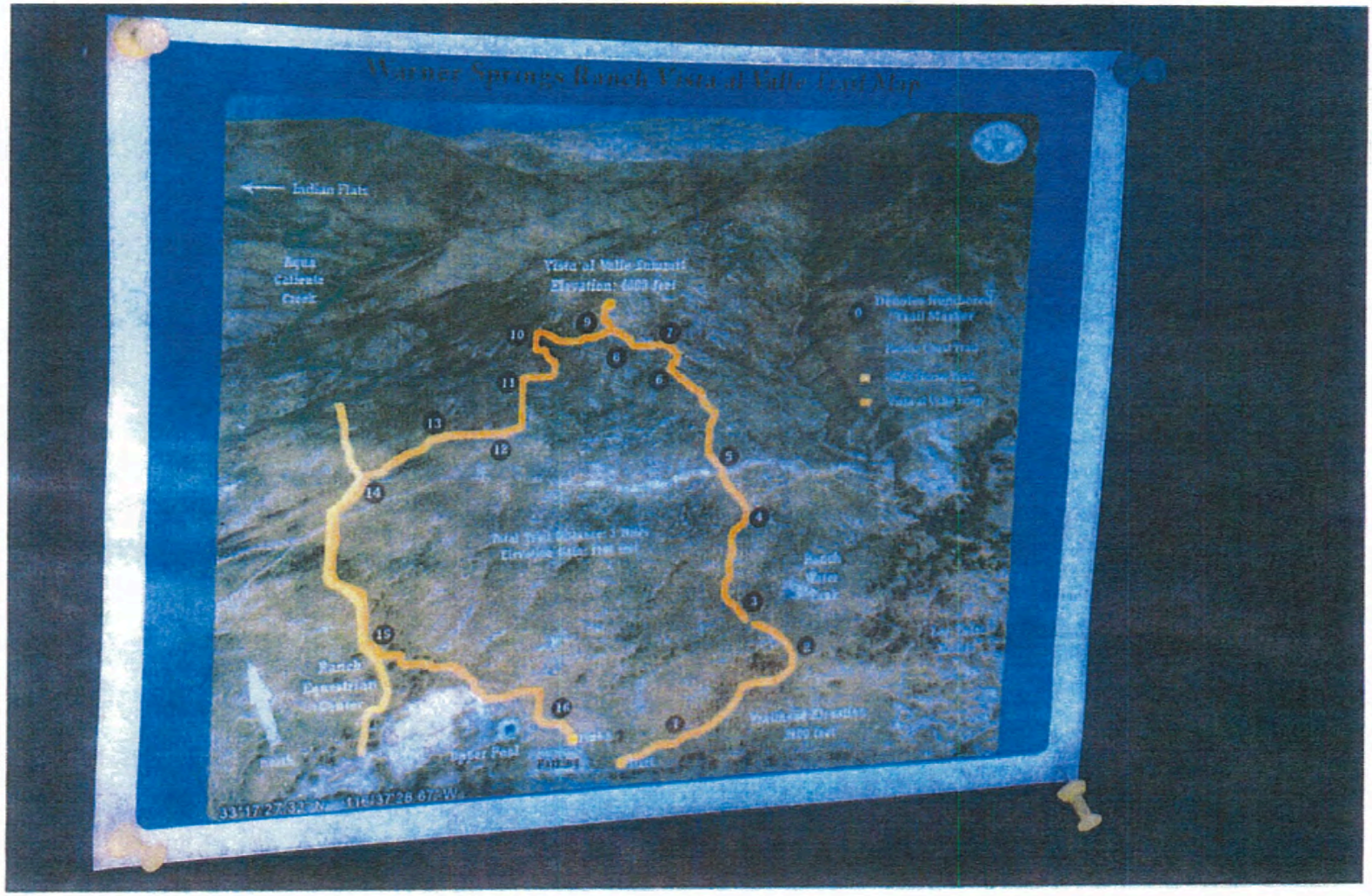
Ground Photo #1

Ground Photo #2

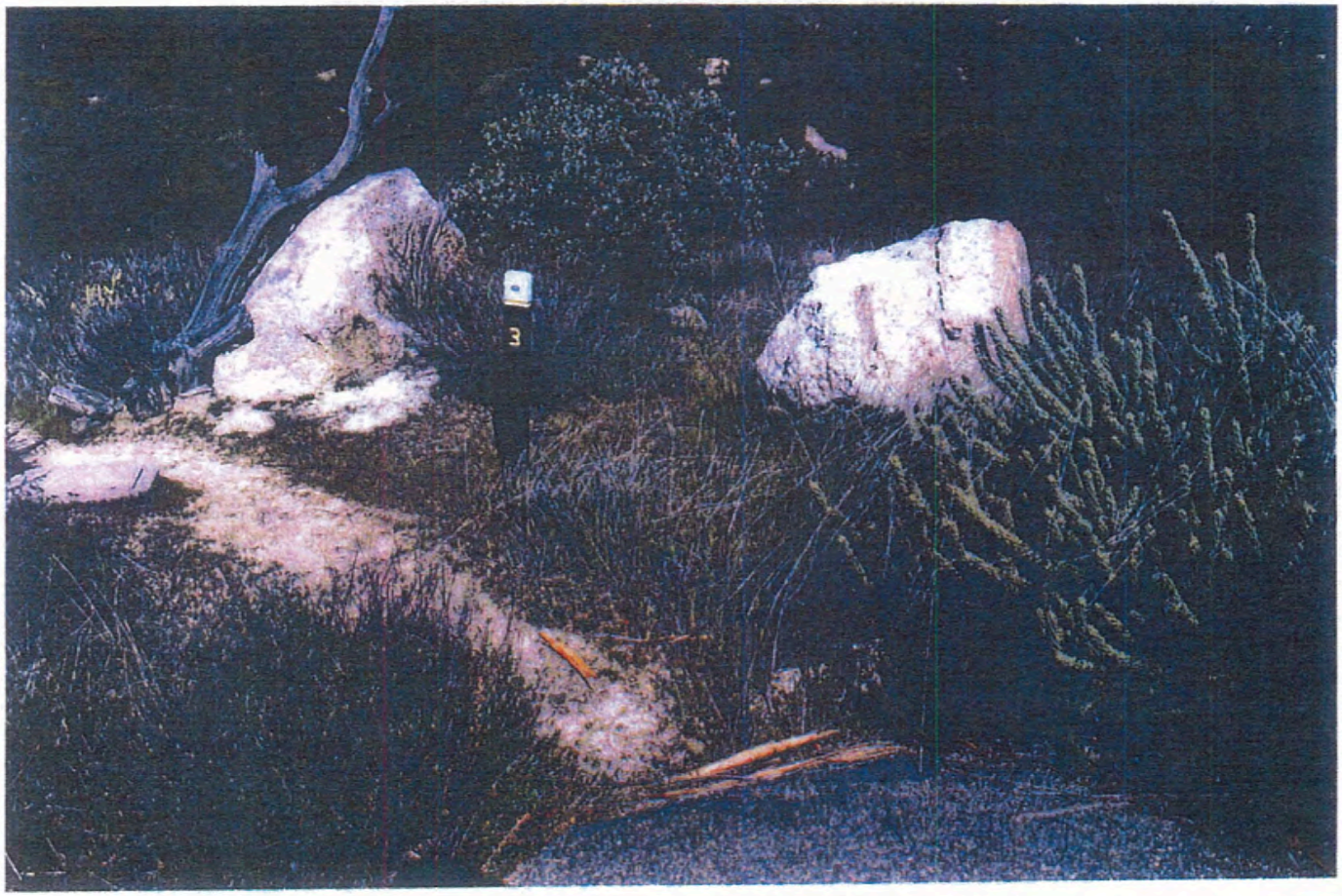
Aerial #4



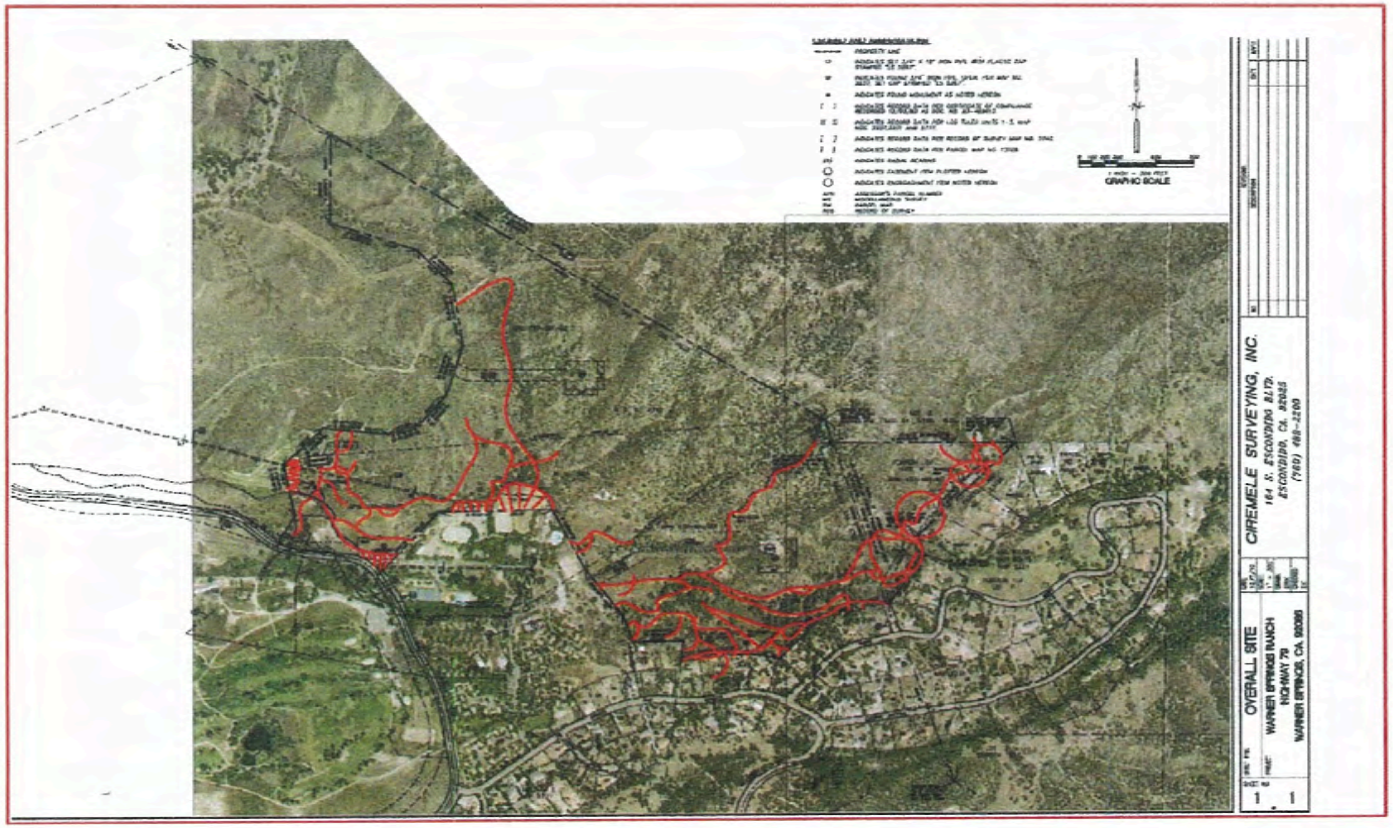
Warner Springs Ranch Map



Trail Marker #3



Encroachment – No Fence



Why is a fence needed?

Why is a fence needed?

Why is a fence needed?

Why is a fence needed?

Why is a fence needed?

Why is a fence needed?

Why is a fence needed?

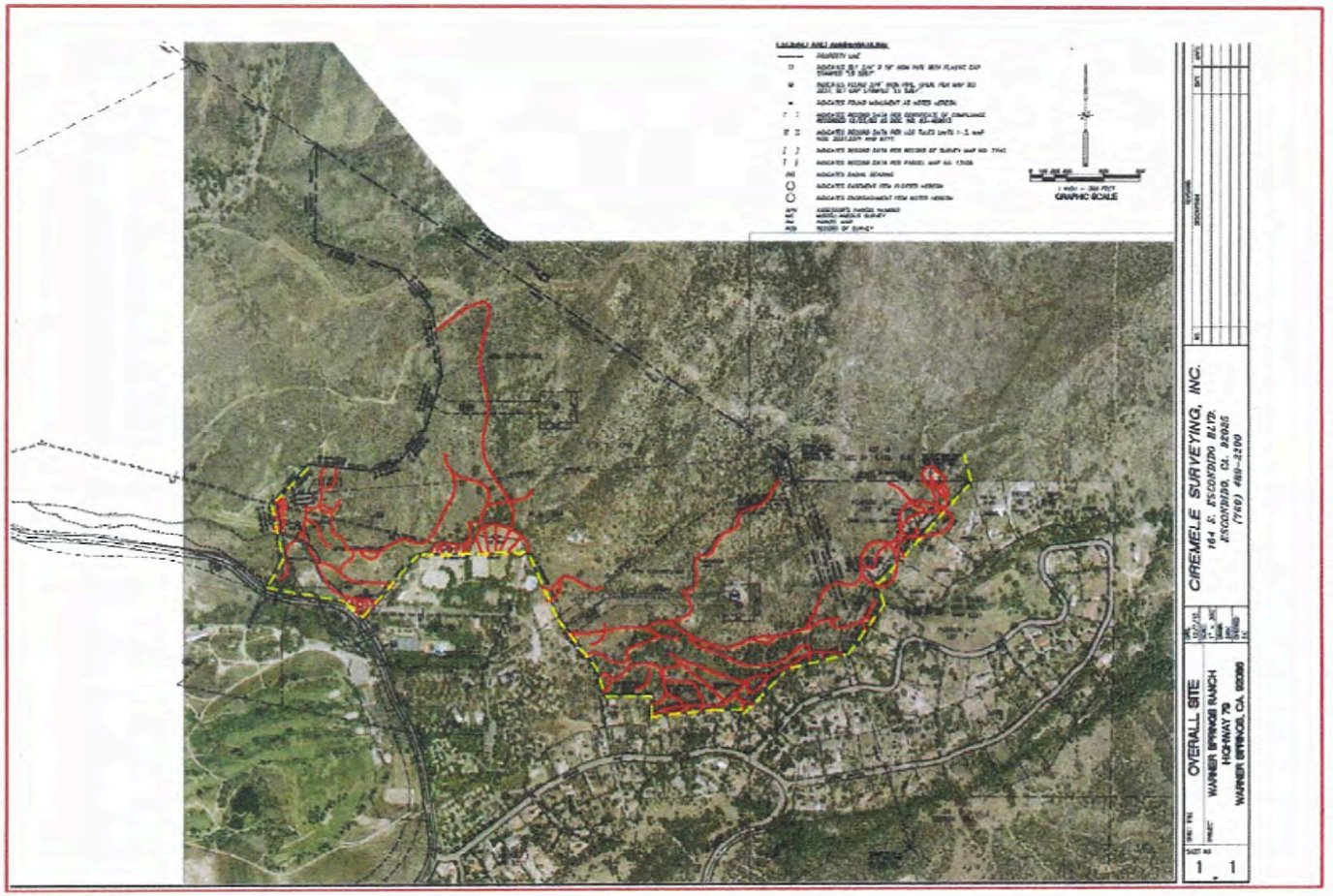
Actions to correct Trespass

- Trustee demanded removal and remediation by Resort.
- WSROA unable to remediate or correct (no funds).
- County would take no action against trespassers stating a "private property concern".
- Left to Trustee to protect; however, Trust not funded and Trustee cannot be on site 24/7.
- Physical barrier from entry is both reasonable and necessary, given the situation.

Proposed Fence

PROPOSED FENCE

Encroachment with Proposed Fence



How was Fence planned and constructed?

- Trustee sought approvals from the County before building, and was told none required.
- At 90% construction, stop work order provided.
- First informed of H-Designation and requirement for Site Plan.
- Ironically, Fence was being built to effectuate what H-Designation failed to do.

Site Plan should be waived because:

- Fence construction was authorized by County before construction began; Trustee reasonably relied on County approval.

- Fence construction exempt from 5709(B) pursuant to 5710 (A) because the County previously authorized the action when it established the duty of the Trustee to protect resources.

Site Plan should be waived because:

- Fence construction exempt from 5709(B) pursuant to SDZCO 5710(B) because the site plan process would not further the purpose of the H-Designation.

- Site plan is cumbersome, expensive (estimated +$30.000) and would not further the protection of the site.

Trust created for preservation, not recreation

- Cultural Trust property was established and set aside because of the extraordinary cultural history of the site and for the preservation of that culture.

- Cultural Trust was never intended for use as recreational open space or as a vehicle for individual curiosity and access.

- The only public use for the Cultural Trust was for "scenic enjoyment of the general public" (Trust, p.1)

Trust created for preservation, not recreation

- This preservation is reflected throughout the Specific Plan and GPA documents and environmental review

- The Specific Plan had another forum for the public experience and education—The Cultural Museum.

  - "The [Trust] area will remain undisturbed" (1983 Staff Report, conditions of approval)

  - "A cultural museum will be constructed on the resort site, making cultural and historical information accessible to all interested parties." (p.34 GP Conformance)

Trust created for preservation, not recreation

- There are NO ACCESS EASEMENTS ON PROPERTY (notwithstanding unauthorized road built by Resort and dozens of active trails)

- Resources remain in peril due to pot hunters, illegal access and misuse.

Available For Questions

Attachment H
Opponent Communications

David A Bantz
PO Box 4
Warner Springs CA 92086

May 19, 2014

Donna Beddow
Planning & Development
County of San Diego
5510 Overland Avenue
San Diego, CA 92123-1239

Dear Donna,

It was so nice of you to invite me to join you for your site visit on Friday, May 9, 2014. However, about ten minutes into your visit, in front of our entire group, you admonished me to refrain from responding to Shasta Gaughen's pronouncements for the rest of the visit. I was shocked. Her comment had been about the Native Americans' connection with the land one hundred years ago. My comments were only meant to note that those who choose to live here now have the same strong connection with it one hundred years later. At the time, I tried to contain myself even as Shasta and Ted Griswold, the attorney for Pala, were asked questions and encouraged to speak by you and Director Mark Wardlaw, throughout the rest of your visit.

In fairness and without further prejudice, please allow me to express myself with this letter directed to you, the Director and your department. On behalf of my neighbors, I would like to offer our point of view which I felt you largely prevented me from presenting during the site visit.

First and foremost, I wish to note Pala Chairman Robert H. Smith's letter of January 29, 2014 to your Department Director Mark Wardlaw to set the circumstance of your site review. In it he states, "The County PDS had apparently made a mistake when they authorized the construction of the fence." He goes on to say, "The 'H designator' normally would require Historic Site Board review and potentially preparation of a site plan before ground-disturbing work could occur. However, by the time the H-designation was discovered, all ground disturbing activity (putting in fence posts) was already completed for the length of the fence."

Los Tules residents I talk with seem to agree with Chairman Smith - there were mistakes made. We in Los Tules would like to find a way to come to an agreement that leaves us all better off - or at least where we were before the fence installation in the Warner Springs Trust property - which we all now know required a site plan. My neighbors feel we can find a way to 'walk this back' to a new start; however, in the meantime, the 15 owners along the fence line feel as if they have been fenced in as well as fenced out. They know they are part of the general public for whom the Trust was formed to provide scenic enjoyment. Yet, because of mistakes made regarding initiation of a site plan of a historical site, they look through a six foot high chain link fence which, in some cases, is less than a foot from their own attractive fences, voluntarily installed along the property line years ago.

With that as the background, now on to my comments regarding this site visit. Donna, you, Mr. Wardlaw and your department have a choice.

1. Will you take seriously proven and self-evident facts regarding clear physical actions taken by Trustee Pala and their fence company, in contravention to your department's regulations (I can cite them should you wish), the law, and your Historic Site Board's recommendation not to

approve a waiver? Or will you accept unproven, unsubstantiated commentary from Shasta and attorney Griswold telling us about unknown persons on unknown dates who entered onto the Trust lands at unspecified times without permission, some with shovels (how is that known?), taking relics and damaging the lands? Please ask the Trustee to bring forward the witnesses who are aware of these actions.

2. Or do you look at the *hundreds* of postholes drilled into the earth on most of the perimeter of the trust because of 'a mistake' and take into account the actual serious damage done by the digging, cement pouring, and mechanized equipment including trucks and bobcats driven all over the perimeter of the Trust lands on both sides of the fence (and trespassing on private property in the process).

Please note that Shasta was asked directly by the Director near the end of the site visit whether she visited the site at all during the digging and installation and she gave a one word answer, "No." What does that tell you? Neighbors were watching carefully and, please believe me, not one neighbor saw any indication that Pala had any supervision or oversight over this fence company's daily activity.

There can be little doubt that damage was done to the land by the fence installer along with waste and trash thrown about and serious damage done to the flora and fauna habitat. As we walked together, we could all see clearly with our own eyes this damage even many months after neighbors obtained the 'stop work order.' It is my opinion that installing the fence caused far more damage to these possibly sacred and precious lands than has occurred in the last hundred years cumulatively. Your Historic Site Board stated during their hearing they think the fence is "a horror."

When we visited the last private property, the Hemelstrand/Blonski property, we saw where the fence installers had trespassed on the owners' driveway and driven back and forth across their back yard to install parts of the fence. They left deep tire gouges in the soil on both sides of the fence as well as five foot high flammable piles of dry brush, trash and debris all around. We all are reminded how dangerous that flammable material can be after the last several days of raging fires across San Diego County, so I am sure you understand the neighborhood concern that that debris is still five feet high inside the Trust lands fence so the neighbors are defenseless to remove it.

As we walked the yard, you asked Shasta if she cared much about this area. She replied, "No, not really." Let me make it clear for the families who live there are among the most upset of all my neighbors - so I hope the Department cares - even if Shasta does not. All of the neighbors who now have that ugly fence to look at every day instead of the beauty of the Trust lands are understandably upset. They are beneficiaries of this Trust who should be enjoying the scenic beauty of the Trust lands; yet are being denied that right as beneficiaries by a mistake and the trustee's direct actions.

Native Americans who inhabited these lands and left these important relics did not know where the borders of this Trust would be so there is little doubt that this fence installation did damage to their leavings and possibly to parts of areas Shasta says remain sacred today.

Are we willing to believe that not one posthole defaced sacred land? Shouldn't there be an EIR to check the facts now? Shouldn't there be remedial action required of the Trustee to put the land back to as close as it was before more damage might be done? How can the Pala claim they are "protecting" these lands and relics with an unsightly metal fence and the direct damage done by the hundreds of postholes and fence installation? How can there possibly be 'no site plan required' on this H designated property? Pala has not finished erecting the fence and should not be allowed to continue without proper exhaustive study of the damage they did. Shouldn't proposals for remediation rather than continuance of their mistaken action be required by all of us involved?

How do you think our neighbors Los Coyotes, who live above us on this mountain, view being restricted from their own homeland? How will other preservation driven organizations view this state of affairs?

Please note once again, the Trust to which Pala agreed to accept trustee responsibilities says the purpose of the Trust is for the *scenic enjoyment of the GENERAL public* as well as to protect precious artifacts. The stated beneficiaries are the general public.

I hope you noticed, right after you admonished me, that you and Mr. Wardlaw walked within ten feet of two white signs that say in big black letters, "NO TRESPASSING, Owned by The Pala Band of Mission Indians. This land is not "*owned* by the Pala." I repeat, they are *trustees* with specific legal responsibilities to the general public who are the beneficiaries; they are not owners. (I believe you saw me start to point them out to you but then I held my tongue thinking of your direction moments before.)

We walked down along the fence on the flat part of the land between the graveyard and the Chapel. There are many equestrians who use these public but poorly marked trails; it appears that someone who may not have known the actual route of the California Riding and Hiking Trail ("CRHT") had nailed a sign claiming that this was the Trail. Atty Griswold used this to try to dismantle the legal standing of the CRHT saying "it no longer was in force." This is not true, but he left the impression that he was right, as I failed to counter him while worrying that you would again chastise me. In fact, that trail is part of the National Millennium Trail system signed in 2000 by President Clinton!

It does look like there was some manure dropped over the years in this area and we all know that it is no longer being done. Remember, please, that for almost 20 years Pala has been trustee of these lands and there has been no claim of damage, no objection to the public using the roads and trails on the trust land and no discussion of need for a fence. So, my neighbors and I will assist in cleaning up the manure - Take down the fence.

Warner Springs Ranch (former owner of these lands before creating the Trust and donating the 240 acres to the trust) gently used these lands for decades for breakfast rides, casual walks and hikes, and horse rides through what is now the trust property to get to other parts of the 2,000+ acre Warner Springs. Maybe we can determine whether these may be 'easements by prior use' during the Site Plan process.

I am sure you know that Shasta and Pala Tribe members visited the Ranch and Trust lands often during the Warner Springs Ranch ownership years. Many of us saw them on the golf course and in the Golf Grill over those years. On Friday, Shasta again acknowledged her participation in and sometimes leadership of tours during those years. I've shown you the brochures. Aren't you amazed that Shasta and various Pala members allowed and even encouraged this access for years without comment - until they lost their bid for the Ranch in U.S. Bankruptcy Court?

Before you arrived, Shasta told me how angry the Pala are. She said to me, as we waited for you, "They are furious they lost the Ranch and will always be." I said, "Why didn't they just bid higher? They could have bid $15 million. They were going to pay $20.5 million less than two years earlier." She said, "I don't know. The property was losing value. They know they should have." I am sorry for them but offensively fencing the trust property will not change that. We hope you will focus on pertinent real issues and hard facts rather than heresay and politics.

It is my personal opinion that my neighbors' property values may also be harmed if you let this fence stand. We neighbors are the innocent bystanders; we moved here because we love this land yet many have endured property damage and loss of our "scenic enjoyment" which is the purpose of the Trust.

It concerns me that you allowed an attorney be present for Pala. Yet you tried not to allow a

neighbor to join us though you had specifically agreed on the phone a few days earlier. At my request after clearance from you, Jon Goldenbaum left his work in Riverside to fly his own plane down to join us, and then you tried not allow him to do so. This was very disconcerting, to say the least to both Mr. Goldenbaum and me.

When we were examining the deep wash by Mr. Goldenbaum's home, Atty Griswold said he has proposed a "gate" to be opened when needed to allow flow of water and debris. Question: who is it that will open and close this gate and what will determine when it may be opened. Is atty Griswold going to drive out with the key and wade into the wash during a summer thunderstorm or winter deluge? To be serious, Mr. Goldenbaum has already experienced serious damage when over a third of his home went up in flames a few years ago during a fire which raged right up that exact wash into his back yard. These fires really happen as we know these past few days in May 2014. If this fence is left standing, it will retard fire fighters and could again damage part of the Goldenbaum property adjacent to the wash, gate or not. What will you say then to Mr. Goldenbaum? If the Goldenbaums are in their yard and their home catches fire, how will they escape?

The fence blocks important animal corridors. We saw bedding areas indicating that deer live about fifty yards inside the fence. Where will they go if the fire runs up the wash again like it did a few years ago? This is a relatively remote area back behind several properties off of Camino Moro. Nobody would even know to go back there unless they were residents who care a great deal about the land...on both sides of the fence! The fence is unnecessary and actually dangerous, especially in certain areas like this one and several other washes which cross the Trust perimeter.

If your department waives the requirement for a site plan and EIR process for installation of this fence in such treasured lands, wouldn't that amount to nothing more than legalized vandalism of the Trust lands after the fact? The County would also be going directly against the Historic Site Board's convincing four-to-one vote not to approve a waiver, but instead to protect these lands from further damage and mismanagement. We ask that the Department work things out between Trustee Pala and the County to restore the land as closely as possible to its original state without further harm to residents / beneficiaries. Granting a site waiver does not repair any entity's inappropriate action or restore the land and the rights of the beneficiaries to the former state.

We trust your Department will take this as seriously as we do.

Thank you,

David A. Bantz
Resident of Los Tules

Cc: Mark Wardlaw, Director

32362 Camino San Ignacio
Warner Springs, CA 92086

RECEIVED
MAR 03 2014
PDS-DIRECTORS OFFICE

February 26, 2014

Mr. Mark Wardlaw
Director of San Diego Planning and Development
5510 Overland Ave. Suite 310
San Diego, CA 92123

Mr. Wardlaw,

We are writing to you about the illegal fence that was constructed by the Pala Band of Indians around the Warner Springs Trust Land.

You have already received letters and pictures from our neighbors. Perhaps you have also seen the 3 segments that were broadcasted by The Turko Files on KUSI. The destruction to property that Michael Turko showed photos of, as well as the brush piled high against the fence, is directly behind our house.

The illegal fence is not just an eyesore. It blocks public access to public property, including the Pacific Crest Trail. The illegal fence and the debris that was left behind block run-off from rain. The illegal fence is a disaster for wildlife.

The Pala are trustees of the land, as you are aware. They did not and do not have a site plan. They do not have an Environmental Impact Study. They blatantly ignored the laws established which govern the rights and responsibility of the trustee. They continue to attempt to circumvent county laws and procedures with their requests for waivers from the Historic Site Board, and now your office.

The fence is illegal and it is awful. We invite you to view the situation for yourself. Not only should the Pala not receive a waiver around the laws, they should be ordered to take the fence down immediately.

Respectfully,

Debbie Hauser and Joseph Blonski
Tel: 760-6720356 760-213-3925

RECEIVED
MAR 03 2014
PDS-DIRECTORS OFFICE

Dear Mr. Wardlow. (Director)

I have lived in Warner Springs for 35 years, & was an owner of the ranch when it was private. The Pala Band of Mission Indians tried to buy it, but would not close escrow, even though it was sold as is. They had it in the palm of their hands & let it slip away. The bankruptcy court saw thru their disguised ploy of trying to get it for less after making us go to bankruptcy. At the time the ranch was owned free & clear bankruptcy was the only way to go forward. This fence is a mean fence, they have done this in revenge for not getting the Ranch. There is no other Chain Link fence in the Back Country it hurts the animals, & the Scenic beauty of the area, & is

totally against what the trust was set up as. Please have the fence taken down.

Sincerely
Don Burgess

P.S. when the ranch was closing the history committee wanted to give Pala all of the artifacts from the Ranch, they were not interested & would not take them. If there were there ancestral artifacts, they could care less.

Copyright © 1995-2013 eBay Inc. All Rights Reserved. ..... and

Louis and JoAnn Cardona
32740 Camino Moro
Warner Springs, CA 92086

March 12, 2014

Director of Planning and
Development Service
County of San Diego
5510 Overland Ave., Ste 310
San Diego, CA 92123

Dear Director,

We are writing this letter to add our positive support to the Opposition of the Pala fence, and our concerns and strong opposition to the request for a Site Plan Waiver.

Many letters have been submitted to you, with valid facts and valid concerns.

We are Los Tules homeowners, and our property is directly impacted by the fence. Our lot is located immediately adjacent to the Cultural Preserve. The back side of our lot is directly closed, and being blocked off to any access by us, or any emergency vehicles that should be needed. In an example, fire equipment could not come up from that side in the event of a fire. In 2006, a fire swept through the Preserve. Our adjacent neighbors' home was badly burned. Our property was impacted by the loss and burn of many oak trees. Our home had minor damage. Presently, much debris and dried brush has collected in this area, awaiting a disastrous outcome if not cleared. Also, every arroyo and waterway has been blocked by the fence.

Please consider all the concerns of the Los Tules neighbors, as they are valid. We are thanking you in advance for thoughtful decision to deny the request for the Site Plan Waiver. We need to protect the beauty and culture and safety of our back country.

Sincerely,

Louis Cardona JoAnn Cardona

RECEIVED
FEB 25 2014
PDS-DIRECTORS OFFICE

Dr. Gerald Fishkin and Kathy Fishkin
32158 Cerrada del Coyote
PO Box 14
Warner Springs, CA 92086

February 18, 2014

Mark Wardlaw, Director
County of San Diego Planning and Development Services
5510 Overland Ave, Ste 310
San Diego CA 92123

Dear Mr. Wardlaw:

As a homeowner and cultural advocate of the backcountry of San Diego County, we find the Fence installed and tearing up the land by Pala a serious threat of the public's right to enjoy the beauty of the back country and access to walk the Pacific Crest Trail. Beginning next month we will have the "Pacific Crest Trail walkers" starting their journey from the Mexican border to Canada. Our home is right on Highway 79 and we just recently had the trail cleaned out next to the highway at our expense so the "walkers" have a safe place to walk the trail which is also designated as part of the California Riding and Hiking Trail. You see the walkers all have packages sent to our Warner Springs post office and this is the access route to the post office. As I write this letter I have also learned the Pacific Crest Trail was a founding trail of the National Trails System Act of 1968 and is part of the Juan Bautistude Anza National Historic Trail. Outside our fence line and front yard is history which needs to be maintained and preserved.

We respectfully request that you visit the site and view the "open space fenced in" and see for yourself the disrespect to the land and to the "public's" access to the beauty of the back country. Please visit our neighbors who for years had open access to the land and now have a "fence" denying them access and quality of life. It is imperative that we all standup as cultural stewards and protect our access and rights, so the next generation of families will be able to enjoy this sacred land.

Sincerely,

Dr. Gerald L. Fishkin, Ph.D.

Kathy M. Fishkin

Jon Goldenbaum

PO Box 190

Warner Springs CA.

951-203-0190

jon@conaircraft.com.

Timothy R. Kirkland

October 6th, 2013

Code Enforcement Division

Planning & Development Services

151 E. Carmel St.

San Marcos, CA 92078

Timothy.Kirkland@sdcounty,ca.gov

Dear Mr. Kirkland,

Thank you for your responses to my friends in the Los Tules neighborhood of Warner Springs concerning the Pala Band of Mission Indians fence.

The major thread of conversation has revolved around the apparent inconsistency by the Pala in fencing the Cultural Preserve. Appendix D of the 1983 Warner Springs Ranch Specific Plan says that "the trust is established for conservation purposes, specifically: 1. preserving the Real Property as open **space** for the scenic enjoyment of the **general public."** I understand that many interested parties are already in this conversation so I will move my focus to other areas.

I live immediately adjacent to the Cultural Preserve; in fact, my yard backs up to it. The lovely views we have of the local area are of the trees and hills of the Preserve. For years my family has enjoyed serene walks through this lovely glade, and as a trained cultural anthropologist, I have enjoyed showing others the property while telling the Cupeno story; the grinding stones and rock shelters are cultural treasures and my neighbors have treated them as such.

Over the years I have often wondered why the Pala have not made a greater effort to bring the cultural history of the Cupeno to the public through the Preserve; it is a moving story. Rather,

the land has apparently been ignored; while regular brush clearing and fire prevention has been a mainstay in our neighborhood, the Preserve has always been a tangle of fallen timber and overgrown brush.

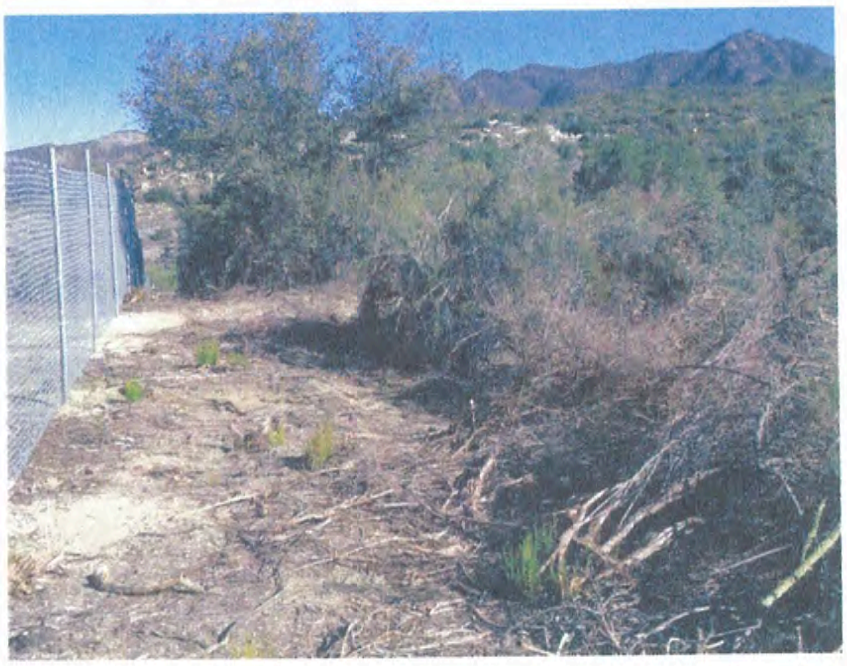
In 2006, a wild fire swept through the Preserve, the natural depression of its streambed became a venturi in a strong east wind. In an instant, a large portion of the Preserve ignited; uncleared brush and timber fueled a wall of fire. Within minutes it jumped into my back yard, and my house and grounds were torched.

My house, 2006

My backyard, 2006, Cultural Preserve in background.

Aerial view of burned Preserve (gray area in center), Los Tules neighborhood in foreground. My house is in the center of the burn.

This brings me to my greatest concern: the wanton stripping of the land to make a path for the fence and the piling up of the excess brush from clearing on the perimeter of our neighborhood. Again, I have lived through one fire fueled by the Preserve; I don't want to do it again. We now have a 240 acre perimeter of dead and drying brush.



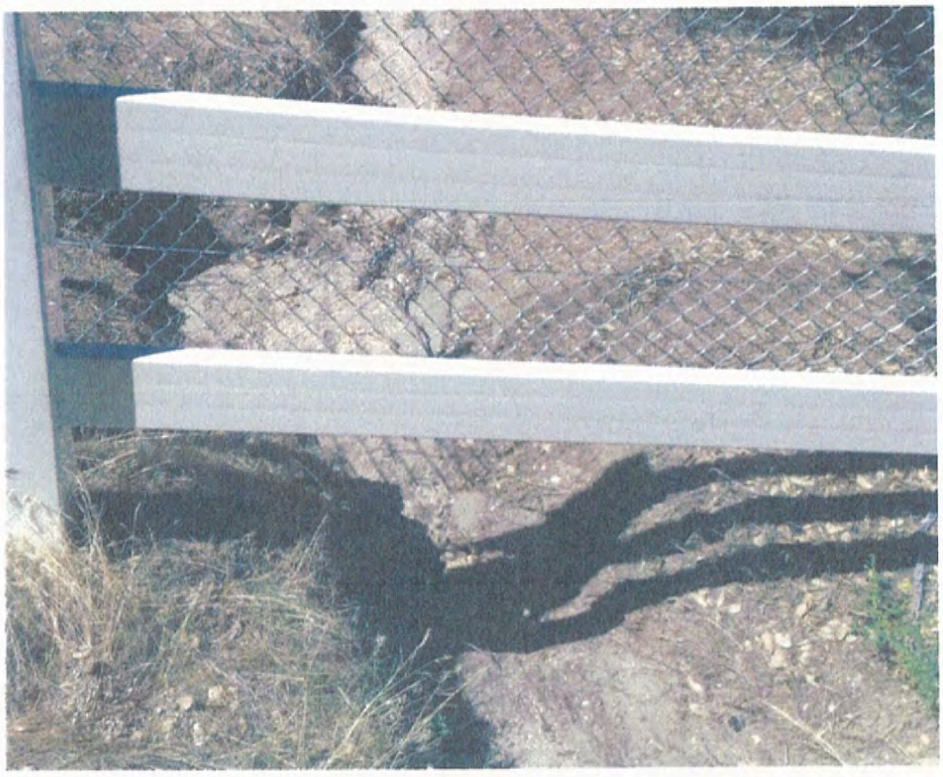
Cleared path for fence: a 240 acre perimeter of dead brush ready to burn.

My second area of concern is that every arroyo and waterway has been blocked by the fence, often right on ground level. This area is all granite rock and decomposed granite, water runs on the surface with little ability to soak in. In the rainy or monsoon season we have classic flash flooding; dry stream beds become torrents, full of brush and logs. Our neighborhood works on clearing natural waterways to avoid flooding, we have culverts under our roads and we spend a great deal of time protecting the natural courses of our neighborhood streams. A deep ditch runs right along my property line, I have often seen it raging with water and large debris. The Pala fence now crosses its path, with only a small open area unblocked. Many other large arroyos and stream beds are blocked with the chain link fence right to the stream bed. No doubt these will become dams when it rains with inevitable flooding.

Deep arroyo completely blocked by fencing. 100 feet from houses.

Fence right on 20 -foot wide stream bed; stream has a strong flow in winter.

2 foot deep ditch in neighborhood, often a raging torrent.



Chain link fence now blocking ditch above, a dam in my backyard.

Finally, my back yard, my white fence and theirs, reminiscent of Stalag Luft 17.

Mr. Kirkland, in conclusion I implore you to put on your code enforcement hat! I have great respect for our friends, the Pala, and will continue to support all efforts to preserve the land that we all love. However this fence is a travesty and a shame to our lovely North County. Even if approved in a new site plan, it is an environmental and esthetic nightmare.

Thanks in advance for your consideration.

Jon Goldenbaum

Olivia Hefler
PO Box 4
Warner Springs CA 92086

RECEIVED
FEB 21 2014
PDS-DIRECTORS OFFICE

February 18, 2014

Mr. Mark Wardlaw, Director
County of San Diego Planning and Development Services
5510 Overland Ave, Ste 310
San Diego CA 92123

Re: Pala fence on Warner Springs Trust must be removed now!

Dear Mr. Wardlaw,

The following information is important to your Department in denying any request by the Pala Band of Indians with respect to retaining or completing the fence around the Warner Springs Trust open space property.

As I noted to you in my letter of February 6, 2014, the fence blocks the California Riding and Hiking Trail and is a blight on the Juan Bautista de Anza National Historic Trail. Upon further research I have learned that the blocked trail is also a **National Millennium Trail**. These 16 trails were designated in 2000, please see link and attachment and text below. They are part of the National Trails System http://www.pnts.org/ which began in 2000

http://clinton4.nara.gov/Initiatives/Millennium/trails_doc.html
(See link, attachment and this White House notice of June 26, 2000)

The Millennium Trails initiative is a part of the White House Millennium Council's efforts to stimulate national and local activities to **"Honor the Past and Imagine the Future."** This *public/private partnership is led by the Department of Transportation, the Rails-to-Trails Conservancy and a collaborative of other agencies and organizations*. The purpose of Millennium Trails is to spark the creation and enhancement of more than 2,000 trails as part of America's legacy for the future.

Sign on Calif Riding and Hiking Trail just south of Warner Springs identifies that it is also part of the Millenium Community Trails as it is the same as the Juan Bautistia de Anza National Historic Trail, one off only 16 national trails so designated by Congress in 2000. This post is on the junction of Pacific Crest Trail and CRHT/Anza National Historic Trail

This is the side of the same post. You can see direction sign to Warner Springs Post Office.

First Lady Hillary Rodham Clinton said, "Through the Millennium Trails project, we are building and maintaining trails that *tell the story of our nation's past and will help to create a positive vision for our future*. The 16 National Millennium Trails that Secretary Slater designated today are all visionary projects that define us as Americans."

"Transportation is about more than asphalt, concrete and steel, it's about people," said Secretary Slater. "The *National Millennium Trails connect our nation's landscape, heritage and culture* and demonstrate our national commitment to improving the quality of life for all Americans. The designated National Millennium Trails symbolize America's legacy for the Millennium."

The Pala fence blocks the Juan Bautista de Anza National Millennium Trail and the California Riding and Hiking Trail. In the coming months there will be many hikers and riders using those trails and the Pacific Crest Trail. The 'general public' are the beneficiaries of the Warner Springs Trust and the 'general public' have the right to use those trails on the Trust property!

The Pala fence does not "Honor the Past and Imagine the Future" as stated above.

How can the County of Sand Diego condone that blockage? That fence must come down immediately!

Sincerely,

Olivia Hefler

Olivia Hefler

THE WHITE HOUSE

Millenium Trails Announcement

Help Site Map Text Only

White House Millennium Council

2000

Go

- President & First Lady
- Vice President & Mrs. Gore
- Record of Progress
- The Briefing Room
- Gateway to Government
- Contacting the White House
- White House for Kids
- White House History
- White House Tours

Millennium Trails

First Lady Hillary Rodham Clinton, U.S. Transportation Secretary Slater Announce 16 National Millennium Trails

Celebrating America's rich history, as well as its bright future in the 21st century, First Lady Hillary Rodham Clinton and U.S. Secretary of Transportation Rodney E. Slater designated 16 National Millennium Trails on Saturday, June 26.

The designations were announced in Pittsburgh at the International Trails and Greenways Conference organized by the Rails-to-Trails Conservancy.

The Millennium Trails initiative is a part of the White House Millennium Council's efforts to stimulate national and local activities to "Honor the Past and Imagine the Future." This public/private partnership is led by the Department of Transportation, the Rails-to-Trails Conservancy and a collaborative of other agencies and organizations. The purpose of Millennium Trails is to spark the creation and enhancement of more than 2,000 trails as part of America's legacy for the future.

First Lady Hillary Rodham Clinton said, "Through the Millennium Trails project, we are building and maintaining trails that tell the story of our nation's past and will help to create a positive vision for our future. The 16 National Millennium Trails that Secretary Slater designated today are all visionary projects that define us as Americans."

"Transportation is about more than asphalt, concrete and steel, it's about people," said Secretary Slater. "The National Millennium Trails connect our nation's landscape, heritage and culture and demonstrate our national commitment to improving the quality of life for all Americans. The designated National Millennium Trails symbolize America's legacy for the Millennium."

David Burwell, President of the Rails-to-Trails Conservancy, said, "All of the more than 50

Events and Remarks

Dr. Bernard Bailyn

Committee on the Arts and Humanities

President At Millennium Lecture

Remarks at Millennium Evening with Poets Laureate

Q&As at Hawking Lecture

Excerpts from 1997 State of the Union

Millenium Trails Announcement

Stephen Hawking

The President and The First Lady

Be Involved

applicants for National Millennium Trails designation deserve recognition. The National Millennium Trails announced today represent a cross section of the growing trails movement in America."

The 16 National Millennium Trails designated are:

The Unicoi Turnpike -- A 68-mile trail dating from the first millennium that carried the Cherokee people from the flatlands east to the **Smokies** through the mountains to the hills of **East Tennessee**. It provided similar passage for European settlers in Colonial and post-revolutionary times. In our day, the Unicoi spirits contemporary Americans into remote trailside communities still reflective of Cherokee and Appalachian cultures.

The Cascadia Marine Trail -- A water trail in the Pacific northwest currently enjoyed by canoeists, kayakers and other watercraft as they explore the beauty of **Puget Sound** and witness the grandeur of **Mount Rainier**. It follows the wake of inlets and coves that originally marked a Native American water trade system.

The Juan Bautista de Anza National Historic Trail -- Stretches 1,200 miles from the **Mexican** border to **San Francisco**, marking the route of exploration and settlement followed by the Spanish as they claimed the Pacific coast for the Iberian Crown.

The Freedom Trail -- Connects 15 sites in old **Boston** that capture America' s revolutionary history, including Faneuil Hall, where plans were laid for an infamous tea party, and Old North Church, watched closely one night by Paul Revere as he rowed with muffled oar to the Charlestown shore.

The Lewis and Clark National Historic Trail -- Commemorates the Lewis and Clark expedition of 1804-06, which covered 3,700 miles of American frontier from **St. Louis, Missouri**, to the mouth of the **Columbia River** in current-day **Oregon**. It opened the continent of North America to European settlement.

The Underground Railroad -- Follows multiple secret routes that originated in the South, intertwined throughout the North, and eventually led to Canada, the western territories, Mexico, the Caribbean, and freedom for those people held in bondage below the Mason-Dixon line. Loss of life or severest punishment was risked by fleeing slaves determined to find their destiny as free men and women.

Civil War Discovery Trail -- identifies and thematically connects the battlefields, military routes and sites of historic significance from the nation's most serious breakdown in domestic tranquility. It provides a lens through which contemporary Americans can view the war which tore the nation so dramatically asunder and offers lessons for its continued binding without malice and redeemed by charity.

The International Express -- The Number Seven Train through **Queens, New York**, connects a series of immigrant neighborhoods and is a metaphor for the migration of all the world's people to America's shores. Pakistani, Irish, Romanian, African-American, Italian, Korean, Hispanic, Indian, Argentinean and other ethnic neighborhoods are connected and available for exploration and cultural discovery on this route from **Sunnyside** to **Flushing.**

Iditarod National Historic Trail -- Surveyed in 1908 by the U.S. Government, the Iditarod is America's only remaining frontier trail. Its 938 miles connect remote settlements to each other, mark the way of the Klondike Gold Rush, and provide a yearly reenactment of the dogsled race-of-mercy that brought life-saving serum to diphtheria-ridden **Nome, Alaska**. Winter travelers go by sled, snowshoe, snowmobile or cross country ski. Warm weather natives and visitors explore the trail via all modes of conveyance, including watercraft where the trailway has melted.

Appalachian National Scenic Trail -- Reaffirms America's love and respect for the great beauty of our land and is the nation's first major *consciously*-created trail. Not a route of exploration, settlement or trade, it is rather a 20th century recognition that we will have no trails in modern times unless we purposefully build and protect them. Stretching over two thousand miles from **Georgia** to **Maine**, the Appalchian Trail is a narrow footpath traversing the Appalachian Mountains' ridge-crests and major valleys. The need to protect the Appalachian Trail from encroaching development led to the passage of the National Trails System Act in 1968.

The Great Western Trail -- Follows the spine of the Rocky Mountains and stretches across America on a north/south axis from the **Canadian** to the **Mexican border**. It traverses lands managed by the federal government, five states and the Navajo Indian Nation. Its unique design of parallel routes accommodating different trail users allows a wide

range of Americans access to the grandeur of our West.

The North Country National Scenic Trail -- Provides a narrow route through the unique northern rim topography of the continental United States and binds together over 160 state parks, forests and wildlife areas from **New York** to **North Dakota**. It is a traceable footpath providing hiking opportunities through seven states, potentially covering 4,600 miles.

Hatfield-McCoy Trail System -- Employs an entirely new approach to trail building by forging a partnership with the corporate giants who own the coal fields of southwest **West Virginia** and surrounding states. Old railbeds, abandoned logging roads and other unused routes that once transported the region's wealth to fuel industrial America, will be recycled as a 2,000-mile trail system accommodating off-highway motorcycle and all-terrain vehicle riders, equestrians, mountain bikers, hikers and other trail users.

The East Coast Greenway -- Sweeps the Atlantic Coast from **Maine** to **Florida** connecting 15 of America's most populous states and virtually every major city of the eastern seaboard. It will incorporate scores of currently disconnected local trails and traverse a remarkable range of urban, suburban, village and rural landscapes, providing recreation, transportation and historic assets to literally millions of east coast Americans.

The Mississippi River Trail -- Combines bicycling and blues by following the nation's mightiest river from Minneapolis to New Orleans. Envisioned as a bicycling route that will touch upon the cultural, historic and natural and habitat richness of the **Mississippi River Valley**, this trail will allow Americans to experience first-hand what Mark Twain has described as the "body of the nation."

American Discovery Trail -- *From Sea-to-Shining Sea* becomes a trail reality as the American Discovery Trail crosses the nation on a continuous line of existing trails, rail-trails, canal towpaths, forest lanes and country roads. When complete, the trail will cover over 6,500 miles, connecting America to America, our dreams to our realities, and the past which we honor to the future of our imaginations.

January 27, 2014

Fencing of the Cultural Preserve in Warner Springs

As early as July 19th we have been trying to get someone to address the fact that The Pala Band of Indians were intending to erect a 6 foot fence around 240 acres. This fence will also surround the Historic Chapel which many residents attend weekly.
With their careless regard for anyone else Pala's have decided to fence this land and in doing so have trespassed and damaged property in the area.
Several individuals were finally successful in August to get The County to give the Pala Indians a stop work order until it could be reviewed.

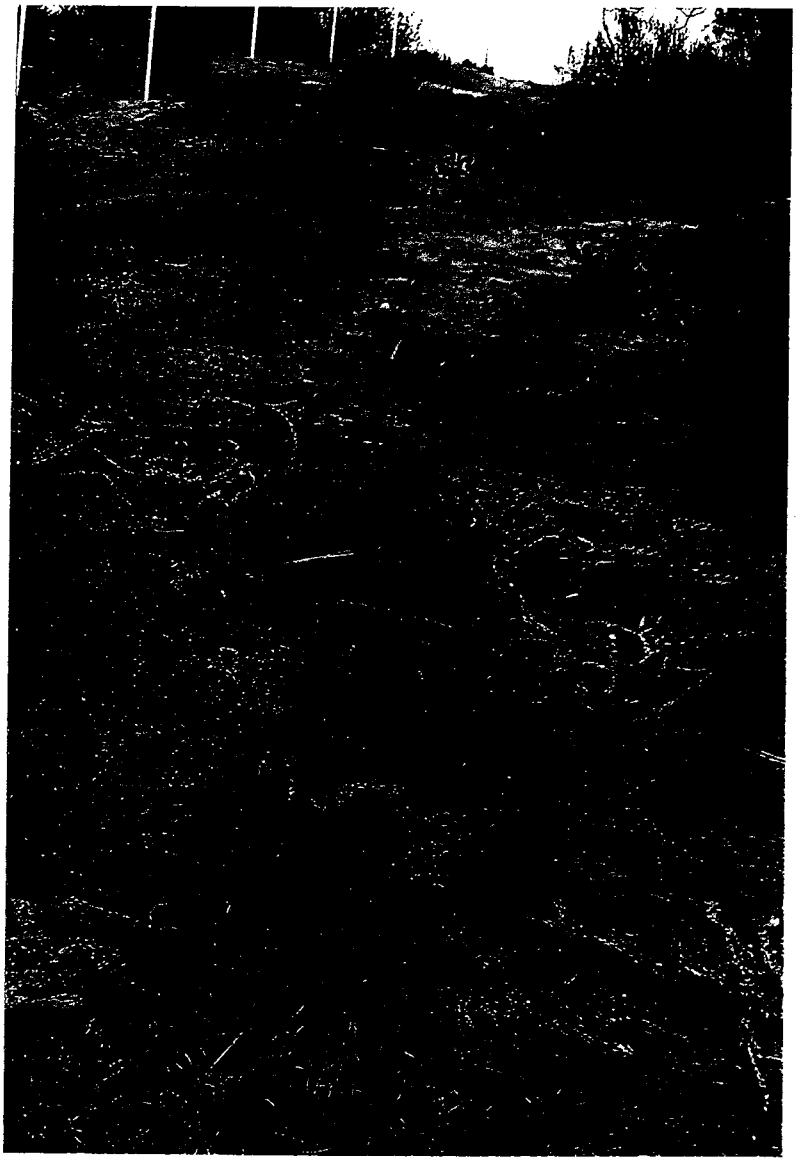
The land being fenced is a Cultural preserve which is to be left as open space for public good. It is still to be determined that the Pala Indians are the soul Trustee of this property. This is NOT sovereign land and originally had 3 Trustees to oversee the care taking of this land and to preserve it.

Normally in January the San Diego County would not be in a high fire alert, but with the lack of precipitation the entire state is still dealing with the fact that at any time a careless spark could set off a disastrous fire, destroying wild live, sending residents packing, and jeopardizing everything individuals have worked so hard for.

In closing we respectfully request the fence to be removed, the sites to be restored and to give the owners punitive damages.

Sincerely,

Diane Hemelstrand
David Langley Lot # 66



RECEIVED
FEB 25 2014
PDS-DIRECTORS OFFICE

Mr. Mark Wardlaw, Director,
County of San Diego Planning & Development Services,
5510 Overland Ave Ste 310,
San Diego CA 92123

Re; Warner Springs illegal construction of fence.

Dear Mr. Wardlaw,

My name is Diane Hemelstrand. I am the owner of property in the Los Tules housing development in Warner Springs, which sustained damage during the unlawful construction of a fence by the Trustee (The Pala Band of Mission Indians) of the Warner Spring Trust.

Other affected property owners and myself (tax payers) are distressed that the County has not required the removal of the fence.
Several items in the County's ruling on their Stop Work Order are vague and incorrect. So that we can better understand our options, we are asking the County to respond several questions that we have.

First – Why is it that the County uses the word Trust to denote who is responsible for the construction of the fence. The definition of a Trust is" A legal document describing the ownership of property". Legal documents don't install fences – in this case the Trustee did.

1. The Fence – The Trust may NOT continue installing the fence until a site plan is approved or in the alternative the fence is removed.
2. Why a private hearing - It has been brought to my attention that the Pala Band Of Indians has requested a private meeting with the you instead of a public hearing. I'm sure this is due to the fact the Council turned down their request for a waiver.
   I'm sure you respect and support the decision of the council. They voted 4 to 1 on January 27th to not approve a waiver to the Pala's, If not, why do they exist??
   This must not be swept under the rug.

Has the County given the Trustee a time limit to file a site plan? If not is there anything that would stop the Trustee from walking away and leaving affected property owners to deal with the mess?
Why isn't the County enforcing 5708? LIMITATIONS ON USE AND CONSTRUCTION WITHIN DESIGNATED LANDMARKS AND DISTRICTS.
a. Archaeological Landmarks or Districts. No salvage mitigation, under grounding of utilities, trench excavation, grading, clearing, grubbing, removal of archaeological features or artifacts, or any other activity or use potentially damaging to a designated Archaeological Landmark or District protected under this Ordinance shall be permitted, except by site plan review pursuant to Section 5709(c.) and/or 5710.
It is very hard to understand why several local small businesses have had to file Environmental Impact reports and have Archeologist on site for construction projects. Why not the Pala?
Which leads us to the last question: Why isn't the County enforcing Zoning Regulation 7703– particularly part D.????
7703 VIOLATIONS AND PENALTIES.
It shall be unlawful for any person to use any property or erect, construct, enlarge, alter, repair, move, remove, improve, convert or demolish, equip, use, occupy or maintain any building or structure, or cause the same to be done, contrary to or in violation of any of the provisions of this Ordinance. Any person violating any of the provisions of this Ordinance, including the violation

of any condition of a use permit, site plan, administrative permit, variance, or other discretionary permit shall be deemed guilty of a misdemeanor unless, in the discretion of the prosecutor, it is charged as an infraction.

a. Each day or portion of a day that any person violates or continues to violate this ordinance constitutes a separate offense and may be charged and punished separately without awaiting conviction on any prior offense.

b. Any person convicted of a misdemeanor under this ordinance shall be punished by imprisonment in the County jail not exceeding six months, or by a fine not exceeding $1,000, or by both.

c. Any person convicted of an infraction under this ordinance shall be punished by a fine not exceeding $100 for the first violation; by a fine not exceeding $200 for a second violation of this ordinance within one year; and by a fine not exceeding $500 for each additional violation of the same provision of this ordinance committed by that person on the same site within one year.

d. Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition that violates any provision of this ordinance.

We are hoping that our questions will spur the County to reassess their response to this issue. I don't think anyone wants this issue to go "viral".

In closing I would like to say that the homeowner's neighboring this beautiful land have watched over and made sure there has not been any damage or vandalism to this property. The Pala's on the other hand have only taken an interest in the land since they lost out on purchasing the "Warner Springs Ranch". Which was their own doing! Before "The Ranch" went into Bankruptcy the Pala's were in escrow for more than two years. They continually found reasons not to close. Title, land discrepancies and on and on. We would still be in escrow if the Honorable Judge Adler had not realized the value of a company being able to close the transaction without Clear Title. It took 30 days to close. The Pala's could have closed if they wanted to. But they were convinced the Ranch was worth nothing and that is what they wanted to pay for it. Sour grapes I would call it. Now they want to cause as many problems with the fence as they did with the Ranch. They would like you to believe they are concerned about their heritage but the truth is as mentioned. Where were they years ago?? We the neighbors were and are loving care takers of this beautiful place. Please remove the destruction they have done.

I hope you can see through this assault on the neighbors, the wildlife, possible flooding and no access to fight inevitable Fires.

Thank you for your time and we look forward to hearing from you.

Diane Hemelstrand
dhmoney@aol.com
760 - 522 - 8122

DUDEK

MAIN OFFICE
605 THIRD STREET
ENCINITAS, CALIFORNIA 92024
T 760.942.5147 T 800.450.1818 F 760.632.0164

September 10, 2014

Mr. Mark Wardlaw
Director of Planning and Development Services
County of San Diego
5510 Overland Avenue, Ste. 110 & 310
San Diego, CA 92123

Subject: ***Warner Springs Ranch Resort – Pala Band of Mission Indian's Chain Link Fence***

Dear Mr. Wardlaw:

I am currently working with Warner Springs Ranch Resort (WSRR) as the project's fire protection planning consultant. Preparation of a project Fire Protection Plan includes analyzing the site's fire risk and developing measures to minimize the exposure of the project to wildfire impacts as well as addressing potential impacts the project may have on the responding firefighting resources. One of the first tasks in this evaluation process is to conduct a site evaluation to document terrain, fuels, ingress/egress routes, proposed project plans, and adjacent land uses, amongst others. During my initial site assessment, there was no chain link fence running from the St. Francis of Assisi Chapel area (Hwy 79 and Stage Road) in close proximity along the north side of the WSRR and extending in very close proximity along the northern boundary of the existing Los Tules community. It is my understanding that the fence was built by the Pala Band of Mission Indians at some point following my initial assessment and was brought to my attention thereafter.

The chain link fence appears to be six feet tall and crosses through drainages, over and/or around boulders, and across trails and fire roads. A cleared area roughly six feet wide was created and the fence is located along the middle of the cleared area.

I have not had the opportunity to conduct a detailed evaluation of the potential impacts of the fence on overall fire safety at the site, but my initial concerns are summarized in the following sections.

Fuel Issues

One result of the fence's construction is damage to existing vegetation/shrubs that has resulted in plant die-back and accumulation of dead plant materials. Additionally, vegetation that was removed to clear a path for the fence was placed in scattered piles, creating "jackpot" type fuel sources during a wildfire which will burn with higher intensity and produce more airborne embers than surrounding fuels. Another concern is that the cleared areas along the fence's path are now more prone to the

establishment of non-native, exotic fire-prone species. For example, areas cleared of native shrubs, which are naturally more resistant to ignition, are often established with non-native grasses, which are very prone to ignition and fire spread. Further, the fence creates a barrier that may interfere with provisions for creating and/or maintaining defensible space for existing structures. Lastly, naturally occurring vegetation blown by the wind (tumbleweed) has collected along the fence and will accumulate over time, potentially resulting in increased fire spread risk. The area is within a Very High Fire Hazard Severity Zone as designated by CAL FIRE. The importance of providing defensible space and managing dead/dying fuels and invasive plants cannot be understated in these areas.

Access Issues

The fence blocks trails and fire roads that could be important during a wildfire. Firefighters are equipped to gain passage through fences, but it can cause delays that ultimately can affect the successful containment of a fire in its incipient stages. Small fires that are not contained quickly have a much higher likelihood of becoming large, uncontrollable fires, especially during extreme fire weather.

While the fence is not completed across Stage Road, if completed, it would eliminate an existing emergency access for the resort. Currently, there are two emergency access points (Stage Road & Los Tules Subdivision) and the primary access is the resort main entrance. The fence that runs along the northern side of the Warner Springs Ranch Resort, if completed, would cut off access from/to Stage Road via SR 79. This roadway has been around since the turn of century and the numerous Caltrans improvements over the past forty years have provided the ranch with the necessary curb cuts needed for access from SR 79. Due to the topography and layout of the resort, persons in the northern portion of the Resort would have to travel southerly to the main entrance or all the way to Los Tules Subdivision, delaying evacuation or potentially delaying fire personnel response. Currently, the emergency evacuation plan is based on efficiency and logistics, where persons in the northern portion of the Resort exit out the north road (Stage Road), persons in the middle portion can go either way and persons in the southern portion exit towards Los Tules Community.

Wildlife Issues

Based on the fence's location and the fact that it crosses drainages, has few openings, and includes a bottom stringer at ground level, wildlife passage is negatively affected. During a wildfire, it may be impossible for some mammals to flee encroaching fire.

If the fence remains, I will need to evaluate its effects on the WSRR project and determine what potential mitigating measures are available to address potential hazards discussed herein, and others that may surface through further evaluation. These same hazards may apply to the existing Los Tules community and should be explored by the County.

Mr. Mark Wardlaw
Subject: Warner Springs Ranch Resort – Chain Link Fence

I would be pleased to answer any questions or respond to any comments regarding this letter of concern.

Sincerely,

Michael Huff
Principal
Fire Protection Planning

Cc: Mr. James Pine, San Diego County Fire Marshal
Mr. William McWethy, Warner Springs Ranch Resort

RECEIVED
FEB 25 2014
PDS-DIRECTORS OFFICE

Mr. Mark Wardlaw, Director
County of San Diego Planning & Development Services
5510 Overland Ave, Ste 310
San Diego, Ca 92123

Ref; The Warner Springs Fence

Dear Mr. Wardlaw

I'm sure you have seen, heard & reviewed most, if not all of the information about 'The Fence' that has been erected around a Trust Land site here in Warner Springs, San Diego County. You may also know some of the history surrounding the Pala Band of Indians attempt to unsuccessfully obtain The Warner Springs Ranch property out of bankruptcy this last year. It eventually sold to a local San Diego company.

From all of this information you may also be able to put together the amount of frustration felt by many past owners of The Ranch & most of all, that felt by local home owners in the surrounding/adjacent areas.

I am one of those home owners whose property was violated by the Pala & it's representatives during the construction of The Fence. I am one of the owners who you can see in the videos shot by The Turko Files & who expressed their dismay at what was clearly an act of willful vandalism & disrespect.

I'm not sure if you & yours have ever been abused where you & your property were violated. I have. To discover that your property had been entered without notice, no permission, by strangers with heavy equipment, with no notification of intended action, including it would seem, no permit or county sanction.

The understanding I have realised for the erection of this fence is clearly misguided as it would seem to have been for the protection of any antiquities that might be present on what is not Indian land. It is an irony that ALL the damage caused by the Pala & their representatives, whose methods of construction & the equipment used caused more damage in several weeks than any others may have in 100 years. Including the local wildlife. Indeed, the damage is still ongoing as a direct result of an imminent threat from the fire hazard so created by the contractors & access deniability by a 6' high metal fence. San Diego does burn from time to time.

The idea that we, the tax paying public, law abiding citizens of San Diego have to represent ourselves when attacked by a group of individuals who clearly believe they are above the law, is deplorable & disgusting. As a result of this action we have to spend our own time & money to ask for an understanding of this situation, just because someone else thinks they can do whatever, whenever, outside the law & those regulations that govern the ordinary men or women.

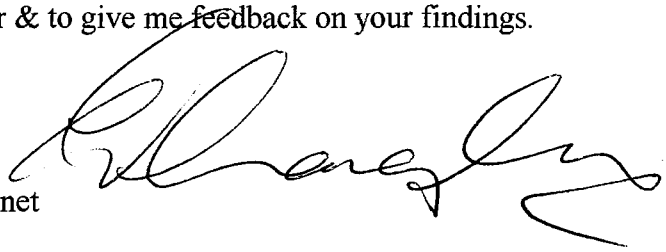
CONTD

I ask that you do your utmost in refusing any further development of this Fence & have it removed immediately. I also ask that you investigate why this happened in the first place & make regulation that it cannot happen to anyone else under similar circumstances.

We are all entitled to fair representation by our government & a peaceful existence. I worked for it, I paid for it & I will have it.

Thank you for your time. Please call or email me if you wish me to explain any of what is contained in this letter & to give me feedback on your findings.

David Langley
760-931-8813
Peachson@sbcglobal.net



RECEIVED
FEB 25 2014
PDS-DIRECTORS OFFICE

Mark Wardlaw, Director
County of San Diego Planning and Development Services
5510 Overland Ave, Ste 310
San Diego CA 92123

Dear Mr. Wardlaw,

My name is Charles Meyer and I am a resident of Los Tules in Warner Springs. I've lived here for 13 years and have been a resident of San Diego County since 1947. I am writing regarding the Warner Springs Trust and the "Pala Fence".

My wife and I have hiked in the Warner Springs Trust open space several times a week since we moved here and were shocked when Pala started erecting their 6 ft. high chain link fence with its severe attendant environmental damage. The environmental damage can be partially seen in "The Turko Files" television coverage of this apparently illegal fence. To me it seems audacious and disrespectful of County laws to install this fence without permits. This isn't tribal land and is only administered by the Trustee. Therefore, I assume the Trust land is subject to the same laws that govern us all. However, to my way of thinking that will be confirmed when the fence is gone.

My reading of the Trust indicates its number one purpose is "(1) preserving the Real Property as ***open space*** for the scenic enjoyment of the general public……etc." This tells me the fence is a clear violation by the Trustee of the intent and wording of the Trust. With the fence they are attempting to exclude the general public from this park-like land using the excuse they are protecting an historic site. In my years here I have never heard or read of any complaint that the public has damaged any "artifacts" of this historic site. The damage to the environment by the builders of the fence could not have been done by the general public through centuries of use. And, where has the Trustee been for the past 30 years if their motive is to protect this historic site. Evidently nothing has occurred during the history of the Trust that has caused concern about damage to the site. The timing of this fence should be a red flag about the motives of the Trustee.

If completed the fence will create two ecosystems one inside the fence and the other outside the fence. The smaller animals will be either trapped by or excluded by the fence. By my observations the Trust area is plentiful with rabbits, foxes, coyotes, bobcats, fawns and adult deer, turkeys, and mountain lions. It would seem to me that the animals unable to navigate the fence will be vulnerable to their predators, i.e., trapped by the fence.

It occurs to me that the Trustee could partner with the responsible public to monitor the property and report out of the ordinary conditions on the property. I for one would volunteer for this purpose. No doubt there are ways to satisfy the Trust without resorting to a fence of the type recently erected which negates a major intent of the Trust. However, I have serious doubts that the preserve without the fence is a goal of the Trustee.

Trust in government requires transparency and therefore I would hope you will deny the Pala's dubious request for private meetings regarding the "fence". The public deserves to hear and know what arguments the Trustee is putting forth so the public can respond accordingly.

I applaud the San Diego County Historic Site Board for voting to deny the Trustee a site plan permit exemption. I hope you will follow their recommendation regarding the permit exemption and further have this ill conceived and potentially fire-deadly fence removed. Fire fighters would have to contend with this fence when an inevitable fire-event occurs. This fence is so wrong it is not hard to count the ways. It is a blight on our community. Please have it removed.

Thank you for taking the time to read our concerns.

Sincerely yours,

Charles and Janie Meyer
32943 Camino Moro
Warner Springs, CA
92086

From Charles Meyer

Re Warner Springs Trust Fence

March 25, 2014

My concerns are that the director be reminded that:

(1) The trustee was arrogant in disrespecting the County by building the fence without following protocol. The Pala are not naive so their actions were obviously deliberate.

(2) The first objective of the Trust is to maintain the property as an open space for the scenic enjoyment of the general public which the fence prevents and the fence is therefore a violation of the Trust. The fence will hinder fire-fighting efforts when a fire event occurs and present a trap to animals surrounded by the fence.

(3) The Site Plan Waiver is in effect asking the County to validate the illegal behavior of the Trustee by building the fence.

(4) There is no evidence (or reports) that the public has ever damaged any artifacts on this historic site.

(5) The San Diego County Historic Site Board recommended against a Site Plan Waiver.

(6) I would hope the Director will order the fence removed in a manner that will not cause even more ecological damage in the preserve.

Beddow, Donna

From: Beddow, Donna
Sent: Tuesday, March 25, 2014 9:14 AM
To: 'Jerry Mitchell'; Wardlaw, Mark
Cc: davidabantz .; Kathryn Fletcher; Real, Sami; Gretler, Darren M
Subject: RE: Warner Springs Trust Code Violations

Mr. Mitchell:

This email is in response to your concerns that you provided to Planning & Development Services on March 16, 2014.

1. Before I go any further I would like correct the County's persistent misuse of the word "Trust". The definition of a Trust is "A legal document describing ownership of property". Legal documents don't install fences – in this case the Trustee (The Pala Band of Mission Indians) did. Please, let's assign the cause of this mess to the correct entity.

Response: When an application is submitted to the County, an applicant and property owner are identified. In this case, the property owner is identified as the Warner Springs Trust and the applicant is the Warner Cultural Trust. When we use the term "Trust" we are referring to the Warner Springs Trust as the property owner. PDS understands that the Pala Band of Mission Indians are the Trustee for the Warner Springs Trust.

2. Where in San Diego County Zoning Regulations does it make provisions for a "Site Plan Waiver"?

Response: The County of San Diego Zoning Ordinance (ZO) §5710 allows an exemption (waiver) to the requirement to process a Site Plan for properties that are "H" designated when the findings of 5710(a or b) can be made.

3. 5710 allows for a Site Plan Exemption applied for prior to construction. How can the County consider an Exemption when the Trustee has already violated County Zoning Laws?

Response: ZO §5710 does not prohibit anyone from applying for an exemption when a project is found to not to be in compliance with the ZO. In this case, a fence was installed without benefit of permit. As part of the Code Compliance action, the property owner must apply for and obtain approval for either a Site Plan or Site Plan waiver. If the Site Plan Waiver is not approved, then the property owner would be required to apply for and receive approval of a Site Plan or remove the fence.

4. Why hasn't the County enforced the provisions of County Zoning Regulation 7703 (in particular Part D.) in this case.

Response: The County has enforced the provision of ZO §7703. A Stop Work Order was issued on August 21, 2013 and the applicant stopped work. The corrective measures were to: 1) immediately cease all installation of the chain-link fencing until such time an approved site plan had been approved and issued, and 2) submit the required site plan application, plans and other required documentation. The deadline was September 25, 2013. The Trustee requested an extension and a new Administrative Warning was issued on October 16, 2013 for the same violation. The corrective measures were to: 1) submit an application for a Site Plan, 2) request a waiver of the Site Plan, or 3) remove the fence. The property owner has applied for a Site Plan Waiver which is currently being reviewed. Because the applicant is in the process of correcting their violation by applying for the Site Plan Waiver, penalties are not assessed.

Please contact me if you have any questions.

Sincerely,

Donna Beddow

County of San Diego
Planning and Development Services
(858) 694-3656

5510 Overland Ave, 3rd Floor, Room 310,
San Diego, CA 92123.

From: Jerry Mitchell [mailto:jmitchell1125@gmail.com]
Sent: Monday, March 24, 2014 5:51 PM
To: Beddow, Donna; Wardlaw, Mark
Cc: davidabantz .; Kathryn Fletcher
Subject: Warner Springs Trust Code Violations

Good morning Donna,

Thank you for getting back to me and letting me know that you were "following up on my concerns".

Since I have not received an answer in over a week I am assuming that you are having as much trouble as I did finding anything in County Code that address anyone having the authority to grant a "Site Plan Waver".

If that is the case it appears to me that it is time to cancel Wednesday's meeting and tell the Trustee's attorney to quit wasting everyone's time with these frivolous attempts to avoid obeying the law.

You do have the authority and duty to enforce County Zoning Regulation 7703. It is time to tell the Trustee that the fines begin next Monday and continue every day until the fence is removed, holes filled, brush piles removed and damaged property re-graded.

I assume that you have read a copy of the Warner Springs Trust. It doesn't take an attorney to determine that the Trustee has violated their fiduciary duty to maintain the property as a public open space.

If the county doesn't force the removal of the fence this issue will end up in a Civil Court at some point in the future. It is possible that the County could be named co-defendant in a suit for damages because they didn't enforce 7703.

I had planed on attending Wednesday's meeting and would have liked the opportunity to discuss this issue with you. I just heard that you have moved the meeting to a smaller room and are limiting the speakers to three groups. I guess you are afraid of embarrassing questions.

Jerry Mitchell

Warner Springs Historical Society
P.O. Box 188
Warner Springs, Ca 92086

County of San Diego Historic Site Review Board
Department of Planning and Development Services

January 27, 2014

Re: Warner Cultural Trust: Site Plan Waiver

Dear Historic Site Board of Directors,

The Warner Springs Historical Society firmly requests that you deny the request for a waiver for the "as built" installation of the fence constructed by the Pala Band of Indians, representing themselves as the Warner Cultural Trust (Preserve), and recommend to the Director of Planning and Development that the waiver is inappropriate. In addition we request that you recommend to the Department of Planning and Development the enforcement of Zoning Regulation 7703 and have this unlawful, unsightly and illegal fence removed at the expense of the Pala Band of Indians who constructed it without a permit.

The fence is in violation of Zoning Ordinance Section 7156(b) and The Warner Springs Ranch Specific Area Plan - PDS2001-3810-83-04 (SP) and is subject to Site Plan Review. The six foot chain link fence, which goes on for miles, is clearly visible from Highway 79, The Warner Springs Ranch Resort, and homes not only bordering the preserve but in view of the preserve. The fence surrounds and mars the view of the 1830 St. Francis Chapel, blocks many hiking and riding trails, presents considerable fire and flash flood dangers, and violates the original intent of the irrevocable trust. The historic Warner Valley is one of the few places in San Diego County that is relatively unchanged in the past 160 years and the views and use by the residents and general public must be considered.

We hope you will read the Trust in detail in making your decision. The trust was established in 1983 and in Article I under Trust Purposes it states that the trust is established firstly "for conservation purposes, in particular preserving the Real Property as open space for the scenic enjoyment of the general public". Additionally, it is for preserving the "historically important Indian burial grounds and religious and cultural structures" The beneficiaries of the trust "shall be the general public although the trustees shall consider the wishes of the Indians who have frequented the area and shall be sensitive to their customs and traditions with respect to the Real Property".

We all share a love of the beauty and history of the area and the preserve, but despite

attempts by the Warner Springs Historical Society and Los Tules Property Owners Association by phone and by mail to the Pala Band of Indians, it's chairman and it's Cultural Center and Environmental Director, we have been unable to establish a dialog. Records in our historical files show that many attempts in the 1980's were made by Cal Rossi, the original trustee and trust creator, to enlist the Los Coyotes Band of Indians and Pala Band Of Indians to be additional trustees. In January 1987 Mr. Rossi informs the County "I have asked for trustees to be named from each of the representative groups numerous times, so that there would be effective participation by tribal members and that a communication link would be established. As of yet I have had no response. Trust documents have been drawn and sent to both the Pala and Los Coyotes groups, again with no response".

It has only been recently since the Pala Band of Indians failed to close the long, difficult escrow to buy the adjacent Warner Springs Ranch from the Warner Springs Ranch Owner's Association that this became an issue. When that escrow failed to close after many years of negotiations, and the Ranch was sold in bankruptcy to another bidder the Pala ~~became a trustee. They~~ then erected the fence, without a permit, over the objection of neighboring properties and in violation of the county code and the trust.

We all would like to see these historic lands protected and preserved as was the original intent of the trust. The land within the preserve is covered with dry brush and downed trees, and many grinding stone areas are covered with debris. White Sage and other native plants have been ripped out of the ground and left along side the fence. This does not represent in any way "protection" or "conservation". In fact, the fence now closes out the public and closes in wildlife that will be trapped during a fire. The fence is not "protecting the cultural preserve" it is endangering it. The fence should be removed post haste, the preserve area should be cleared, and the preserve re-opened to the general public for it's enjoyment. It is only in working together in a respectful way with all parties involved that this can occur and this important historical resource within the county preserved.

Sincerely,

Kathryn Fletcher

Kathryn Fletcher
President, Warner Springs Historical Society

Bill Kettenburg, Vice President

Document # 658460
12/16/83

TRUST AGREEMENT
WARNER SPRINGS TRUST

This Trust Agreement is entered into on November 17, 1983, between Warner Springs Ranch, a California limited partnership, as Trustor, and A. Cal Rossi, as Trustee (hereinafter referred to as the "Trustees" in anticipation of the appointment of additional trustees under Article XII).

Concurrently with the execution of this Trust Agreement, the Trustor has transferred and delivered to the Trustees, exclusively for conservation purposes, and without any consideration on the Trustees' part, real property (hereinafter referred to as the "Real Property") consisting of approximately 240 acres in the County of San Diego, State of California, legally described in Exhibit "A" attached hereto and incorporated herein.

The Real Property, together with any other property that may later become subject to this trust, shall constitute the trust estate, and shall be held, administered and distributed as hereinafter provided.

This trust shall be known as the "Warner Springs Trust."

ARTICLE I
TRUST PURPOSES

This trust is established for conservation purposes, in particular for the purposes of (1) preserving the Real Property as open space for the scenic enjoyment of the general public, or pursuant to any clearly delineated federal, state or local governmental conservation policy, (2) preserving the historically important Indian burial grounds and religious and cultural structures located on the Real Property, (3) fostering archaeological and other scientific studies of the Real Property, (4) furthering the study of the customs, traditions, language and history of the Indians who have frequented the Real Property, (5) preserving the Real Property for the education of the general

public with regard to such customs, traditions, language and history, and (6) allowing the continued use of religious facilities on the Real Property for religious purposes.

The beneficiaries of this trust shall be the general public, although the Trustees shall consider the wishes of the Indians who have frequented the area and shall be sensitive to their customs and traditions with respect to the Real Property.

ARTICLE II
ADDITION OF PROPERTY

The Trustees may receive and accept other property, whether real, personal, or mixed, by way of gift, bequest, or devise, from any person, firm, trust, or corporation, to be held, administered, and distributed in accordance with and pursuant to the provisions of this Trust Agreement; but no gift, bequest or devise of any such property shall be received and accepted if it is conditioned or limited in such manner as to require the disposition of the principal or income to any person or organization other than a "charitable organization" or for other than "charitable purposes" within the meaning of such terms as defined in this Trust Agreement, or as shall in the opinion of the Trustees jeopardize the federal tax exemption of this trust pursuant to Section 501(c)(3) of the Internal Revenue Code, as now in force or hereafter amended.

ARTICLE III
MANAGEMENT OF TRUST FUND AND INCOME

The Real Property may not be sold, leased, conveyed or encumbered by the Trustees, nor may the Real Property be improved beyond the extent absolutely necessary to carry out the purposes of this trust.

The Real Property shall be held in perpetuity and shall be used exclusively for conservation purposes.

The Trustees shall hold all other trust assets and may, in their discretion, invest such other assets or part of such other assets in investments authorized in Article XV which are permitted under the laws of the State of California, or may in their discretion retain the cash and collect the income, and shall from time to time and in such amounts as in their discretion they shall deem proper devote and apply so much of the principal and income of the trust estate exclusively to the purposes described in Article I.

ARTICLE IV
RESTRICTIONS ON USE OF TRUST ESTATE

The trust estate and the income thereof shall be devoted exclusively to the purposes described in Article I and shall in no part and under any circumstances be given or contributed to or inure to the benefit of any private person or corporation. No part of the trust estate shall be used to carry on propaganda or otherwise attempt to influence legislation, or to participate in any political campaign. Notwithstanding any other provision hereof, this trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended.

ARTICLE V
GIFTS IRREVOCABLE

Gifts made to the Trustees shall be irrevocable. If it shall be determined by the Internal Revenue Service subsequent to the creation of this trust and the transfer of any property or funds

to the Trustees by the Trustor or any other person that the trust fund is not exempt from the payment of income tax on its income or if the Trustor or other donors to the trust may not be entitled to charitable deductions for income tax purposes for contributions made thereto in the manner and to the full extent provided by the Internal Revenue Code, then such gifts as remain in the fund at the time of such determination shall be given by the Trustees to a qualified tax-exempt charitable organization selected by the Trustees to best carry out the purposes of this trust, and this trust shall thereupon terminate.

ARTICLE VI
TRUST IRREVOCABLE

This Trust Agreement is irrevocable and may not be amended or modified; provided, however, that if for any reason whatsoever this trust fails to qualify as a tax-exempt charitable trust, such changes as are necessary for the trust to so qualify may be made by the Trustor; provided further, however, that Article XIII with regard to Meetings of Trustees and Article XIV with regard to trust records and property may be amended from time to time by the unanimous consent of the Trustees then serving.

ARTICLE VII

[RESERVED]

ARTICLE VIII
TERMINATION OF TRUST

The trust shall continue forever unless terminated by a court of competent jurisdiction, in which case the trust assets shall be distributed to or for the use of such charitable organizations as the court may select for another charitable purpose which is as similar to the original purpose as is reasonably possible. In no

event shall the Real Property be used by such charitable organization for other than conservation purposes.

The Trustor authorizes and empowers the Trustees to form and organize a nonprofit corporation limited to the uses and purposes provided for in this Trust Agreement, such corporation to be organized under the laws of the State of California, such corporation when organized to have power to administer and cortrol the affairs and property and to carry out the uses, objects, and purposes of this trust.

Upon the creation and organization of such corporation, the Trustees are authorized and empowered to convey, transfer, and deliver to such corporation all the property and assets to which this trust may be or become entitled. The charter, bylaws, and other provisions for the organization and management of such corporation and its affairs and property shall be such as the Trustees shall determine, consistent with the provisions of this Article.

ARTICLE IX
MEANING OF CHARITABLE ORGANIZATIONS

In this Trust Agreement and in any amendments to it, references to charitable organizations or charitable organization mean corporations, trusts, funds, foundations, or community chests created or organized in the United States or in any of its possessions, whether under the laws of the United States, any state or territory, the District of Columbia, or any possession of the United States, organized and operated exclusively for charitable purposes, no part of the net earnings of which inures or is payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which do not participate in or intervene in (including the publishing or distributing of statements) any

political campaign on behalf of any candidate for public office. It is intended that the organization described in this section shall be entitled to exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as now in force or hereafter amended.

ARTICLE X

MEANING OF "CHARITABLE PURPOSES"

In this Trust Agreement and in any amendment to it, the term "charitable purposes" shall be limited to and shall include only religious, charitable, scientific, literary or educational purposes within the meaning of those terms as used in Section 501(c)(3) of the Internal Revenue Code, but only such purposes as also constitute public charitable purposes under the laws on trusts of the State of California.

ARTICLE XI

MEANING OF "CONSERVATION PURPOSES"

In this Trust Agreement and in any amendment to it, the term "conservation purposes" shall be limited to and shall include only those purposes allowed by Section 170(h)(4) of the Internal Revenue Code now in force or hereafter amended.

ARTICLE XII

PROVISIONS REGARDING TRUSTEE

A. The Pala Band of Indians and the Los Coyotes Band of Indians may, at their election by written instrument signed and acknowledged, serve as additional Trustees. A writing signed by the chairman, president or other recognized leader of each such band, certifying that he is authorized to execute such writing on behalf of the band, and designating one individual as the representative of the band with regard to trust matters, shall be

authority for such representative to act on behalf of the band, and the other Trustees and all persons dealing with the Trustees shall have no obligation to investigate or determine the authority of such representative. Because the Cupeno Indians have been associated with the Real Property more than others, due consideration shall be given to the appointment of a Cupeno as the representative of each band.

B. If A. Cal Rossi shall for any reason cease to act as a Trustee, any person he may appoint by written instrument, signed and acknowledged, whether individual, corporation, association or otherwise, shall serve as a successor Trustee in his stead. If he shall fail to appoint a successor Trustee, a successor Trustee shall be appointed by a court of competent jurisdiction.

C. Notwithstanding the foregoing, any Trustee under this trust agreement may, by written instrument, signed and acknowledged, resign its office. If all of the Trustees so resign, one successor Trustee shall be appointed by a court of competent jurisdiction. Any such succeeding Trustee shall, upon its acceptance of the office by written instrument signed and acknowledged, have the same powers, rights, and duties, and the same title to the trust estate, as if the original Trustee. In the event a successor Trustee is not appointed, the trust shall be terminated in accordance with Article VIII.

D. Any Trustee may be removed by a court of competent jurisdiction for good cause upon application of another Trustee.

E. None of the Trustees shall be required to furnish any bond or surety, and none of them shall be responsible or liable for the acts or omissions of any other of the Trustees or of any

predecessor or of a representative, custodian, agent, depositary or counsel selected with reasonable care.

F. The Trustees shall be reimbursed from the trust estate for all expenses reasonably incurred by them in the administration of the trust estate, but shall not be entitled to compensation for their services.

G. One or more Trustees then in office, whether original or successor, shall have full authority to act even though one or more vacancies may exist. A Trustee may, by appropriate written instrument signed and acknowledged, delegate all or any part of its powers to another Trustee or other Trustees for such periods and subject to such conditions the delegating Trustee may determine.

H. The Trustees may at their election appoint an advisory group of Native Americans and other interested parties to advise them with regard to the Real Property and the conduct of trust affairs, but they shall not be bound by the advice of such advisory group.

ARTICLE XIII
MEETINGS OF TRUSTEES

A. All meetings of the Trustees shall be held at the offices of the Owners Association or at such other location as determined from time to time by unanimous vote of the Trustees.

B. Regular meetings of the Trustees shall be held, without call or notice, at 10:00 a.m. on the last Friday of March and September of each year at the offices of the Owners Association.

C. Special meetings of the Trustees may be called by any one Trustee. Special meetings shall be held on four (4) days' written notice by first class mail, postage prepaid, or on forty-eight

(48) hours' written notice delivered personally or by telephone or telegram. Notice of the special meeting need not be given to any Trustee who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice to such Trustee. All such waivers, consents, and approvals shall be filed with the trust records or made a part of the minutes of the meetings.

D. If there are two or three Trustees, two Trustees shall constitute a quorum for the transaction of business.

E. Except as otherwise provided in this Trust Agreement, or by law, every act or decision done or made by the unanimous agreement of the Trustees present at a meeting duly held at which a quorum is present is the act of the Trustees provided, however, that any meeting at which a quorum was initially present may not continue to transact business if the withdrawal of a Trustee or Trustees results in the absence of a quorum.

F. A. Cal Rossi, or his successor Trustee, or such other person as the Trustees present may elect by unanimous vote, shall preside at meetings of the Trustees. Any person appointed by the presiding officer shall act as secretary of the meeting. Trustees may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Such participation shall constitute personal presence at the meeting.

G. A majority of the Trustees present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24)

hours, notice of the adjournment to another time or place must be given prior to the time of the adjourned meeting to the Trustees who were not present at the time of the adjournment.

H. The Robert's Rules of Order, as may be amended from time to time, shall govern the meetings of Trustees insofar as such rules are not inconsistent with or in conflict with this Trust Agreement, or the law.

I. Any action required or permitted to be taken by the Trustees may be taken without a meeting, if all the Trustees individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Trustees. Such action by written consent shall have the same force and effect as the unanimous consent of such Trustees.

J. The Trustees shall not be permitted to vote or act by proxy.

ARTICLE XIV
TRUST RECORDS AND PROPERTY

A. The Trustees shall keep adequate and correct records of account and minutes of the proceedings of the Trustees. The minutes shall be kept in written form. Other books and records shall be kept in either written form or in any other form capable of being converted into written form.

B. The fiscal year of the trust shall be from July 1 to June 30 of each year. The Trustees shall publish within ninety (90) days of the close of each fiscal year a statement of the receipts and disbursements, and the purposes for which disbursements have been made for the preceding fiscal year. An annual audit shall be made of the accounts of the trust by certified public accountants. The annual report shall be furnished to all Trustees.

C. A. Cal Rossi or his successor Trustee shall have exclusive custody of the securities, cash, and other property of

the trust, and the custody of all books and records pertaining to the trust.

ARTICLE XV
POWERS OF TRUSTEES

In extension and not in limitation of the common law and statutory powers of trustees and other powers granted in this Trust Agreement, the Trustees shall have the following discretionary powers:

A. To invest and reinvest the principal and income of the trust in such property, real, personal, or mixed, and in such manner as they shall deem proper, and from time to time to change investments as they shall deem advisable; to invest in or retain any stocks, shares, bonds, notes, obligations, or personal or Real Property (including without limitation any interest in or obligation with any corporation, association, business trust, investment trust, common trust fund, or investment company) although some or all of the property so acquired or retained is of a kind or size which but for this express authority would not be considered proper and although all of the trust funds are invested in securities of one company. No principal or income however, shall be loaned, directly or indirectly, to any trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to this trust, nor to anyone except on the basis of an adequate interest charge and with adequate security.

B. To sell, lease, or exchange any personal, mixed or real property at public auction or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter such undertakings relating to the trust property, they consider advisible, whether or not such leases or contracts may extend beyond the duration of the trust.

C. To borrow money for such periods, at such rates of interest, and upon such terms as the Trustees consider advisable,

and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; to acquire or hold any real or personal property, subject to any mortgage or pledge on or of property acquired or held by this trust.

D. To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and other instruments, sealed or unsealed, incident to any transaction in which they engage.

E. To vote, to give proxies, to participate in the reorganization, merger or consolidation of any concern, or in the sale, lease, disposition, or distribution of its assets; to join with other security holders in acting through a committee, depositary, voting trustees, or otherwise, and in this connection to delegate authority to such committee, depositary, or trustees and to deposit securities with them or transfer securities to them; to pay assessments levied on securities or to exercise subscription rights in respect of securities.

F. To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deem appropriate; to hold trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the trust property is at all times identified as such on the books of the trust; to keep any or all of the trust property or funds in any place or places in the United States of America; to employ clerks, accountants, investment counsel, investment agents, and any special services, and to pay the reasonable compensation and expenses of all such services in addition to the compensation of the trustees.

G. To rent or lease the church facility on the Real Property to the Catholic Church for no consideration other than an agreement to maintain the premises.

H. In carrying out and aiding the purposes and objects of this Trust Agreement, the Trustee shall have full power and authority to employ and pay attorneys, lecturers, writers, inves-

tigators, archaeologists, scientists, and such assistants and employees of every kind as they may deem necessary.

I. Notwithstanding anything herein to the contrary, the Trustees shall not have the power to sell, convey, lease or encumber the Real Property; however, nothing in this Trust Agreement shall be construed as prohibiting the Trustees from making any dedications or irrevocable offers of dedication to any governmental entity for right of way for Highway 79 which is required to be so dedicated or offered for dedication as a condition to approval of Warner Springs Ranch Specific Plan (SP 83-04) and any amendments thereto.

ARTICLE XVI
PROHIBITED TRANSACTIONS

Other provisions of this Trust Agreement notwithstanding, the Trustees shall not engage in any act of self-dealing as defined in Section 4941 Subdivision (d) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws; nor retain any excess business holding as defined in Section 4943 Subdivision (c) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws; nor make any investments in such manner as to incur tax liability under Section 4944 of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945 Subdivision (d) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

Other provisions of this Trust Agreement notwithstanding, the Trustees shall distribute the trust income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

ARTICLE XVII

TRUSTEES' FIDUCIARY CAPACITY

The Trustees' powers are exercisable solely in the fiduciary capacity consistent with and in furtherance of the charitable and conservation purposes of this trust and not otherwise.

ARTICLE XVIII

MEANING OF "TRUSTEES"

In this Trust Agreement and in any amendment to it, references to "Trustees" mean the one or more Trustees, whether original or successor, for the time being in office.

ARTICLE XIX

MISCELLANEOUS

Any person may rely on a copy, certified by a notary public, of the executed original of this Trust Agreement held by the Trustees, and of any of the notations on it and writings attached to it, as fully as he might rely on the original documents themselves. Any such person may rely fully on any statements of fact certified by any who appears from such original documents or from such certified copy to be a Trustee under this Trust Agreement. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do. No one dealing with the Trustees need see to the application of anything paid or transferred to or upon the order of the Trustees of the trust.

ARTICLE XX

GOVERNING LAW

This Trust Agreement is to be governed in all respects by the laws of the State of California.

The Trustor and Trustees have executed this Trust Agreement on the day and year first written above.

TRUSTOR

Warner Springs Ranch, a
California limited partnership

By: The A. Cal Rossi Company, Ltd., a California corporation, general partner

By: _____
A. Cal Rossi, Jr.,
President

By: Border Lights, Inc., a Delaware corporation, general partner

By: _____
Henry V. Greene,
President

TRUSTEE

_____
A. Cal Rossi, Jr.

STATE OF CALIFORNIA)
Francisco) ss
COUNTY OF SAN ~~DIEGO~~)

On November 17, 1983, before me, Linda I. Methven, the undersigned Notary Public in and for said State, personally appeared A. Cal Rossi, known to me ~~or proved to me on the basis of satisfactory evidence~~ to be the person who executed the within instrument on behalf of The A. Cal Rossi Company, Ltd., a California corporation, which corporation is known to me to be a general partner of Warner Springs Ranch, a California limited partnership, the partnership that executed the within instrument, and acknowledged to me that both such entities executed the same.

Witness my hand and official seal.

OFFICIAL SEAL
LINDA I. METHVEN
NOTARY PUBLIC - CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
My Comm. Expires Dec. 27, 1984

Linda I. Methven

STATE OF New York)
) ss
COUNTY OF New York)

On November 22, 1983, before me, Catherine D. DiPierno, the undersigned Notary Public in and for said State, personally appeared Henry V. Greene, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument on behalf of Border Lights, Inc. a Delaware corporation, which corporation is known to me to be a general partner of Warner Springs Ranch, a California limited partnership, the partnership that executed the within instrument, and acknowledged to me that both such entities executed the same.

CATHERINE D. DI PIERNO

Witness my hand and official seal.

Catherine D. DiPierno

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN ~~DIEGO~~)

On November 17, 1983, before me, Linda I. Methven, the undersigned Notary Public, personally appeared A. Cal Rossi, known to me ~~or proved to me on the basis of~~ satisfactory evidence to be the person whose name is subscribed to the within instrument, and ackowledged that he executed it.

Witness my hand and official seal.

OFFICIAL SEAL
LINDA I. METHVEN
NOTARY PUBLIC - CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
My Comm. Expires Dec. 27, 1984

Linda I. Methven

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

PARCEL 4, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED December 23, 1983 AS FILE/PAGE NO. 83-469613, OFFICIAL RECORDS IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY.

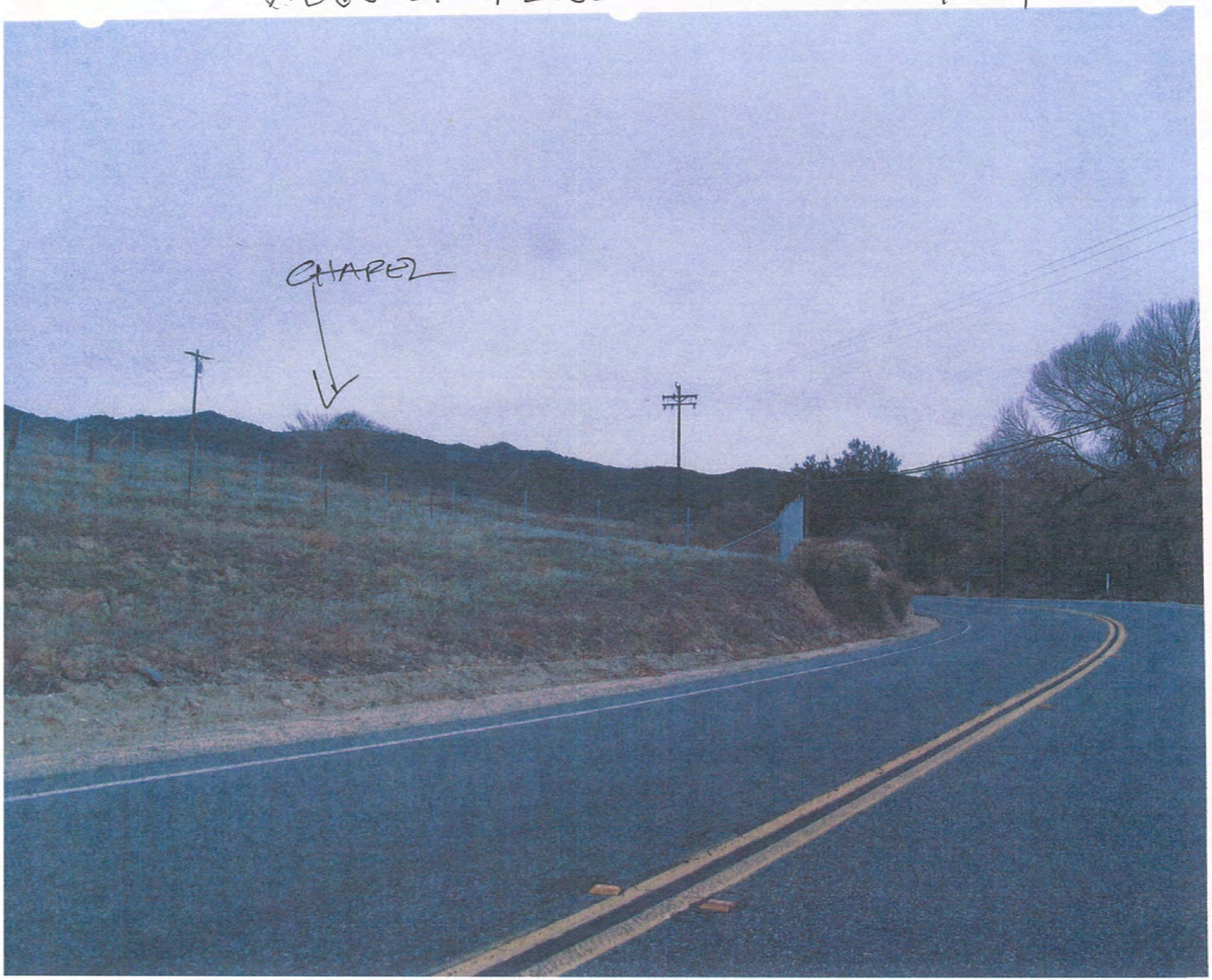
DOCUMENT IS NOT OFFICIAL

1830 ST. FRANCIS CHAPEL

BEFORE FENCE

VIEW OF CHAPEL + TOWN FROM HWY 79

VIEW OF FENZ - FROM HWY 79



HWY 79 + STAGE ROAD - FORCE GOING DOWN INTO FLOOD

BEHIND CHAPEL
LOOKING WEST
TOWARDS
MT. PALOMAR
FENCE BLOCKING
OFF EQUESTRIAN
TRAIL

San Diego County Historic Site Board

January 27, 2014

ITEM 5 - WARNER CULTURAL TRUST; SITE PLAN WAIVER

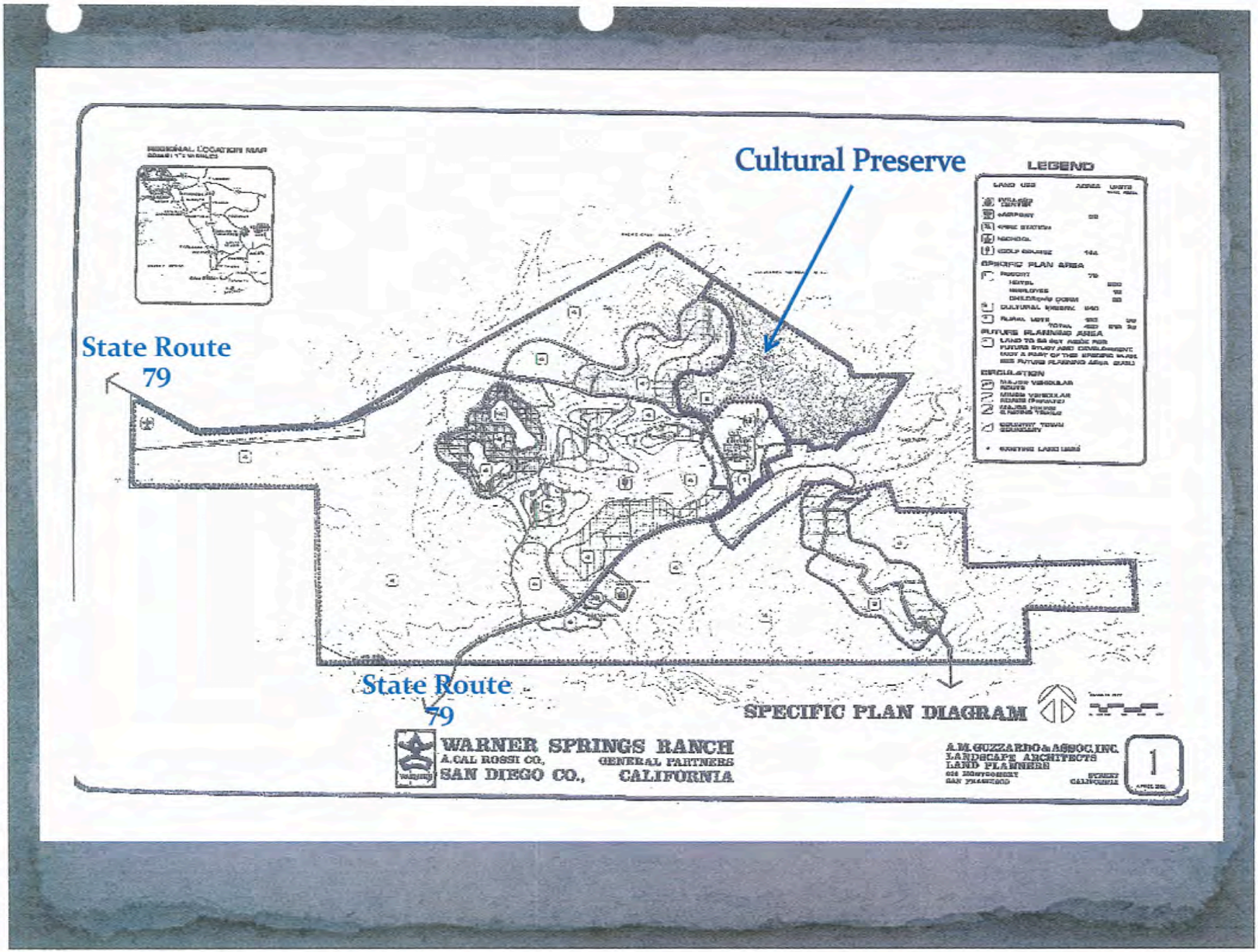
Involvement in Cultural Preserve

- Author of original Warner Springs Ranch EIR and Specific Plan in 1983 that deeded Cultural Preserve to Warner Springs Ranch Trust.

- Currently preparing Warner Springs Ranch Resort Specific Plan Amendment and EIR for current owner, Warner Springs Ranch Resort, LLC.

Request

Warner Springs Ranch Resort, LLC requests that the San Diego County Historic Site Board recommend that the requirement for a Site Plan not be waived and no fence be constructed.


Cultural Preserve
LEGEND
State Route
79
State Route
79
SPECIFIC PLAN DIAGRAM
WARNER SPRINGS RANCH
A CAL ROSSI CO., GENERAL PARTNERS
SAN DIEGO CO., CALIFORNIA
A.M. GUZZARDO & ASSOC. INC.
LANDSCAPE ARCHITECTS
LAND PLANNERS
1

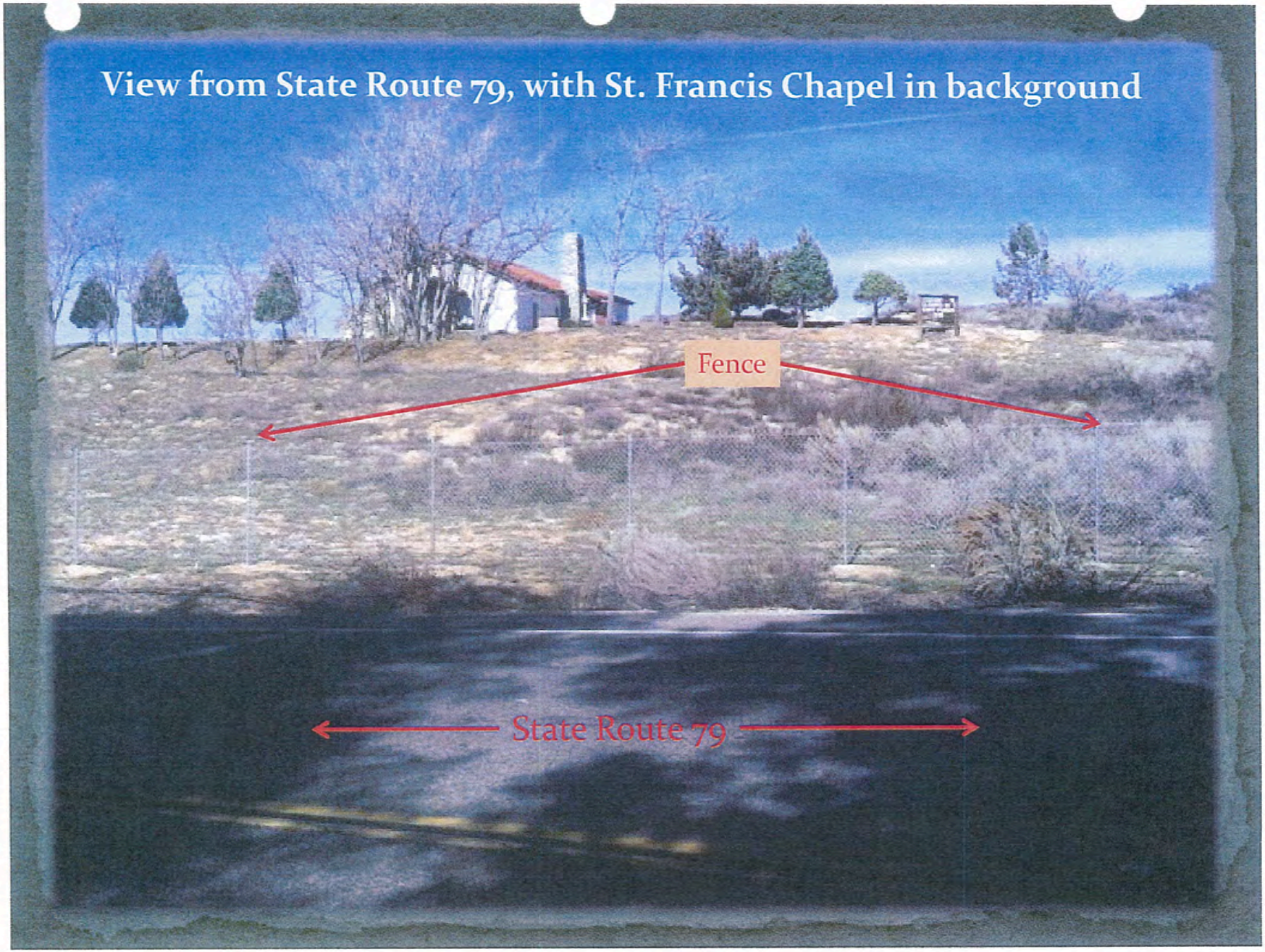
Purpose of Cultural Preserve

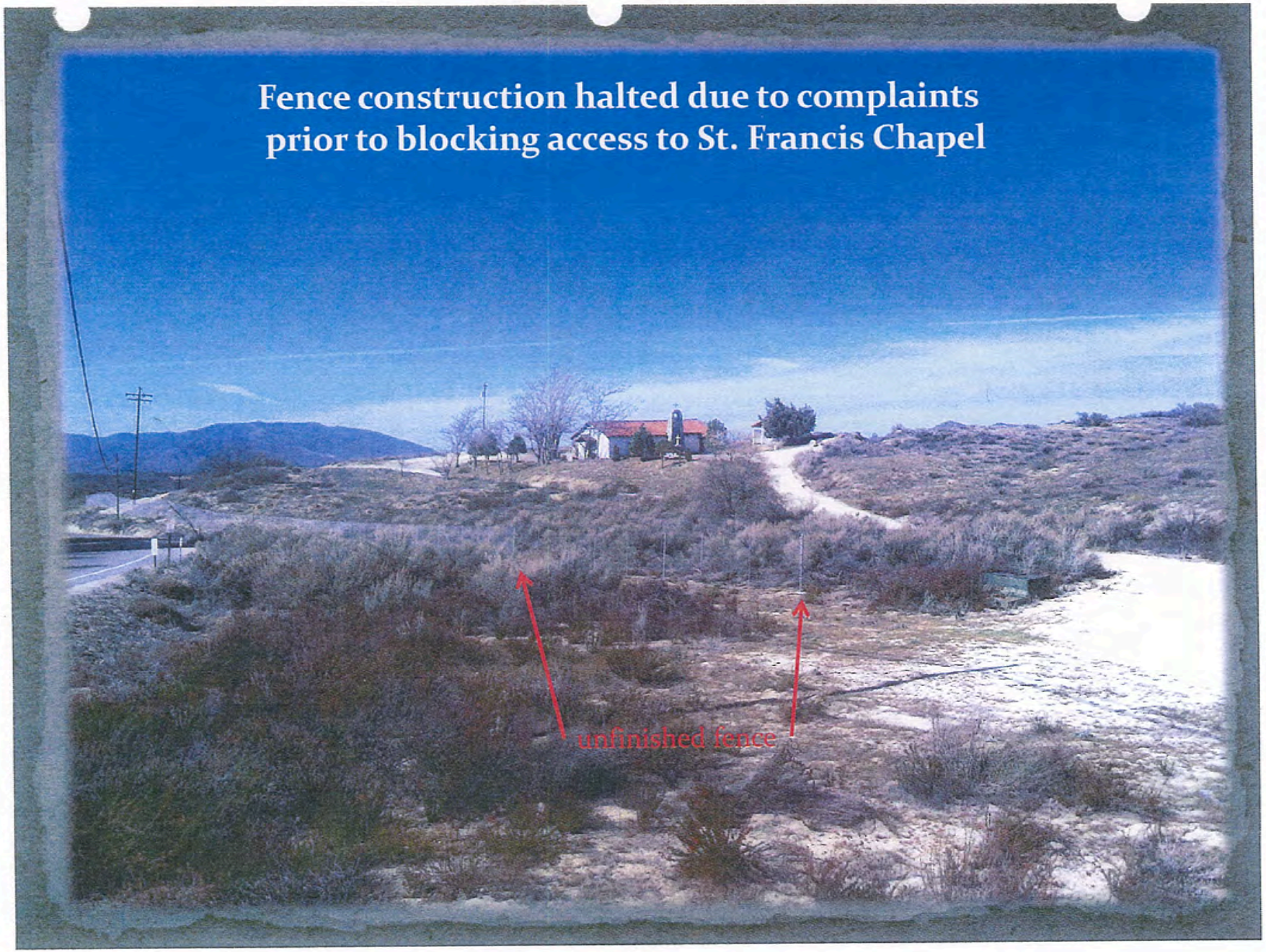
- Preserve Pre-Historic and Historic Cultural Resources
- Preserve Historic Landscape
  - Native American
  - Spanish
  - Mexican
  - Early California
  - Historic Resort
- Accommodate Wildlife and Human Movement
  - Large Mammals
  - California Riding and Hiking Trail

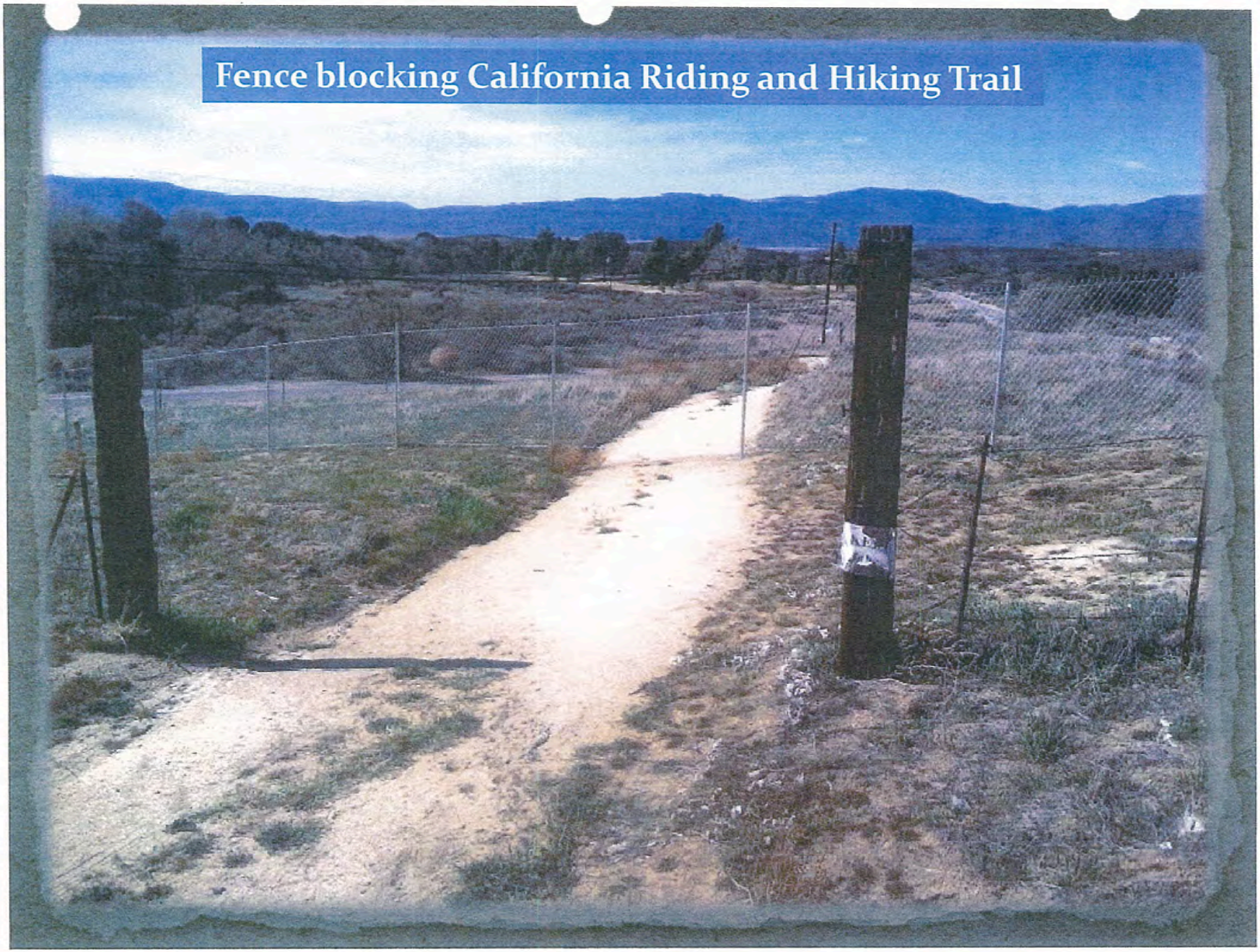
The property on which the fence was constructed is zoned with the Special Area "H" Designator (Historic) that requires Site Plan review.

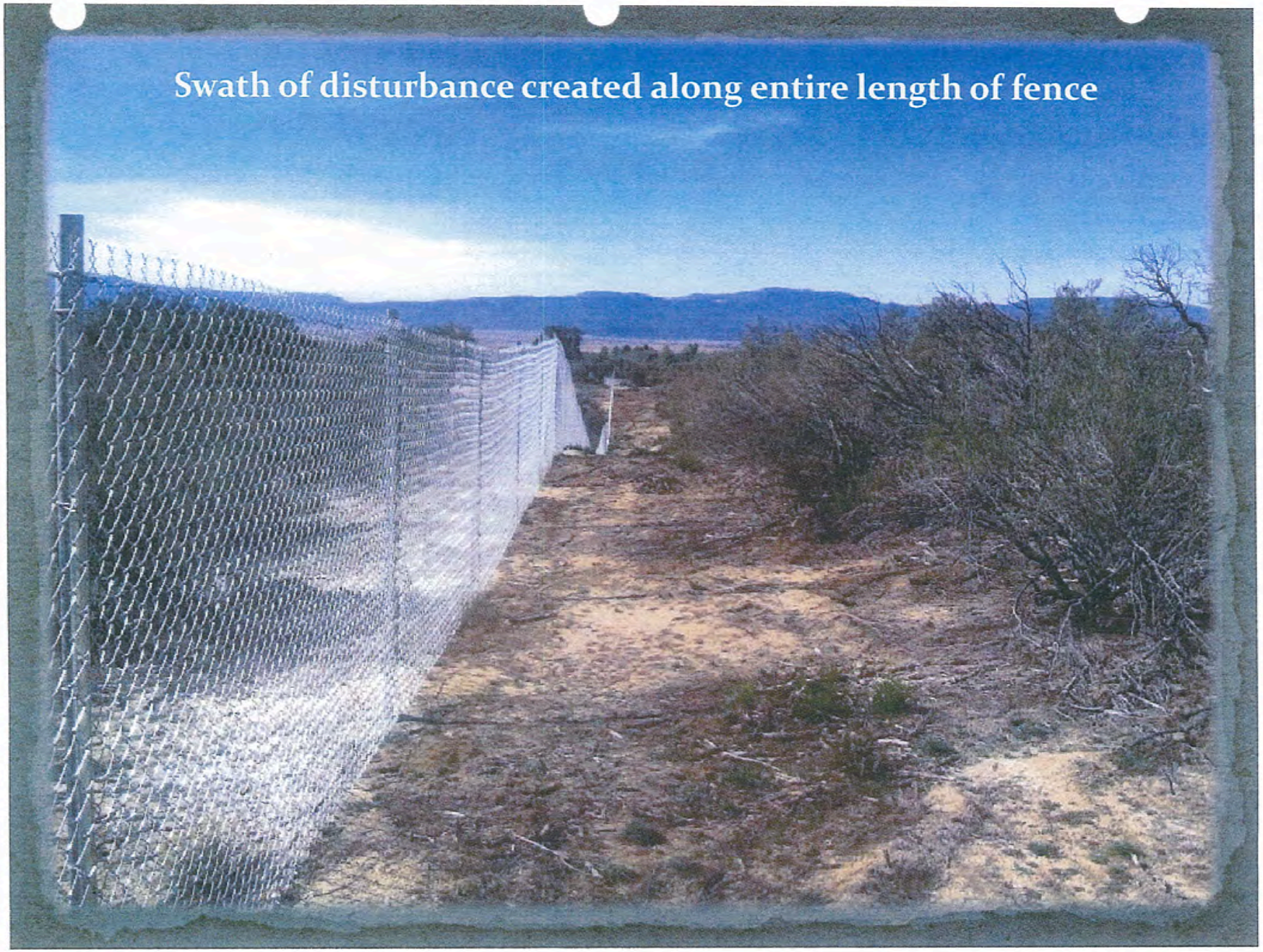
The following findings must be made in order to support a Site Plan Waiver:

- *The proposed improvement is not visible from any street;*
- *There is no active code enforcement action on the property;*


View from State Route 79, with St. Francis Chapel in background
Fence
State Route 79


Fence construction halted due to complaints
prior to blocking access to St. Francis Chapel
unfinished fence


Fence blocking California Riding and Hiking Trail


Swath of disturbance created along entire length of fence

CPTED PROGRAM

Crime Prevention Through Environmental Design

Barbara Wallace has agreed to meet with the Cultural Preserve Trustees to include the Cultural Preserve in the County Sheriff's Department Crime Prevention Program if they have concerns about being able to protect the property and its cultural resources.

Note: The Sheriff's Department personnel currently providing law enforcement coverage in the Warner Springs area are not aware of any crimes being reported in the past few years on the Cultural Preserve property. Confirmed: January 23, 2014

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

"KEEPING THE PEACE SINCE 1850"

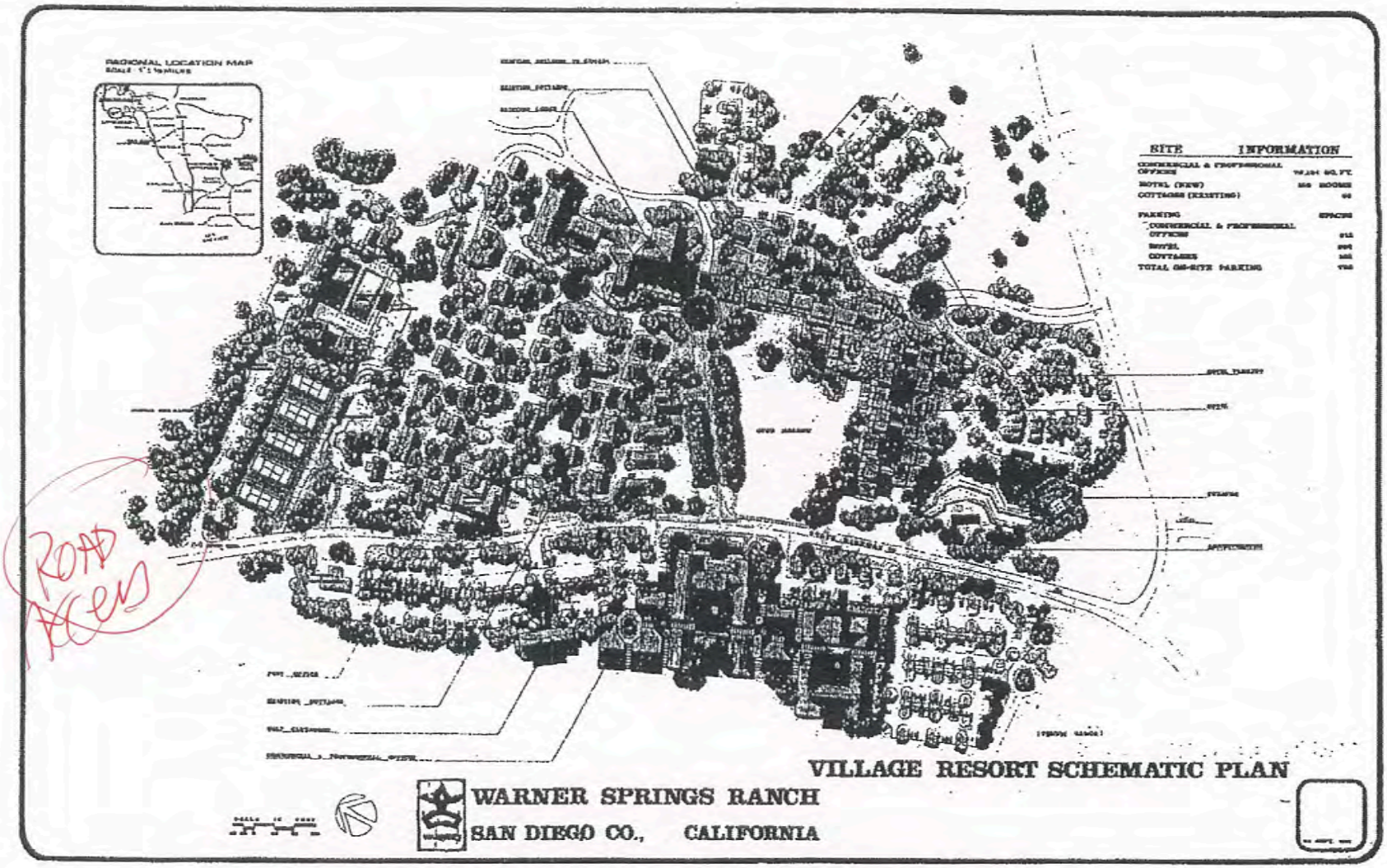
BARBARA J. WALLACE
CRIME PREVENTION SPECIALIST

RAMONA & RURAL CRIME PREVENTION UNIT
1424 MONTECITO ROAD
RAMONA, CA 92065
(760) 738-2425
barbara.wallace@sdsheriff.org

William D. Gore
SHERIFF

Cultural Resource Protection

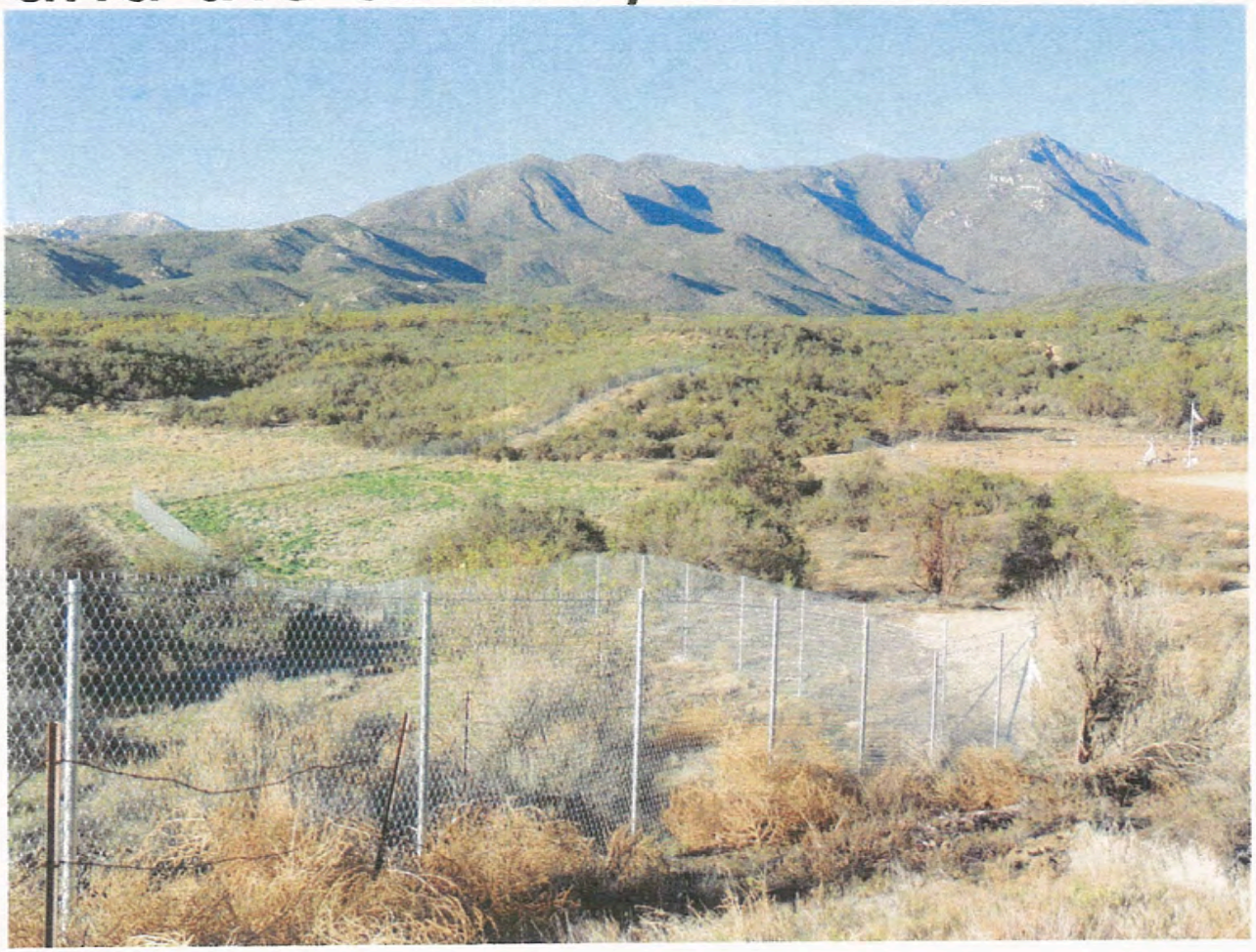
- Warner Springs Ranch Resort, LLC employs Elite Security for 7 day/24 hour protection for resort.
- The Trustee, in association with the Ranch owner, could easily employ Elite Security to provide protection for cultural resources on adjacent parcel.
- This protection could include security patrols and cameras



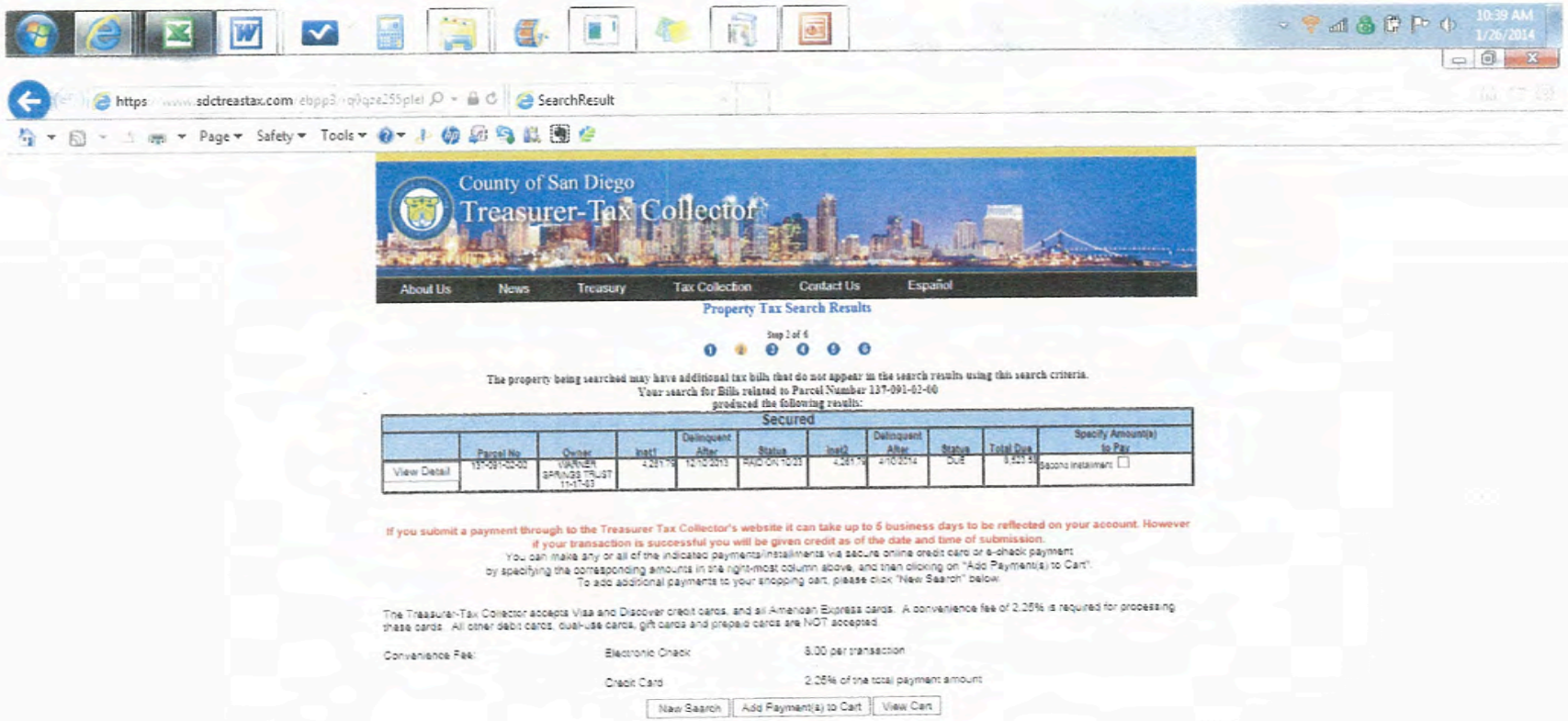
2885 ac master-planned resort community

C01120

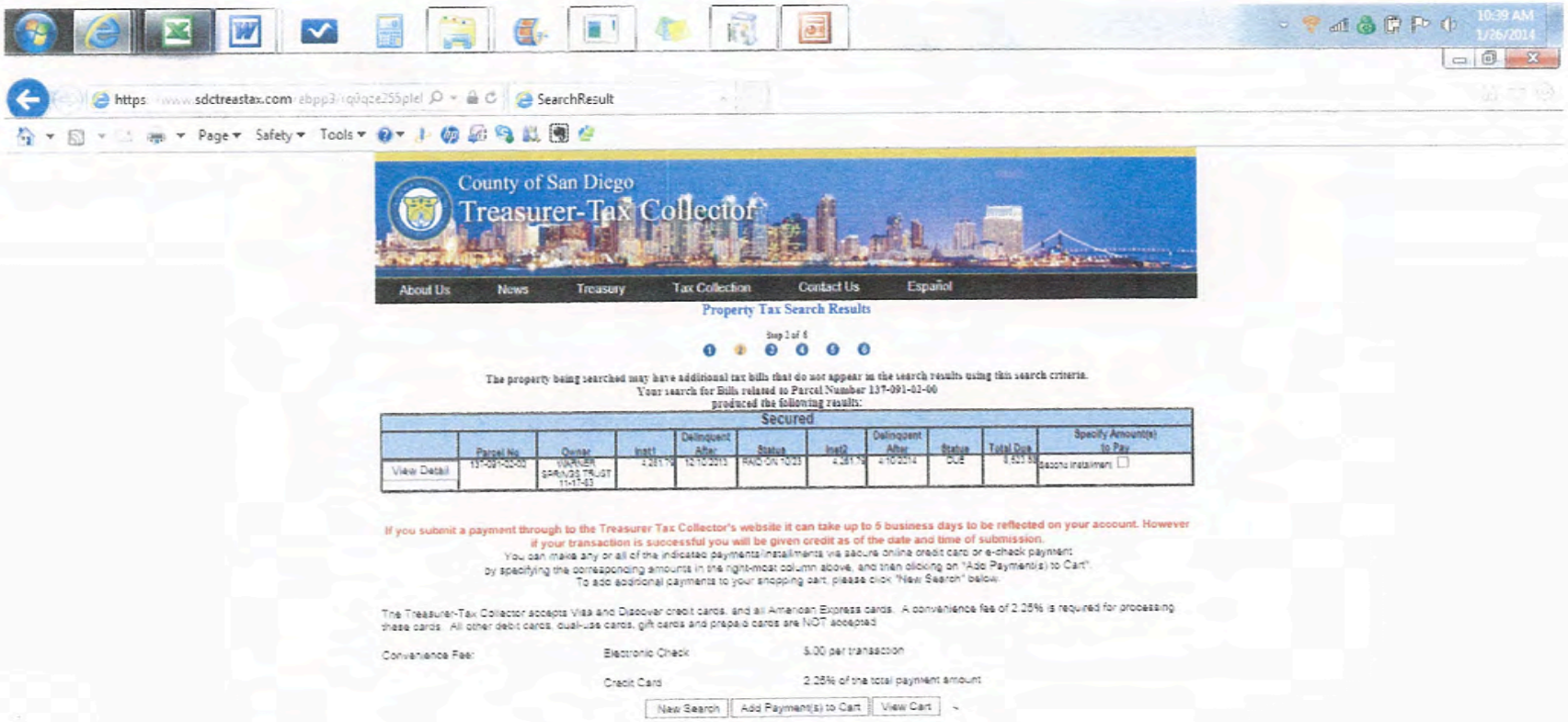
Fence meanders 11,000 linear feet through pristine back country, goes around the already fenced cemetery



It is Trust land, not Pala land



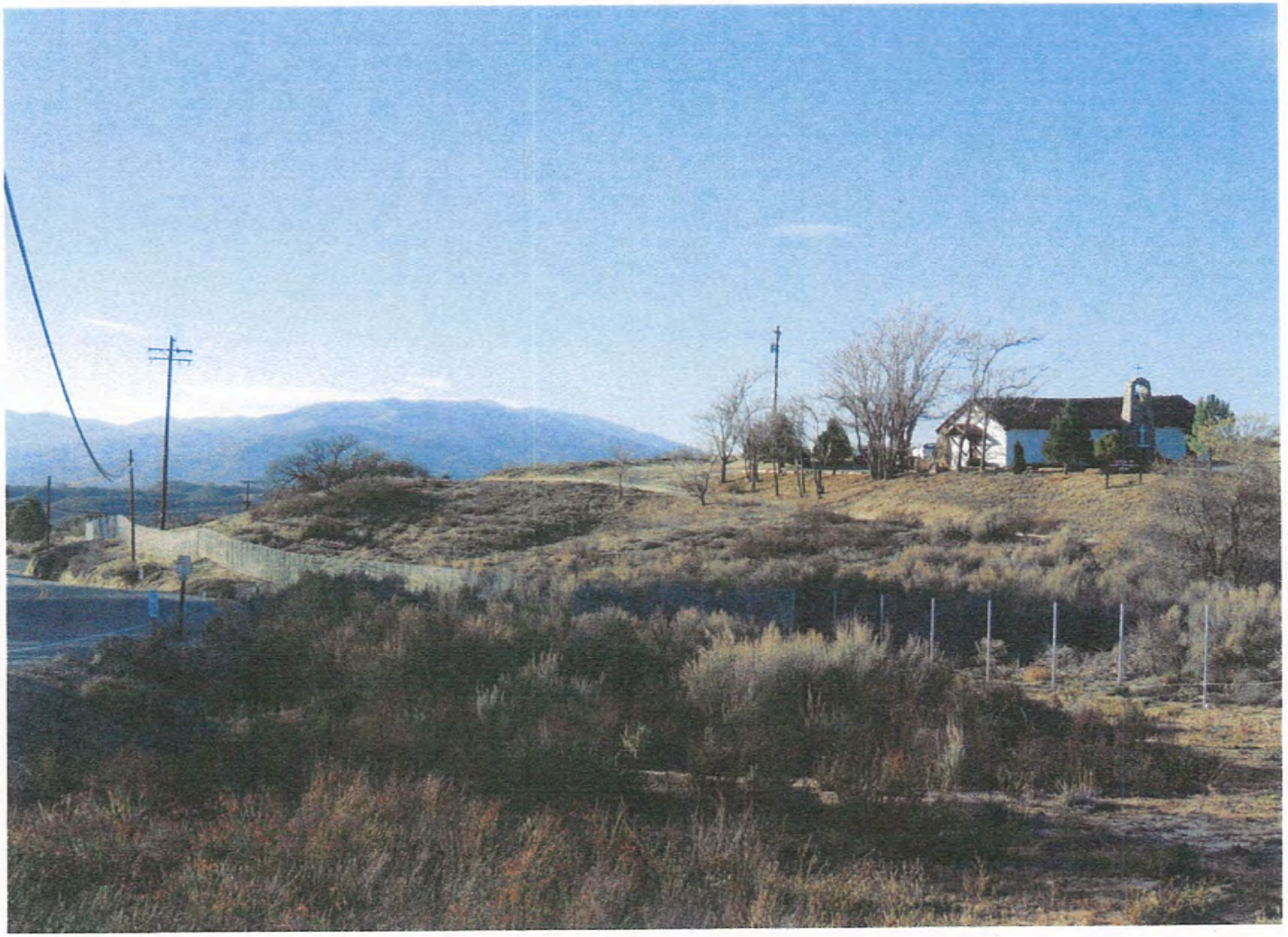
Trust land #2, not Pala land



Fence crosses Stage Rd, legal access to Warner Springs Ranch and historic chapel built 1830

Fence crosses Stage Rd

Fence continues past historic Chapel; eyesore to public along Rte 79



Fence installation damaged private property, left flammable debris

Private property damage & destruction of natural habitat

Dangerous debris, fire hazard

More flammable debris, plus fence cuts off fire dept access

Foreground damage to private property, fence winds 2 miles

Crosses animal paths and waterways, debris caught by fence increases risk of flooding, erosion and fire

Cuts off riding and hiking trails

Fence cuts off public access to Historic Chapel

Attachment I
Trust Documents

Document # 658460
12/16/83

TRUST AGREEMENT
WARNER SPRINGS TRUST

This Trust Agreement is entered into on November 17, 1983, between Warner Springs Ranch, a California limited partnership, as Trustor, and A. Cal Rossi, as Trustee (hereinafter referred to as the "Trustees" in anticipation of the appointment of additional trustees under Article XII).

Concurrently with the execution of this Trust Agreement, the Trustor has transferred and delivered to the Trustees, exclusively for conservation purposes, and without any consideration on the Trustees' part, real property (hereinafter referred to as the "Real Property") consisting of approximately 240 acres in the County of San Diego, State of California, legally described in Exhibit "A" attached hereto and incorporated herein.

The Real Property, together with any other property that may later become subject to this trust, shall constitute the trust estate, and shall be held, administered and distributed as hereinafter provided.

This trust shall be known as the "Warner Springs Trust."

ARTICLE I
TRUST PURPOSES

This trust is established for conservation purposes, in particular for the purposes of (1) preserving the Real Property as open space for the scenic enjoyment of the general public, or pursuant to any clearly delineated federal, state or local governmental conservation policy, (2) preserving the historically important Indian burial grounds and religious and cultural structures located on the Real Property, (3) fostering archaeological and other scientific studies of the Real Property, (4) furthering the study of the customs, traditions, language and history of the Indians who have frequented the Real Property, (5) preserving the Real Property for the education of the general

public with regard to such customs, traditions, language and history, and (6) allowing the continued use of religious facilities on the Real Property for religious purposes.

The beneficiaries of this trust shall be the general public, although the Trustees shall consider the wishes of the Indians who have frequented the area and shall be sensitive to their customs and traditions with respect to the Real Property.

ARTICLE II
ADDITION OF PROPERTY

The Trustees may receive and accept other property, whether real, personal, or mixed, by way of gift, bequest, or devise, from any person, firm, trust, or corporation, to be held, administered, and distributed in accordance with and pursuant to the provisions of this Trust Agreement; but no gift, bequest or devise of any such property shall be received and accepted if it is conditioned or limited in such manner as to require the disposition of the principal or income to any person or organization other than a "charitable organization" or for other than "charitable purposes" within the meaning of such terms as defined in this Trust Agreement, or as shall in the opinion of the Trustees jeopardize the federal tax exemption of this trust pursuant to Section 501(c)(3) of the Internal Revenue Code, as now in force or hereafter amended.

ARTICLE III
MANAGEMENT OF TRUST FUND AND INCOME

The Real Property may not be sold, leased, conveyed or encumbered by the Trustees, nor may the Real Property be improved beyond the extent absolutely necessary to carry out the purposes of this trust.

The Real Property shall be held in perpetuity and shall be used exclusively for conservation purposes.

The Trustees shall hold all other trust assets and may, in their discretion, invest such other assets or part of such other assets in investments authorized in Article XV which are permitted under the laws of the State of California, or may in their discretion retain the cash and collect the income, and shall from time to time and in such amounts as in their discretion they shall deem proper devote and apply so much of the principal and income of the trust estate exclusively to the purposes described in Article I.

ARTICLE IV
RESTRICTIONS ON USE OF TRUST ESTATE

The trust estate and the income thereof shall be devoted exclusively to the purposes described in Article I and shall in no part and under any circumstances be given or contributed to or inure to the benefit of any private person or corporation. No part of the trust estate shall be used to carry on propaganda or otherwise attempt to influence legislation, or to participate in any political campaign. Notwithstanding any other provision hereof, this trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended, or by an organization contributions to which are deductible under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended.

ARTICLE V
GIFTS IRREVOCABLE

Gifts made to the Trustees shall be irrevocable. If it shall be determined by the Internal Revenue Service subsequent to the creation of this trust and the transfer of any property or funds

to the Trustees by the Trustor or any other person that the trust fund is not exempt from the payment of income tax on its income or if the Trustor or other donors to the trust may not be entitled to charitable deductions for income tax purposes for contributions made thereto in the manner and to the full extent provided by the Internal Revenue Code, then such gifts as remain in the fund at the time of such determination shall be given by the Trustees to a qualified tax-exempt charitable organization selected by the Trustees to best carry out the purposes of this trust, and this trust shall thereupon terminate.

ARTICLE VI
TRUST IRREVOCABLE

This Trust Agreement is irrevocable and may not be amended or modified; provided, however, that if for any reason whatsoever this trust fails to qualify as a tax-exempt charitable trust, such changes as are necessary for the trust to so qualify may be made by the Trustor; provided further, however, that Article XIII with regard to Meetings of Trustees and Article XIV with regard to trust records and property may be amended from time to time by the unanimous consent of the Trustees then serving.

ARTICLE VII

[RESERVED]

ARTICLE VIII
TERMINATION OF TRUST

The trust shall continue forever unless terminated by a court of competent jurisdiction, in which case the trust assets shall be distributed to or for the use of such charitable organizations as the court may select for another charitable purpose which is as similar to the original purpose as is reasonably possible. In no

event shall the Real Property be used by such charitable organization for other than conservation purposes.

The Trustor authorizes and empowers the Trustees to form and organize a nonprofit corporation limited to the uses and purposes provided for in this Trust Agreement, such corporation to be organized under the laws of the State of California, such corporation when organized to have power to administer and control the affairs and property and to carry out the uses, objects, and purposes of this trust.

Upon the creation and organization of such corporation, the Trustees are authorized and empowered to convey, transfer, and deliver to such corporation all the property and assets to which this trust may be or become entitled. The charter, bylaws, and other provisions for the organization and management of such corporation and its affairs and property shall be such as the Trustees shall determine, consistent with the provisions of this Article.

ARTICLE IX
MEANING OF CHARITABLE ORGANIZATIONS

In this Trust Agreement and in any amendments to it, references to charitable organizations or charitable organization mean corporations, trusts, funds, foundations, or community chests created or organized in the United States or in any of its possessions, whether under the laws of the United States, any state or territory, the District of Columbia, or any possession of the United States, organized and operated exclusively for charitable purposes, no part of the net earnings of which inures or is payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which do not participate in or intervene in (including the publishing or distributing of statements) any

political campaign on behalf of any candidate for public office. It is intended that the organization described in this section shall be entitled to exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as now in force or hereafter amended.

ARTICLE X
MEANING OF "CHARITABLE PURPOSES"

In this Trust Agreement and in any amendment to it, the term "charitable purposes" shall be limited to and shall include only religious, charitable, scientific, literary or educational purposes within the meaning of those terms as used in Section 501(c)(3) of the Internal Revenue Code, but only such purposes as also constitute public charitable purposes under the laws on trusts of the State of California.

ARTICLE XI
MEANING OF "CONSERVATION PURPOSES"

In this Trust Agreement and in any amendment to it, the term "conservation purposes" shall be limited to and shall include only those purposes allowed by Section 170(h)(4) of the Internal Revenue Code now in force or hereafter amended.

ARTICLE XII
PROVISIONS REGARDING TRUSTEE

A. The Pala Band of Indians and the Los Coyotes Band of Indians may, at their election by written instrument signed and acknowledged, serve as additional Trustees. A writing signed by the chairman, president or other recognized leader of each such band, certifying that he is authorized to execute such writing on behalf of the band, and designating one individual as the representative of the band with regard to trust matters, shall be

authority for such representative to act on behalf of the band, and the other Trustees and all persons dealing with the Trustees shall have no obligation to investigate or determine the authority of such representative. Because the Cupeno Indians have been associated with the Real Property more than others, due consideration shall be given to the appointment of a Cupeno as the representative of each band.

B. If A. Cal Rossi shall for any reason cease to act as a Trustee, any person he may appoint by written instrument, signed and acknowledged, whether individual, corporation, association or otherwise, shall serve as a successor Trustee in his stead. If he shall fail to appoint a successor Trustee, a successor Trustee shall be appointed by a court of competent jurisdiction.

C. Notwithstanding the foregoing, any Trustee under this trust agreement may, by written instrument, signed and acknowledged, resign its office. If all of the Trustees so resign, one successor Trustee shall be appointed by a court of competent jurisdiction. Any such succeeding Trustee shall, upon its acceptance of the office by written instrument signed and acknowledged, have the same powers, rights, and duties, and the same title to the trust estate, as if the original Trustee. In the event a successor Trustee is not appointed, the trust shall be terminated in accordance with Article VIII.

D. Any Trustee may be removed by a court of competent jurisdiction for good cause upon application of another Trustee.

E. None of the Trustees shall be required to furnish any bond or surety, and none of them shall be responsible or liable for the acts or omissions of any other of the Trustees or of any

predecessor or of a representative, custodian, agent, depositary or counsel selected with reasonable care.

F. The Trustees shall be reimbursed from the trust estate for all expenses reasonably incurred by them in the administration of the trust estate, but shall not be entitled to compensation for their services.

G. One or more Trustees then in office, whether original or successor, shall have full authority to act even though one or more vacancies may exist. A Trustee may, by appropriate written instrument signed and acknowledged, delegate all or any part of its powers to another Trustee or other Trustees for such periods and subject to such conditions the delegating Trustee may determine.

H. The Trustees may at their election appoint an advisory group of Native Americans and other interested parties to advise them with regard to the Real Property and the conduct of trust affairs, but they shall not be bound by the advice of such advisory group.

ARTICLE XIII
MEETINGS OF TRUSTEES

A. All meetings of the Trustees shall be held at the offices of the Owners Association or at such other location as determined from time to time by unanimous vote of the Trustees.

B. Regular meetings of the Trustees shall be held, without call or notice, at 10:00 a.m. on the last Friday of March and September of each year at the offices of the Owners Association.

C. Special meetings of the Trustees may be called by any one Trustee. Special meetings shall be held on four (4) days' written notice by first class mail, postage prepaid, or on forty-eight

(48) hours' written notice delivered personally or by telephone or telegram. Notice of the special meeting need not be given to any Trustee who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of such notice to such Trustee. All such waivers, consents, and approvals shall be filed with the trust records or made a part of the minutes of the meetings.

D. If there are two or three Trustees, two Trustees shall constitute a quorum for the transaction of business.

E. Except as otherwise provided in this Trust Agreement, or by law, every act or decision done or made by the unanimous agreement of the Trustees present at a meeting duly held at which a quorum is present is the act of the Trustees provided, however, that any meeting at which a quorum was initially present may not continue to transact business if the withdrawal of a Trustee or Trustees results in the absence of a quorum.

F. A. Cal Rossi, or his successor Trustee, or such other person as the Trustees present may elect by unanimous vote, shall preside at meetings of the Trustees. Any person appointed by the presiding officer shall act as secretary of the meeting. Trustees may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Such participation shall constitute personal presence at the meeting.

G. A majority of the Trustees present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24)

hours, notice of the adjournment to another time or place must be given prior to the time of the adjourned meeting to the Trustees who were not present at the time of the adjournment.

H. The Robert's Rules of Order, as may be amended from time to time, shall govern the meetings of Trustees insofar as such rules are not inconsistent with or in conflict with this Trust Agreement, or the law;

I. Any action required or permitted to be taken by the Trustees may be taken without a meeting, if all the Trustees individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Trustees. Such action by written consent shall have the same force and effect as the unanimous consent of such Trustees.

J. The Trustees shall not be permitted to vote or act by proxy.

ARTICLE XIV
TRUST RECORDS AND PROPERTY

A. The Trustees shall keep adequate and correct records of account and minutes of the proceedings of the Trustees. The minutes shall be kept in written form. Other books and records shall be kept in either written form or in any other form capable of being converted into written form.

B. The fiscal year of the trust shall be from July 1 to June 30 of each year. The Trustees shall publish within ninety (90) days of the close of each fiscal year a statement of the receipts and disbursements, and the purposes for which disbursements have been made for the preceding fiscal year. An annual audit shall be made of the accounts of the trust by certified public accountants. The annual report shall be furnished to all Trustees.

C. A. Cal Rossi or his successor Trustee shall have exclusive custody of the securities, cash, and other property of

the trust, and the custody of all books and records pertaining to the trust.

ARTICLE XV
POWERS OF TRUSTEES

In extension and not in limitation of the common law and statutory powers of trustees and other powers granted in this Trust Agreement, the Trustees shall have the following discretionary powers:

A. To invest and reinvest the principal and income of the trust in such property, real, personal, or mixed, and in such manner as they shall deem proper, and from time to time to change investments as they shall deem advisable; to invest in or retain any stocks, shares, bonds, notes, obligations, or personal or Real Property (including without limitation any interest in or obligation with any corporation, association, business trust, investment trust, common trust fund, or investment company) although some or all of the property so acquired or retained is of a kind or size which but for this express authority would not be considered proper and although all of the trust funds are invested in securities of one company. No principal or income however, shall be loaned, directly or indirectly, to any trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to this trust, nor to anyone except on the basis of an adequate interest charge and with adequate security.

B. To sell, lease, or exchange any personal, mixed or real property at public auction or by private contract, for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter such undertakings relating to the trust property, they consider advisible, whether or not such leases or contracts may extend beyond the duration of the trust.

C. To borrow money for such periods, at such rates of interest, and upon such terms as the Trustees consider advisable,

and as security for such loans to mortgage or pledge any real or personal property with or without power of sale; to acquire or hold any real or personal property, subject to any mortgage or pledge on or of property acquired or held by this trust.

D. To execute and deliver deeds, assignments, transfers, mortgages, pledges, leases, covenants, contracts, promissory notes, releases, and other instruments, sealed or unsealed, incident to any transaction in which they engage.

E. To vote, to give proxies, to participate in the reorganization, merger or consolidation of any concern, or in the sale, lease, disposition, or distribution of its assets; to join with other security holders in acting through a committee, depositary, voting trustees, or otherwise, and in this connection to delegate authority to such committee, depositary, or trustees and to deposit securities with them or transfer securities to them; to pay assessments levied on securities or to exercise subscription rights in respect of securities.

F. To employ a bank or trust company as custodian of any funds or securities and to delegate to it such powers as they deem appropriate; to hold trust property without indication of fiduciary capacity but only in the name of a registered nominee, provided the trust property is at all times identified as such on the books of the trust; to keep any or all of the trust property or funds in any place or places in the United States of America; to employ clerks, acountants, investment counsel, investment agents, and any special services, and to pay the reasonable compensation and expenses of all such services in addition to the compensation of the trustees.

G. To rent or lease the church facility on the Real Property to the Catholic Church for no consideration other than an agreement to maintain the premises.

H. In carrying out and aiding the purposes and objects of this Trust Agreement, the Trustee shall have full power and authority to employ and pay attorneys, lecturers, writers, inves-

tigators, archaeologists, scientists, and such assistants and employees of every kind as they may deem necessary.

I. Notwithstanding anything herein to the contrary, the Trustees shall not have the power to sell, convey, lease or encumber the Real Property; however, nothing in this Trust Agreement shall be construed as prohibiting the Trustees from making any dedications or irrevocable offers of dedication to any governmental entity for right of way for Highway 79 which is required to be so dedicated or offered for dedication as a condition to approval of Warner Springs Ranch Specific Plan (SP 83-04) and any amendments thereto.

ARTICLE XVI
PROHIBITED TRANSACTIONS

Other provisions of this Trust Agreement notwithstanding, the Trustees shall not engage in any act of self-dealing as defined in Section 4941 Subdivision (d) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws; nor retain any excess business holding as defined in Section 4943 Subdivision (c) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws; nor make any investments in such manner as to incur tax liability under Section 4944 of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945 Subdivision (d) of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

Other provisions of this Trust Agreement notwithstanding, the Trustees shall distribute the trust income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code, or corresponding provisions of any subsequent federal tax laws.

ARTICLE XVII

TRUSTEES' FIDUCIARY CAPACITY

The Trustees' powers are exercisable solely in the fiduciary capacity consistent with and in furtherance of the charitable and conservation purposes of this trust and not otherwise.

ARTICLE XVIII

MEANING OF "TRUSTEES"

In this Trust Agreement and in any amendment to it, references to "Trustees" mean the one or more Trustees, whether original or successor, for the time being in office.

ARTICLE XIX

MISCELLANEOUS

Any person may rely on a copy, certified by a notary public, of the executed original of this Trust Agreement held by the Trustees, and of any of the notations on it and writings attached to it, as fully as he might rely on the original documents themselves. Any such person may rely fully on any statements of fact certified by any who appears from such original documents or from such certified copy to be a Trustee under this Trust Agreement. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do. No one dealing with the Trustees need see to the application of anything paid or transferred to or upon the order of the Trustees of the trust.

ARTICLE XX

GOVERNING LAW

This Trust Agreement is to be governed in all respects by the laws of the State of California.

The Trustor and Trustees have executed this Trust Agreement on the day and year first written above.

TRUSTOR

Warner Springs Ranch, a
California limited partnership

By: The A. Cal Rossi Company,
Ltd., a California
corporation, general partner

By: _____
A. Cal Rossi, Jr.,
President

By: Border Lights, Inc., a
Delaware corporation,
general partner

By: _____
Henry V. Greene,
President

TRUSTEE

_____
A. Cal Rossi, Jr.

STATE OF CALIFORNIA)
Francisco) ss
COUNTY OF SAN ~~DIEGO~~)

On December 17, 1983, before me, Linda I. Methven, the undersigned Notary Public in and for said State, personally appeared A. Cal Rossi, known to me ~~or proved to me on the basis of satisfactory evidence~~ to be the person who executed the within instrument on behalf of The A. Cal Rossi Company, Ltd., a California corporation, which corporation is known to me to be a general partner of Warner Springs Ranch, a California limited partnership, the partnership that executed the within instrument, and acknowledged to me that both such entities executed the same.

Witness my hand and official seal.

OFFICIAL SEAL
LINDA I. METHVEN
NOTARY PUBLIC - CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
My Comm. Expires Dec. 27, 1984

Linda I. Methven

STATE OF New York)
) ss
COUNTY OF New York)

On November 22, 1983, before me, Catherine D. DiPierno, the undersigned Notary Public in and for said State, personally appeared Henry V. Greene, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument on behalf of Border Lights, Inc. a Delaware corporation, which corporation is known to me to be a general partner of Warner Springs Ranch, a California limited partnership, the partnership that executed the within instrument, and acknowledged to me that both such entities executed the same.

Witness my hand and official seal.

CATHERINE D. DiPIERNO
NOTARY PUBLIC

Catherine D. DiPierno

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN ~~DIEGO~~)

On December 17, 1983, before me, Linda I. Methven, the undersigned Notary Public, personally appeared A. Cal Rossi, known to me ~~or proved to me on the basis of~~ satisfactory evidence to be the person whose name is subscribed to the within instrument, and ackowledged that he executed it.

Witness my hand and official seal.

OFFICIAL SEAL
LINDA I. METHVEN
NOTARY PUBLIC - CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
My Comm. Expires Dec. 27, 1984

Linda I. Methven

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

PARCEL 4, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED December 23 ,198 3 AS FILE/PAGE NO. 83-469613 , OFFICIAL RECORDS IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY.

ORIGINAL

DOC # 2011-0077534

FEB 09, 2011 9:27 AM
OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
Ernest J. Dronenburg, Jr., COUNTY RECORDER
FEES: 37.00
OC: OC

PAGES: 8

Recording Requested By
And When Recorded Mail To:

7076

Pala Band of Mission Indians, Successor Trustee
Warner Spring Trust dated 11/17/1983
Attn: Robert H. Smith, Chairman
35008 Pala Temecula Road, PMB 50
Pala, CA 92059

APNs: 137-100-01-00 & 137-091-02-00

AFFIDAVIT - CHANGE OF TRUSTEE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

The undersigned, ROBERT H. SMITH, Chairman of the Pala Band of Mission Indians, and THERESA J. NIETO, Treasurer of the Pala Band of Mission Indians, both of legal age, being duly sworn, deposes and says:

1. On November 17, 1983, WARNER SPRINGS RANCH, a California limited partnership, as Trustor, and A. CAL ROSSI, as Trustee, executed an irrevocable Trust Agreement entitled the WARNER SPRINGS TRUST dated November 17, 1983.

2. A. CAL ROSSI is the same person named as the initial Trustee of the WARNER SPRINGS TRUST and is the same person as the party in that certain Grant Deed dated November 17, 1983, executed by WARNER SPRINGS RANCH, a California limited partnership, to A. CAL ROSSI, as Trustee of the WARNER SPRINGS TRUST dated November 17, 1983, recorded on December 28, 1983, as Document No. 83-473226 of Official Records of San Diego County, California, covering the following described real property situated in Warner Springs, San Diego County, California:

See legal description set forth on Exhibit "A" attached hereto and incorporated herein by this reference.

3. Pursuant to ARTICLE XII, paragraph B, of said trust, in the event that A. CAL ROSSI shall for any reason cease to act as Trustee of the trust, he may appoint by written instrument, signed and acknowledged, an individual, association or otherwise, who shall serve as successor Trustee of the trust in his stead.

7077

4. On August 15, 1994, pursuant to the terms of the trust, A. CAL ROSSI, by written instrument, signed and acknowledged, elected to resign as Trustee of the trust and appointed the PALA BAND OF MISSION INDIANS as Successor Trustee of the trust. A true and correct copy of the "Resignation of Trustee and Designation of Successor Trustee" is attached hereto as Exhibit "B" and incorporated herein by this reference.

5. On September 14, 1994, the PALA BAND OF MISSION INDIANS, by formal written Resolution 94-28 accepted such appointment and consented to act as Successor Trustee of the trust. A true and correct copy of said Resolution 94-28 is attached hereto as Exhibit "C" and incorporated herein by this reference.

6. Since September 14, 1994, the PALA BAND OF MISSION INDIANS has acted and continues to act as sole Successor Trustee of the trust.

7. This Affidavit-Change of Trustee is recorded pursuant to California Probate Code Section 18105 to establish that the sole Successor Trustee of the WARNER SPRINGS TRUST dated November 17, 1983, is the PALA BAND OF MISSION INDIANS.

CERTIFICATION MADE UNDER PENALTY OF PERJURY
[C.C.P. 2015.5]

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: February 2, 2011

Pala Band of Mission Indians, as Successor Trustee of the WARNER SPRINGS TRUST dated 11/17/1983

By: _____
Robert H. Smith, Chairman
Pala Band of Mission Indians

By: _____
Theresa J. Nieto, Treasurer
Pala Band of Mission Indians

Subscribed and sworn to (or affirmed) before me on this 2 day of February, 2011, by Robert H. Smith and Theresa J. Nieto, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

CYNTHIA CROSS
COMM. # 1842238
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXP. APR. 09, 2013

_____
Notary Public Signature

(Notary Public Seal)

Notary Acknowledgments are on following page

7078

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On February 2, 2011, 2011, before me, Cynthia Cross, a Notary Public, personally appeared ROBERT H. SMITH, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under the Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said County and State

CYNTHIA CROSS
COMM. # 1842238
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXP. APR. 08, 2013

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On February 2, 2011, 2011, before me, Cynthia Cross, a Notary Public, personally appeared and THERESA J. NIETO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under the Penalty of Perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said County and State

CYNTHIA CROSS
COMM. # 1842238
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXP. APR. 08, 2013

EXHIBIT "A"

7079

LEGAL DESCRIPTION

PARCEL 4 OF CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 23, 1983 AS INSTRUMENT NO. 83-469613 AND RECORDED JANUARY 6, 1984 AS INSTRUMENT NO. 84-005433, BOTH OF OFFICIAL RECORDS, BEING THAT PORTION OF RANCHO SAN JOSE DEL VALLE, PER PATENT DATED JANUARY 16, 1880, IN BOOK 2, PAGE 73 OF PATENTS, RECORDS OF SAN DIEGO COUNTY, TOGETHER WITH A PORTION OF LOT F OF LOS TULES UNIT NO. 1, MAP THEREOF NO. 2237, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ALL IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID LOT F WITH THE NORTHEASTERLY BOUNDARY OF SAID RANCHO; THENCE ALONG SAID RANCHO BOUNDARY NORTH 17°50'00" WEST 213.51 FEET TO CORNER NO. 22 OF SAID RANCHO; THENCE CONTINUING ALONG SAID RANCHO BOUNDARY NORTH 56°45'00" WEST 4626.00 FEET; THENCE LEAVING SAID BOUNDARY SOUTH 790.00 FEET; THENCE SOUTH 70°33'36" EAST 721.11 FEET; THENCE SOUTH 42°05'21" EAST 417.73 FEET; THENCE SOUTH 08°25'37" EAST 545.89 FEET; THENCE SOUTH 16°27'36" WEST 458.80 FEET; THENCE SOUTH 38°55'39" WEST 334.22 FEET; THENCE SOUTH 71°33'54" WEST 252.98 FEET; THENCE NORTH 84°24'02" WEST 512.44 FEET; THENCE SOUTH 44°05'26" WEST 445.53 FEET; THENCE SOUTH 11°18'36" EAST 458.91 FEET; THENCE SOUTH 28°57'04" WEST 268 FEET, MORE OR LESS, TO THE CENTERLINE OF STATE HIGHWAY 79; THENCE IN A GENERAL SOUTHEASTERLY DIRECTION ALONG SAID CENTERLINE TO THE NORTHERLY BOUNDARY OF LOS TULES UNIT NO. 3, MAP THEREOF NO. 5777; THENCE IN A GENERAL NORTHEASTERLY DIRECTION ALONG THE NORTHERLY LINES OF SAID MAPS 5777 AND LOS TULES UNIT NO. 2, MAP NO. 2371 TO THE SOUTHWESTERLY CORNER OF SAID LOT F, BEING ALSO A POINT ON SAID RANCHO BOUNDARY; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LOT F, NORTH 33°42' EAST 501.00 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE OF LOT F NORTH 22°27'30" WEST 140.40 FEET; THENCE NORTH 00°35'30" EAST 50.00 FEET; THENCE NORTHEASTERLY IN A STRAIGHT LINE, 1115 FEET, MORE OR LESS TO THE NORTHERLY LINE OF SAID LOT F; THENCE WESTERLY ALONG SAID NORTHERLY LINE TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PARCEL OF LAND CONVEYED BY CHARLES FORMAN AND THE EMPIRE LAND CATTLE CO. TO THE UNITED STATES OF AMERICA, BY DEED DATED APRIL 17, 1911 AND RECORDED IN BOOK 526, PAGE 369 OF DEEDS.

ALSO EXCEPTING ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 72 OF LOS TULES UNIT NO. 3, MAP THEREOF NO. 5777 AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID LOT 72 SOUTH 27°45'27" EAST 234.94 FEET (RECORD SOUTH 27°44'17" EAST 235.00 FEET) TO THE NORTHERLY RIGHT OF WAY OF CAMINO SAN IGNACIO AS SHOWN ON SAID MAP NO. 5777; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE SOUTH 62°13'49" WEST 159.66 FEET (RECORD SOUTH 62°15'43" WEST 159.77 FEET); SOUTH 52°13'13" WEST 855.59 FEET (RECORD 855.80 FEET); NORTHWESTERLY ALONG A TANGENT 163.21 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 49°23'13" AN ARC DISTANCE OF 140.68 FEET; TANGENT TO SAID CURVE NORTH 78°23'34" WEST 2.25 FEET;

LEGAL DESCRIPTION
(continued)

NORTHERLY ALONG A TANGENT 20.00 FOOT RADIUS CURVE THROUGH CENTRAL ANGLE OF 84°50'26" AN ARC DISTANCE OF 29.61 FEET; ALONG A NON TANGENT LINE NORTH 83°33'08" WEST 21.00 FEET; NORTH 83°33'54" WEST 30.23 FEET (RECORD NORTH 83°33'08" WEST 30.00 FEET; TO THE CENTERLINE OF STATE HIGHWAY 79, BEING ALSO A POINT IN A NON TANGENT 485.00 FOOT RADIUS CURVE CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 83°33'54" EAST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°24'01" AN ARC DISTANCE OF 130.36 FEET; THENCE TANGENT TO SAID CURVE NORTH 08°57'55" WEST 112.00 FEET; THENCE LEAVING SAID CENTERLINE NORTH 86°46'26" WEST 415.00 FEET; THENCE3 NORTH 24°34'26" WEST 192.50 FEET; THENCE NORTH 41°19'34" EAST 230.00 FEET; THENCE NORTH 21°20'18" WEST 914.33 FEET; THENCE NORTH 14°02'25" EAST 397.14 FEET; THENCE NORTH 40°15'01" EAST 733.30 FEET; THENCE NORTH 88°53'34" EAST 890.00 FEET; THENCE SOUTH 26°17'28" EAST 597.70 FEET; THENCE SOUTH 36°16'26" EAST 491.00 FEET; THENCE SOUTH 18°41'05" EAST 253.20 FEET; THENCE NORTH 85°05'23" WEST 40.00 FEET TOO THE NORTHWESTERLY CORNER OF LOT 70 OF SAID MAP NO. 5777; THENCE ALONG THE BOUNDARY OF SAID MAP THE FOLLOWING COURSES:

SOUTH 09°53'57" EAST 264.89 FEET (RECORD SOUTH 09°53'00" EAST 265.00 FEET; SOUTH 80°03'54" WEST 214.25 FEET (RECORD SOUTH 80°07'00" WEST 214.27 FEET); SOUTH 62°15'44" WEST 322.64 FEET (RECORD SOUTH 62°15'43" WEST 322.65 FEET) TO THE POINT OF BEGINNING.

END OF LEGAL DESCRIPTION

APNs: 137-100-01-00 & 137-091-02-00

EXHIBIT "B"

7081

WARNER SPRINGS TRUST

RESIGNATION OF TRUSTEE AND DESIGNATION OF SUCCESSOR TRUSTEE

I, A. Cal Rossi, declare as follows:

1. I am the original Trustee of the Warner Springs Trust ("Trust"), created November 17, 1983 by a Trust Agreement executed the same date.

2. I hereby resign my office as Trustee pursuant to Article X, paragraph C of the Trust Agreement, effective today's date.

3. I hereby appoint the Pala Band of Mission Indians, a federally recognized Indian Tribe, P.O. Box 43, Pala, California, 92059-0043, as my successor Trustee, pursuant to Article X paragraph B of the Trust Agreement.

4. I herewith convey and transmit all records, documents, files, and Trust accounts pertaining to the Warner Springs Trust, and that are in my possession or control, to the Pala Band of Mission Indians.

I declare under penalty of perjury of the laws of California that the foregoing is true and correct. Signed this 15th day of ~~July~~ August, 1994, at San Francisco, California.

A. Cal Rossi

State of California)
) SS.
County of San Diego)

On this 15th day of August, 1994, before me a Notary Public, in and for the said state and county, personally appeared A. Cal Rossi, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the above instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Nancy L. Sherwood
Notary Public

OFFICIAL NOTARY SEAL
NANCY L. SHERWOOD
Notary Public — California
SAN FRANCISCO COUNTY
My Comm. Expires AUG 04,1995

EXHIBIT "B"

7082

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT No. 5907

State of California

County of San Francisco

On August 15, 1994 (DATE) before me, Nancy L. Sherwood, Notary Public (NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"),

personally appeared A. Cal Rossi, Jr. (NAME(S) OF SIGNER(S)),

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

OFFICIAL NOTARY SEAL
NANCY L. SHERWOOD
Notary Public — California
SAN FRANCISCO COUNTY
My Comm. Expires AUG 01,1995

WITNESS my hand and official seal.

Nancy L. Sherwood
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____ (TITLE(S))

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☒ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
WARNER SPRINGS TRUST

DESCRIPTION OF ATTACHED DOCUMENT

Resignation of Trustee and Designation of Successor Trustee
TITLE OR TYPE OF DOCUMENT

1
NUMBER OF PAGES

August 15, 1994
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

©1993 NATIONAL NOTARY ASSOCIATION • 8236 Remmet Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184

EXHIBIT "C"

7083

Pala Band Of Mission Indians

P.O. Box 43
Pala, California 92059-0043
(619) 742-3784

RESOLUTION 94-28

Appoint the Pala Band as Trustee

WHEREAS, the Pala Band of Mission Indians is a federally recognized tribe with the inherent sovereignty and duty to regulate the territory of the Band and the activities and transactions occurring within the exterior boundaries of the Pala Indian Reservation; and

WHEREAS, the 240 acre parcel of land known as the Warner Springs Ranch in Northern San Diego County has major historical, cultural, and religious significance for the Pala Band and its members; and

WHEREAS, the Warner Springs Ranch Trust was created Nov 17,1983, designating A. Cal. Rossi as the Trustee; and

WHEREAS, A. Cal. Rossi has elected under the terms of the Trust Agreement to resign as Trustee and appoint the Pala Band of Mission Indians as his successor Trustee.

THEREFORE BE IT RESOLVED that effective immediately, the Pala Band of Mission Indians, through the Band's Executive Committee, shall serve as the successor Trustee of the Warner Springs Trust, and is authorized to take whatever actions are necessary to manage, maintain, and preserve the Trust property for the use of the Band and its members. and for the purposes prescribed by the Trust Agreement.

CERTIFICATION

This is to certify that the above resolution was passed by the Pala Band of Mission Indians General Council at a duly called meeting held on September 14. 1994. with 56 members present by a vote of 35 "for" 0 "against" and 17 "abstaining". This resolution has not been rescinded or amended in any way.

Robert H. Smith, Chairman

Doreen Kolb, Vice-Chairperson

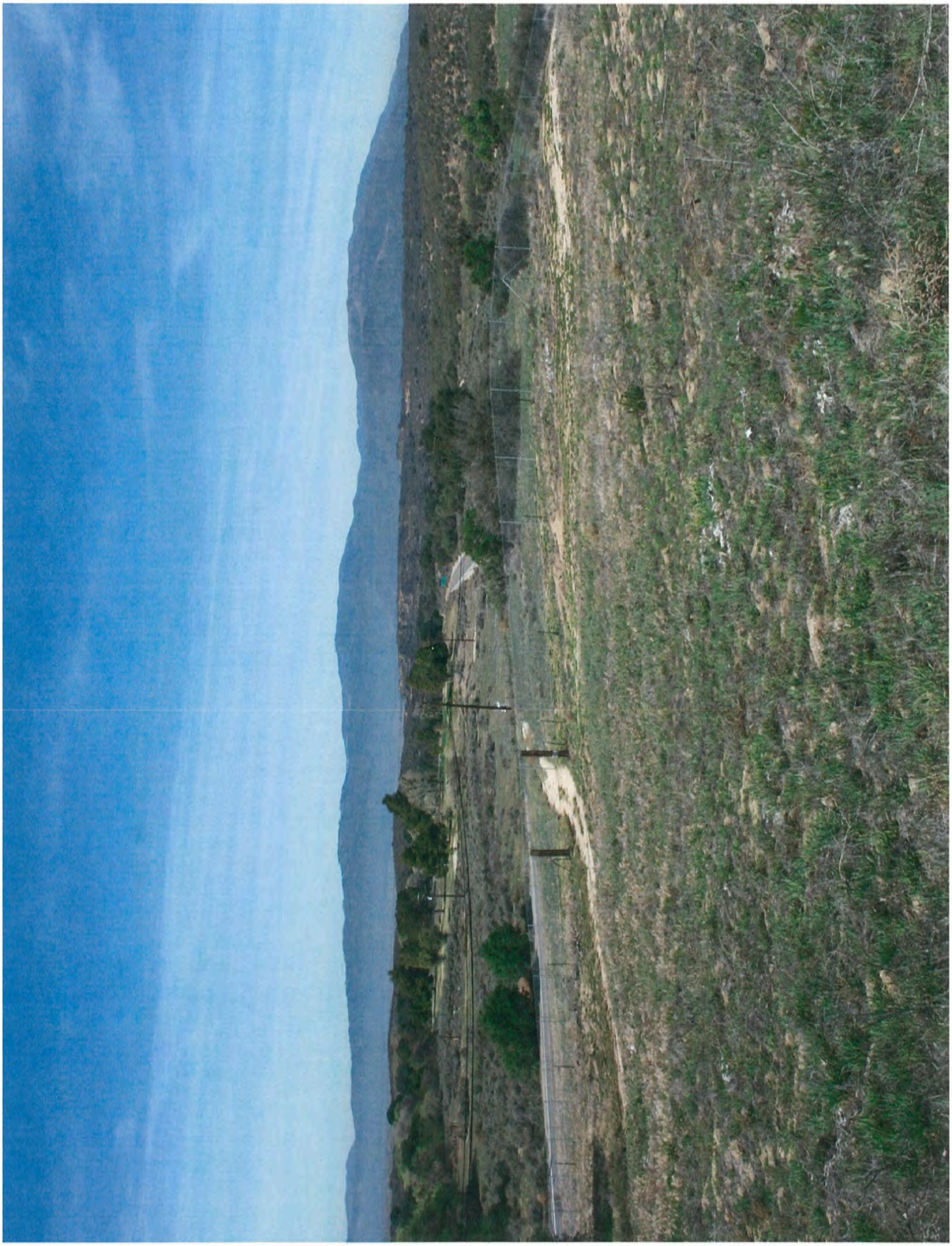
Stanley H. McGarr, Secretary

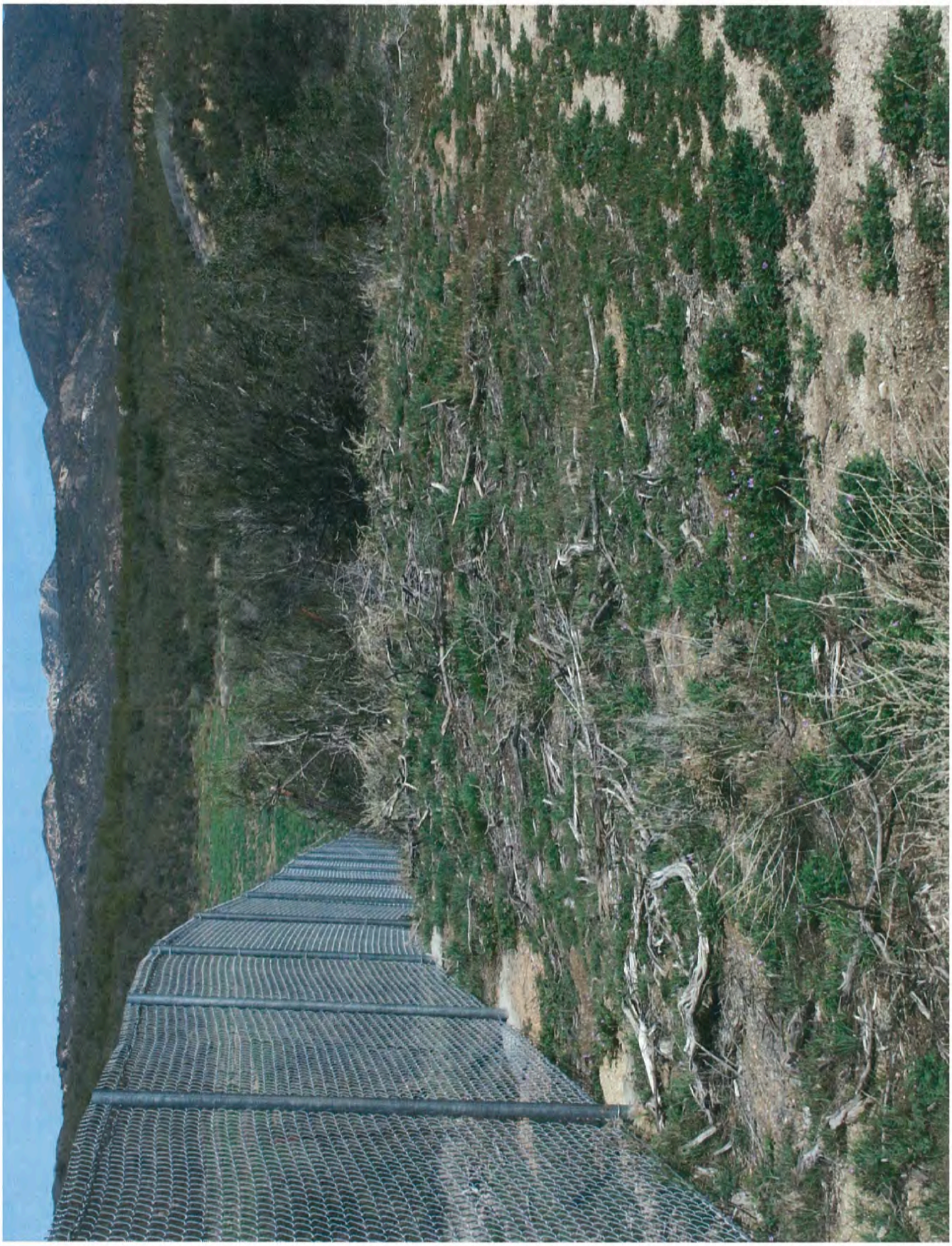
Theressa Villa, Treasurer

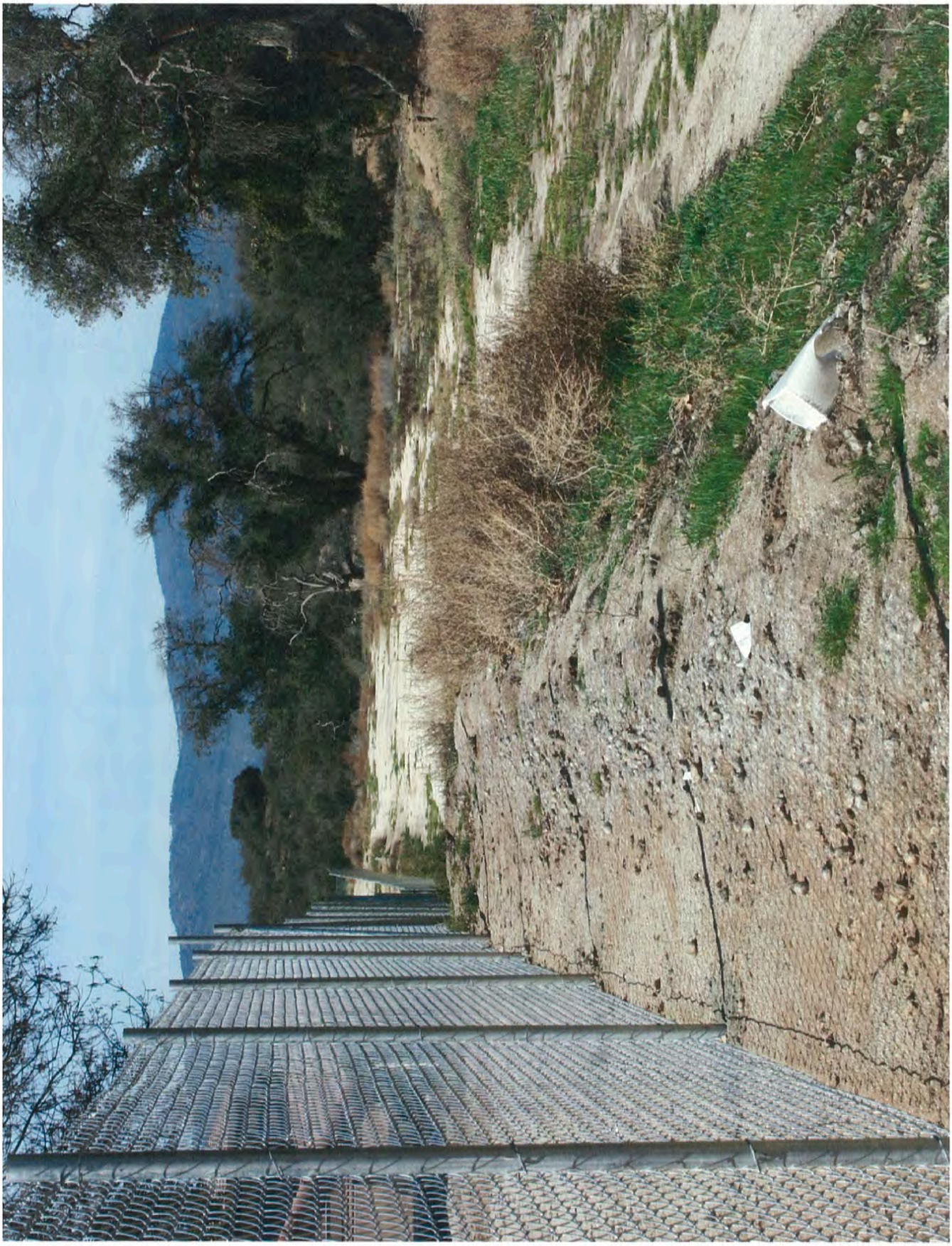
Marcus Mojado, Committee

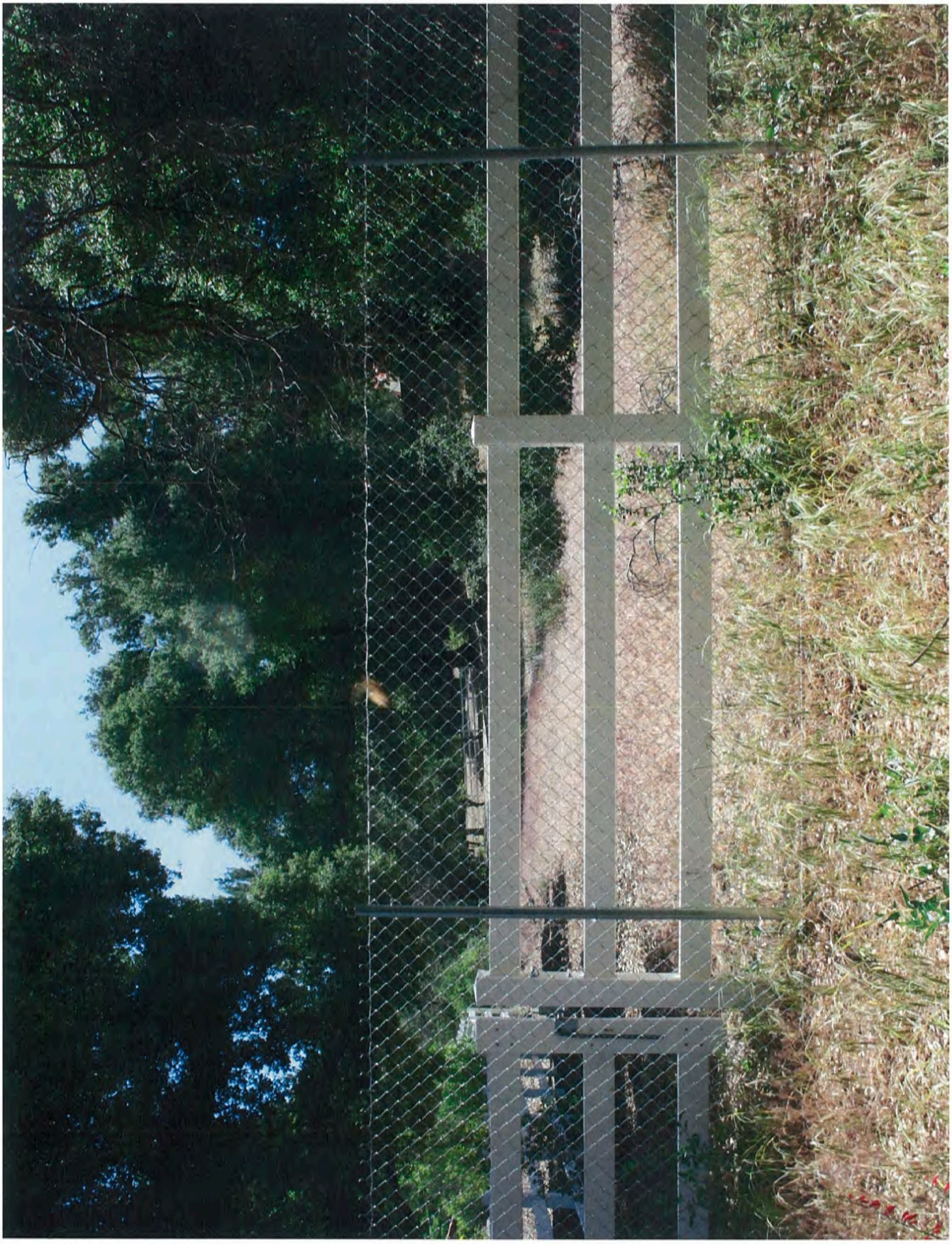
LeeAnn Hayes, Committee

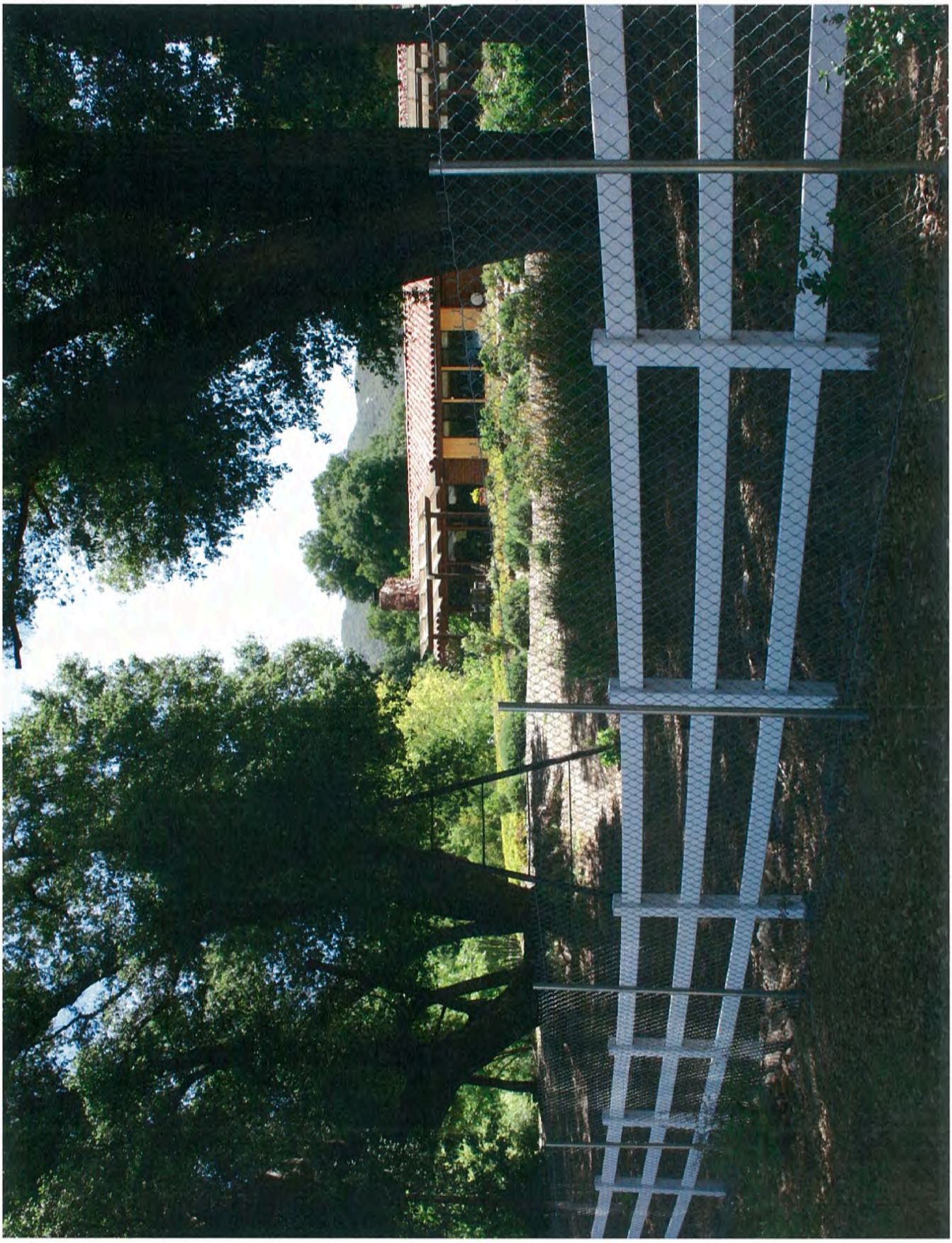
Attachment J
Site Photos











Attachment I
Code Compliance Documentation

LUIS GONZALEZ
INDOOR FENCING
888-718-9777

COUNTY OF SAN DIEGO
DEPARTMENT OF PLANNING AND LAND USE
5201 Ruffin Road San Diego, CA 92123-1666 (858) 694-2960

SAN MARCOS OFFICE
338 VIA VERA CRUZ
SAN MARCOS, CA 92069-2638
(760) 940-2893

EL CAJON OFFICE
200 EAST MAIN ST. – SIXTH FLOOR
EL CAJON, CA 92020-3912
(619) 441-4264

NOTICE OF VIOLATION

STOP WORK

Requirements to Obtain Permit

1. Apply for a permit at any of the offices listed above
2. When you apply, you will need:
   a. Legal description of your property;
   b. Three (3) plot plans drawn to scale, showing the size and shape of your lot and size and location of all the buildings on the lot. Clearly show distances of all structures from property lines and road centerlines; plans must be in ink.
   c. Other drawings necessary to show that the construction will meet all building code requirements.
   d. Assessor's Parcel Number
   e. Grading Permit when 200 cubic yards or more of earth is moved.
3. If you have any questions or would like information regarding application by mail, contact any office by phone.

FIELD INSPECTOR'S COMMENTS

If legally possible obtain the following Permits:
Building Permit for _____
Electrical Permit for _____
Plumbing Permit for _____
Mechanical Permit for _____
Grading Permit, Yes___ No___

Violations Detected

INSTALLATION OF A CHAIN LINK FENCE WITHOUT AN APPROVED SITE PLAN.

VIOLATION OF THE ZONING ORDINANCE: (Yes) No____

CEASE ALL INSTALLATIONS OF CHAIN LINK FENCE UNTIL SUCH TIME AN APPROVED SITE PLAN HAS BEEN SECURED.
8/21/2013 [signature]
Date Inspector's Signature

COMPLIANCE REQUESTED WITHOUT DELAY

Double Permit Fees are required for work started without permits.

BRING THIS NOTICE WITH YOU WHEN YOU APPLY FOR YOUR PERMIT(S).

SITE

Number/Street	NO ADDRESS
St. Rd. Av. ( )	
District	WARNER SPRINGS
Owner's Name	WARNER SPRINGS TRUST 11-17-83
Case	2013-00071

A.P.N. 137-071-02-00

DPL 30 (REVISED 3/2002)

County of San Diego, Planning & Development Services

ADMINISTRATIVE WARNING

CODE COMPLIANCE DIVISION

DATE OF WARNING: 8/21/2013 **CASE #** PDS2013-ENFGEN-000071

LOCATION OF VIOLATION: No physical address

APN: 137-091-02-00

ZONE: S88 (Specific Planning Area)

PROPERTY OWNER: Warner Springs Trust 11-17-83
35008 Pala Temecula Rd. PMB 50
Pala, CA 92059

The Code Compliance Division of Planning & Development Services recently received a complaint regarding violation(s) of County Code on your property. The following violations were verified during a site visit on **Friday, August 09, 2013**. This letter is to notify you that Administrative Citation(s) may be issued to you if you fail to take the required corrective actions to remove violations from your property by the deadline(s) shown below. You may not be contacted again before this action is taken.

The Department would like to avoid taking higher levels of compliance action and avoid any unnecessary cost to you. We encourage you to make every effort to remove the violation(s) on your own by the Correction Due Date indicated.

THIS IS YOUR OPPORTUNITY TO CORRECT THE VIOLATIONS ON YOUR PROPERTY WITHOUT ANY FURTHER COUNTY COMPLIANCE ACTION.

FAILURE TO COMPLY:

Should you fail to complete the corrections required by the deadline(s) provided or obtain a time extension from your Code Compliance Officer, one or more of the following compliance actions may be taken:

1. Issuance of Administrative Citations up to a total amount of $10,000.
2. Issuance of Civil Penalties up to $1,000 per day; for a total of $50,000 per violation, per year.
3. Enacting Public Nuisance Abatement proceedings with violations being remedied by the County at your expense.
4. Referral to County Counsel for filing of Civil Enforcement Action in Superior Court.
5. Referral to District Attorney's Office for Criminal Prosecution.

SECTION VIOLATED	DESCRIPTION
SDCZO Section 5809(b)	Chain link fence being installed without an approved site plan in a designated Archaeological Landmark or District.

Rev. 09/20/2012 NOTICE: The Building Official may suspend or refuse to issue any building permits until all violations are corrected per Section 91.1.114.5 of the County Code. If you fail to respond to this notice and make the required corrections by the deadline(s) provided, the Department may take additional compliance action which may include citations and administrative fines pursuant to Sections 18.103 and 18.104 of the County Code of Administrative Ordinances.

REQUIRED CORRECTIVE MEASURES:

DEADLINE:
September 25, 2013

1. Immediately cease all installation of chain link fencing on above listed property until such time an approved site plan has been approved and issued.
2. Submit the required site plan application, plans and other required documentation.

Should you have any questions or concerns, please feel free to contact the assigned Code Compliance Officer Chris Heidenreich at (760) 940-2945 or by e-mail at chris.heidenreich@sdcounty.ca.gov.

Thank you in advance for taking an active role in correcting the violation on your property and for being part of the solution as the Department strives to enhance safe and livable communities.

Saul Valdez, **Code Compliance Officer**
E-mail: Saul.Valdez@sdcounty.ca.gov Phone: (858) 694-3710
Code Compliance Division
Planning & Development Services

Cc: Warner Springs Ranch Resort LP, C/O Fred Grand

Attachments: Stop Work Order

County of San Diego, Planning & Development Services
ADMINISTRATIVE WARNING
Code Enforcement Division

DATE OF WARNING: 9/26/2013 **CASE #** PDS2013-ENFGCO-000071
LOCATION OF VIOLATION: 0000 Highway 79, Warner Springs, CA 92086
APN: 137-091-02-00
ZONE: S88
PROPERTY OWNER: Warner Springs Trust 11-17-83
C/O PMB 50
35008 Pala Temecula Rd
Pala, CA 92059

COPY

The Code Enforcement Division of the Planning & Development Services recently received a complaint regarding violation(s) of County Code on your property. The following violations were verified during a site visit on 9/5/2013. This letter is to notify you that Enforcement Action(s) may be taken if you fail to take the required corrective actions to remove violations from your property by the deadline(s) shown below. You may not be contacted again before this action is taken.

The Department would like to avoid taking higher levels of enforcement and avoid any unnecessary cost to you. We encourage you to make every effort to remove the violation(s) on your own by the Correction Due Date indicated.

THIS IS YOUR OPPORTUNITY TO CORRECT THE VIOLATIONS ON YOUR PROPERTY WITHOUT ANY FURTHER COUNTY ENFORCEMENT ACTION.

FAILURE TO COMPLY:

Should you fail to complete the corrections required by the deadline(s) provided or obtain a time extension from your Code Enforcement Officer, one or more of the following enforcement actions may be taken:

1. Issuance of Administrative Citations up to a total amount of $10,000.
2. Issuance of Civil Penalties up to $1,000 per day; for a total of $50,000 per violation, per year.
3. Enacting Public Nuisance Abatement proceedings with violations being remedied by the County at your expense.
4. Referral to County Counsel for filing of Civil Enforcement Action in Superior Court.
5. Referral to District Attorney's Office for Criminal Prosecution.

SECTION VIOLATED	DESCRIPTION
SDCCRO Section 91.1.105	Building permits required
SDCCRO Section 91.1.114.1	Unlawful to violate County building codes
SDCZO Section 5709(B)	Site Plan required

NOTICE: The Building Official may suspend or refuse to issue any building permits until all violations are corrected per Section 91.1.114.5 of the County Code. If you fail to respond to this notice and make the required corrections by the deadline(s) provided, the Department may take additional enforcement action which may include citations and administrative fines pursuant to Sections 18.103 and 18.104 of the County Code of Administrative Ordinances.

REQUIRED CORRECTIVE MEASURES: **DEADLINE:**

Property owner has 30 days from todays date to submit an application for a Site plan approval for water tank and fence and when site plan is approved you have 30 days to submit plans for the water tank into plan check. 10/26/13

Should you have any questions or concerns, please feel free to contact the assigned Code Enforcement Officer whose name and direct telephone number are shown at the bottom of this Warning.

Thank you in advance for taking an active role in correcting the violation(s) on your property and for being part of the solution as the Department strives to enhance safe and livable communities.

Chris Heidenreich, **Code Enforcement Officer**

E-mail: Chris.Heidenreich@sdcounty.ca.gov Phone: 760-940-2945
Code Enforcement Division **Planning & Development Services**

County of San Diego, Planning & Development Services
ADMINISTRATIVE WARNING
Code Enforcement Division

DATE OF WARNING: 10/16/13 **CASE #** PDS2013-ENFGEN-000071
LOCATION OF VIOLATION: 00000 Highway 79, Warner Springs, CA 92086
APN: 137-091-02-00
ZONE: S88
PROPERTY OWNER: Warner Springs Trust 11-17-83
C/O PMB 50
35008 Pala Temecula Rd
Pala, CA 92059

COPY

The Code Enforcement Division of the Planning & Development Services recently received a complaint regarding violation(s) of County Code on your property. The following violations were verified during a site visit on 9/5/2013. This letter is to notify you that Enforcement Action(s) may be taken if you fail to take the required corrective actions to remove violations from your property by the deadline(s) shown below. You may not be contacted again before this action is taken.

The Department would like to avoid taking higher levels of enforcement and avoid any unnecessary cost to you. We encourage you to make every effort to remove the violation(s) on your own by the Correction Due Date indicated.

THIS IS YOUR OPPORTUNITY TO CORRECT THE VIOLATIONS ON YOUR PROPERTY WITHOUT ANY FURTHER COUNTY ENFORCEMENT ACTION.

FAILURE TO COMPLY:

Should you fail to complete the corrections required by the deadline(s) provided or obtain a time extension from your Code Enforcement Officer, one or more of the following enforcement actions may be taken:

1. Issuance of Administrative Citations up to a total amount of $10,000.
2. Issuance of Civil Penalties up to $1,000 per day; for a total of $50,000 per violation; per year.
3. Enacting Public Nuisance Abatement proceedings with violations being remedied by the County at your expense.
4. Referral to County Counsel for filing of Civil Enforcement Action in Superior Court.
5. Referral to District Attorney's Office for Criminal Prosecution.

SECTION VIOLATED	DESCRIPTION
SDZCO Section 5709(B)	Site plan required

NOTICE: The Building Official may suspend or refuse to issue any building permits until all violations are corrected per Section 91.1.114.5 of the County Code. If you fail to respond to this notice and make the required corrections by the deadline(s) provided, the Department may take additional enforcement action which may include citations and administrative fines pursuant to Sections 18.103 and 18.104 of the County Code of Administrative Ordinances.

REQUIRED CORRECTIVE MEASURES:	DEADLINE:
Must submit an application for site plan approval, a request for a waiver of the site plan, or remove the fence.	12/02/2013

Should you have any questions or concerns, please feel free to contact the assigned Code Enforcement Officer whose name and direct telephone number are shown at the bottom of this Warning.

Thank you in advance for taking an active role in correcting the violation(s) on your property and for being part of the solution as the Department strives to enhance safe and livable communities.

Chris Heidenreich, **Code Enforcement Officer**

E-mail: Chris.Heidenreich@sdcounty.ca.gov Phone: 760-940-2945
Code Enforcement Division **Planning & Development Services**

County of San Diego

DEPARTMENT OF PUBLIC WORKS

RICHARD E. CROMPTON
DIRECTOR

5510 OVERLAND AVE, SUITE 210
SAN DIEGO, CALIFORNIA 92123-1239

(858) 694-3165 FAX: (858) 694-2354
Web Site: www.sdcounty.ca.gov/dpw/

November 20, 2013

DPW2013-LDCDEU-00070
APN NO: 137-100-01-00

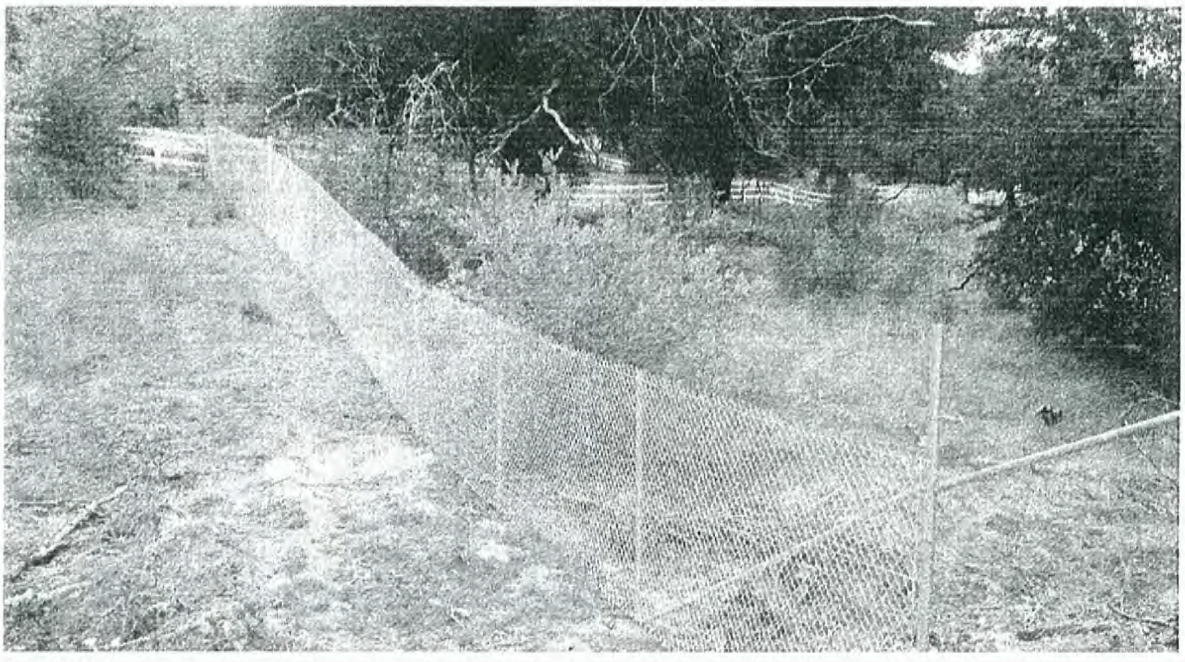
Warner Springs Trust
35008 Pala Temecula Rd.
Pala, CA. 92059

RE: CHAIN LINK FENCING CROSSING A JURISDICTIONAL WATERCOURSE

On November 4, 2013, The Department of Public Works (DPW) conducted an inspection of the watercourse on Assessor's Parcel Number, 137-100-01-00. Specifically, the inspection focused on the Wye junction tributary of the Canada Agua Caliente watercourse running through your property. Staff determined that this privately owned watercourse is in violation of Section 87.602(a) (attached) of the County's Watercourse Ordinance (CWO) and the County Zoning Ordinance Section 5708(b) (attached). Section 87.602(a) prohibits placing material in a watercourse that may impair, impede or divert the watercourse. This section also prohibits construction of any improvements in a watercourse without a permit. Further, Section 5708(b) restricts construction of any structure(s) potentially damaging to a designated Historic Landmark or District.

The following items have been identified as being in violation:

1) Construction of a chain-link fence over a tributary stream (viz., jurisdictional watercourse; see following photos).



In an effort to resolve this violation, DPW requests that you perform the following corrective actions:

1) Remove the portion of chain-link fence crossing the watercourse (i.e., bank to bank).
2) Or, submit a Site Plan to Planning & Development Services in pursuit of an acceptable engineered fence design per Zoning Ordinance Sec. 5709(a) & (b) [see attached].

Because this stream is in a natural state and contains sensitive environmental resources, restrictive conditions on the type of maintenance or equipment allowed in the watercourse are necessary. Deviation from these specific conditions and/or corrections may require environmental permits from the California Department of Fish and Game, United States Fish and Wildlife Service, United States Army Corps of Engineers, and the Regional Water Quality Control Board.

Specific conditions for the above noted corrective actions include the following:

1. No heavy machinery should be placed in the watercourse.

As a follow up to this letter, we will be inspecting your property again on Dec. 20, 2013. If you have any questions regarding this matter or are unable to commence the work before the next scheduled inspection, please contact Lawrence Cuatico, Watercourse Enforcement, at (619) 306-8157 or FAX (858) 694-2354. Thank you for your cooperation.

Sincerely,

Glen Gundert, P.E.
Senior Civil Engineer
Private Development Construction Inspection

cc: Richard Lantis (O-336)

Attachments