

August 4, 2011

D247.2

VIA OVERNIGHT MAIL

Mr. John McKenzie, Project Manager
County Planning & Building Dept.
976 Osos Street, Room 300
San Luis Obispo, California 93408-2040

RE: *Excelaron (Mankins) Conditional Use Permit Draft EIR*
(DRC2009-00002; ED09-039)

Dear Mr. McKenzie:

We have been retained by In-N-Out Burgers, Inc. (hereinafter "INOB") to provide comments on the Draft Environmental Impact Report for the Excelaron (Mankins) application for the Conditional Use Permit referenced above (hereinafter the "Draft EIR").

INOB is the owner of the Northwest Rancho Huasna which is identified by the street address of 9815 Huasna Road (hereinafter the "Rancho"). The Rancho is located on the north line of Huasna Road, north of the hamlet of Huasna, approximately 10 miles east of the City of Arroyo Grande. The Rancho is approximately 4,834 acres in size and is located within approximately two miles of the proposed Excelaron project. Enclosed and marked as Figure "1" is a map showing the relative locations of the Rancho and the proposed Excelaron project. Additionally, enclosed and marked as Figure "2" is a map, drawn from the perspective of an individual standing on the Rancho, illustrating that the project site is clearly visible from the Rancho.

In its current state, the Rancho benefits from exceptionally scenic oak-covered hillsides and level valleys branching off from the interior valleys, including Huasna Creek Valley and Long Valley. The extensive level land and the scenic hillsides feature a very favorable rural atmosphere with rustic views. The seasonal creeks and reservoirs also contribute to the ambiance. The Rancho offers a secluded setting, with only limited intrusion from neighboring properties.

The Rancho is used (and historically has been used) for year-round cattle grazing by the Todd Ruffoni family. The Ruffoni family operates a cow-calf operation on the ranch and the adjacent acreage pursuant to a lease agreement. In addition to the open agricultural land, there exists on the property an old, historic adobe home, an older manager's home, and a few outlying buildings (including a corral). The main home dates from the Mexican Authority, and it is believed that a portion of the existing home was constructed as early as 1831.

Given the natural beauty of the surrounding area, we have been asked by INOB to analyze the Draft EIR and the effects the proposed Excelaron project would have on the area, and specifically, the Rancho. Having completed our lengthy analysis, the purpose of this letter is to express INOB's substantial criticism of the Excelaron project and to point out the extensive shortcomings in the Draft EIR. Although it is INOB's position that Excelaron's Conditional Use Permit application must be denied in its entirety, at a minimum, the County of San Luis Obispo must substantially revise the Draft EIR before the project proceeds any further. Additionally, once revised, the Draft EIR must be recirculated in accordance with the California Environmental Quality Act Guidelines (hereinafter "CEQA") since "significant new information" must be added to allow for a meaningful review and public comment period. (14 Cal. Code Regs § 15088.5.)

Enclosed herewith is an independent third-party analysis of the Draft EIR prepared by The Planning Center at the request of INOB. The enclosed report is extremely detailed and provides INOB's comments to date. Thus, this letter will not reiterate the specific points addressed in the report, but instead, will highlight the most salient points and call attention to those areas which do not comply with the requirements of CEQA.

A. The Executive Summary Does Not Comply with CEQA

The Executive Summary does not identify alternatives which would "reduce or avoid" the significant environmental impacts of the project. (14 Cal. Code Regs § 15123(b)(1).) Further, while mitigation alternatives are discussed, there is no link between the significant impacts identified and the proposed project alternatives. Finally, the CEQA Guidelines require that the Executive Summary identify "[i]ssues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects." (14 Cal. Code Regs § 15123(b)(3).) The Draft EIR fails to provide this information at all.

B. The Project Description is Inconsistent

An accurate, stable, and finite project description is an essential element of an informative and legally sufficient EIR. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.) Here, however, the project description is inconsistent throughout the Draft EIR and the acreage of the proposed site varies in at least four different sections:

- Chapter 1, Introduction states that the project site is 2.2 acres.¹
- Chapter 2, Project Description states that the project site is 260 acres, though the project would result in disturbance to 6.4 acres.²
- Chapter 4.10, Land Use and Recreation states that the project site is on a 160-acre parcel.³
- Appendix G states that implementation of the project would impact 4.3 acres.

If the proposed Excelaron project is to proceed any further, the public must definitively know the project's scope. As written, the Draft EIR fails to provide any certainty in this area whatsoever.

C. The Whole of the Action is Not Considered in the Draft EIR

A "Project" is defined under CEQA as "the whole of an action" that may result in either a direct physical change or an indirect reasonably foreseeable physical change to the environment. (14 Cal. Code Regs § 15378(a).) The circumstances surrounding the proposed Excelaron project strongly suggest that "the whole of the action" is not captured in the Draft EIR. Information in press releases from United Hunter Oil & Gas Corporation, an investor in the Excelaron project, clearly indicate that the applicant has acquired oil exploration leases in the surrounding area, and that the company is in

¹ See Draft EIR Section 1.0, Introduction, at 1-1: "The Huasna Valley Oil Exploration and Production Project would involve the development of three sites with a total area of approximately 2.2 acres."

² See Draft EIR Section 2.0, Project Description, at 2-1: "Excelaron LLC (the Applicant) is proposing a phased project to explore, test, and possibly produce oil on a single parcel totaling approximately 260 acres. The project would involve the grading of access roads, pads and containment berms (approximately 6.4 acres of new disturbance and generating approximately 16,000 yds³ of cut/fill)."

³ See Draft EIR Section 4.10.1.1, Existing Land Uses and Designations, at 4.10-1: "The project site is on one approximately 160-acre parcel (APN 085-271-004)."

advanced negotiations to lease an additional adjacent 4,982 acres.⁴ This is only one example suggesting that the proposed project is much larger than represented in the Draft EIR. The enclosed report contains additional examples.

D. The Proposed Mitigation Measures are Legally Inadequate

Many of the mitigation measures in the Draft EIR rely on future studies, but do not include performance standards. Such mitigation measures are in violation of CEQA. (*Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.)

E. The Analysis of Aesthetics and Visual Resources Is Incomplete

At least one proposed mitigation measure (AE.1-1) represents an impermissible deferral of mitigation, and the proposed mitigation measure fails to include a defined performance standard. Further, as written, the Draft EIR fails to consider all feasible mitigation measures to mitigate Impact AE.1. Thus, additional analysis of mitigation measures is necessary.

F. Agricultural Resources

The conclusions raised with respect to the impact on agricultural resources are not supported by the analysis in the Draft EIR. Specifically, Table 3.1 lists 15 cumulative projects which could impact the agricultural resources; however, no analysis is provided regarding the amount of agricultural land lost to cumulative development. Therefore, additional analysis of the impact of the proposed project on agricultural resources is necessary.

G. Air Quality

The spreadsheets provided by the applicant in Appendix D of the Draft EIR do not supply sufficient information to confirm if the calculations derived from the spreadsheets are accurate. Similarly, the results of odor modeling studies are not provided in any of the appendices to the Draft EIR, and therefore the conclusions could not be verified. Further, it is unclear whether the applicant considered the unique meteorological conditions of the Huasna Valley when arriving at the conclusions regarding the impacts on air quality. Finally, additional pollutants must be included in the health risk assessment, and additional analysis of the impact on air quality is required in order to engage in a meaningful review and public comment on the proposed project.

⁴ See United Hunter Oil & Gas Corp. February 17, 2011 press release *United Hunter Oil & Gas Corp. Announces Porter Ranch Acquisition*, available at http://www.unitedhuneroil.com/docs/news2011/UHO_Feb1711.pdf

H. Biological Resources

It is unclear from the Draft EIR what portion of the project site was surveyed for biological resources. Further, the Draft EIR does not include any original biological assessment reports, thereby preventing a full analysis of the impact on biological resources reported by the applicant, and specifically the impact on the federally threatened red-legged frog. Further, the analysis is deficient with respect to identifying acreage of various plant communities in the proposed project area, and in providing any explanation as to why the impact on the California Condor, a Federal and State endangered species known to nest in the area, is less than significant. The Draft EIR also fails to address whether the project would interfere with wildlife movement along the Huasna River. Thus, additional information is needed.

I. Hazards and Hazardous Materials

The Draft EIR does not include an analysis of lessons learned from prior oil exploration in the Huasna Oil Field. Given the substantial history of oil exploration and failures in the area, a history of lessons learned would be useful in the lead agency's analysis of the proposed project. Further, with respect to the evaluation of hazards, potential for injury, and transportation risk, the Draft EIR appears to use overly optimistic estimates for the worst case scenario, thereby minimizing the reported injury and accident rates. There is also a significant potential for radon and Naturally Occurring Radioactive Materials in the area that has not been addressed. These issues require further analysis.

J. Noise

The Draft EIR has not identified the full construction noise impact associated with offsite improvements. Further, the magnitude of noise from construction equipment cannot be verified because the Draft EIR does not specify which construction equipment would be utilized during the grading phase or construction of the Shipping Site, Pads, and access roads. Finally, the proposed mitigation measures do not adequately mitigate the impacts with respect to noise.

K. Land Use

The Draft EIR provides an inadequate analysis regarding whether the proposed project conflicts with local policies or ordinances, including the County's General Plan, the San Luis Obispo Inland Area Plan and the Huasna-Lopez Area Plan. The policy analysis must be revised to include an evaluation of the entirety of the project under all applicable land use plans, policies, and regulations.

L. Water Resources

The Draft EIR does not include an analysis of radioactivity in wells in the surrounding area. Further, drilling operations could contaminate the soil, enter groundwater, surface water, and downstream facilities. An expanded analysis must be conducted, and in the event of an oil spill, the impact on the water resources in the area will be significant and unavoidable, notwithstanding the conclusion in the Draft EIR that an oil spill would not significantly impact ground water and surface water resources.

M. Transportation and Traffic

Additional sight distance studies are necessary along State Route 166 and Alamo Creek Road. Further, acceleration/deceleration lanes may be needed along that route for slow moving trucks traveling to and from the project. The Draft EIR must also include trip generation measures during morning and evening peak hours. As written, the Draft EIR only includes daily trips from the proposed project and, for the additional reasons discussed herein, is therefore inadequate.

N. Fire Protection and Emergency Response

The proposed project includes significant wildfire risks and the classification of fire risk as a Class II impact in the Draft EIR is incorrect. The fire risk is a Class I impact due to, among other things, the classification of the area as a Very High Fire Hazard Severity Zone by CAL Fire. Also, the fact that industrial operations will be associated with the project means that there is a substantially increased fire risk. Finally, the remote location of the project site in combination with the minimal sources of water in the event of a fire render the proposed project a Class I fire risk.

O. Schools

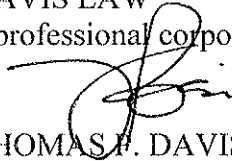
Several conclusions in the Draft EIR regarding schools are unsupported by citation by the applicant. Further, the conclusions regarding the availability of funds to construct additional schools in the area are unsupported by the current state of funds available to the Lucia Mar School District. That said, the Draft EIR lacks the basic information necessary to determine the status of local schools, and as such, there is no basis for determining the severity of the project's impact on schools.

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County Planning & Building Dept.
August 4, 2011
Page 7 of 7

In conclusion, INOB respectfully believes that the Draft EIR is inadequate in several respects and fails to provide essential documentation necessary to verify the conclusions made therein. For these reasons, INOB requests that, at a minimum, the Draft EIR be substantially revised, and thereafter recirculated for public comment before the proposed Excelaron project proceeds any further.

Very truly yours,

DAVIS LAW
a professional corporation

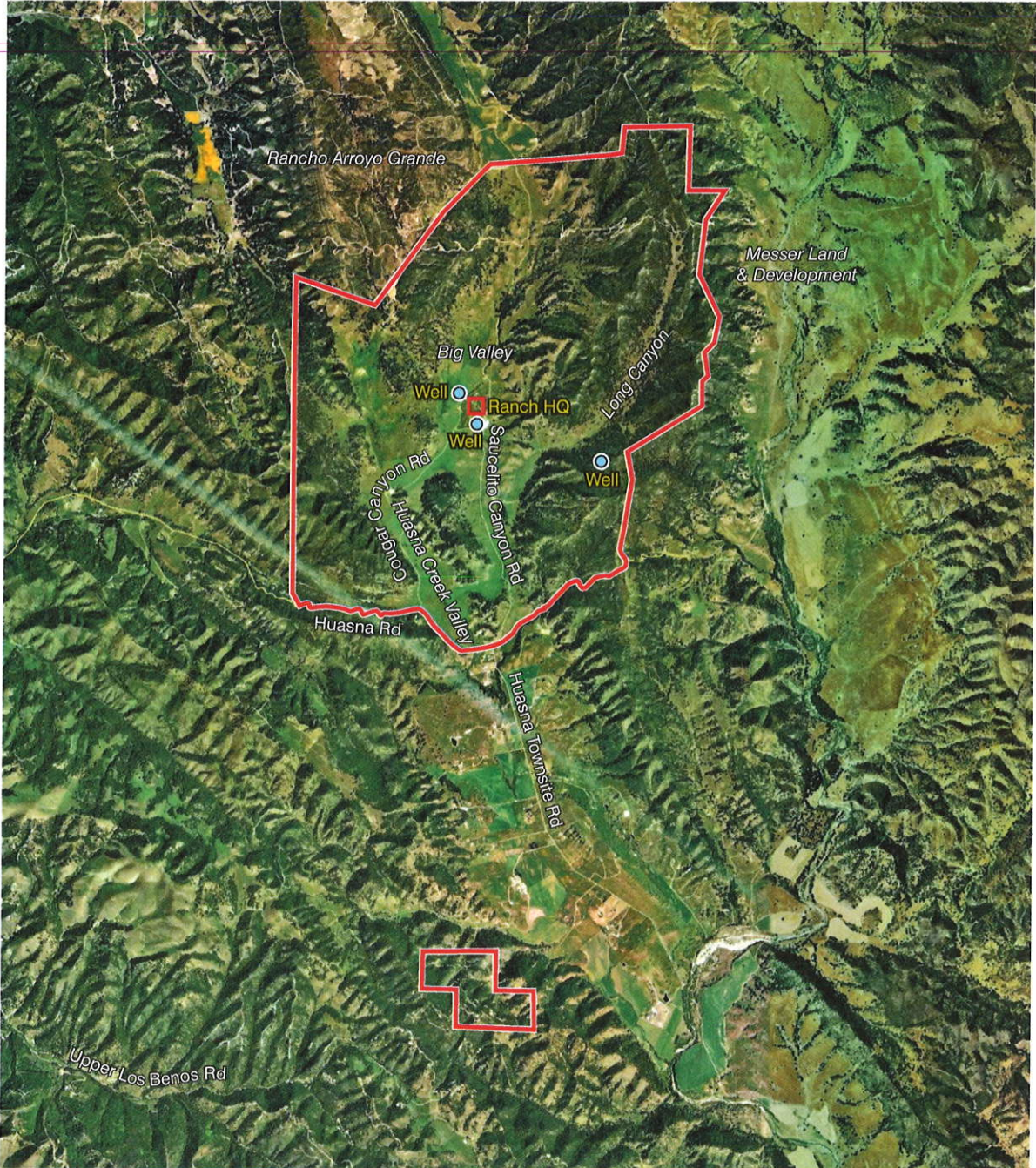


THOMAS F. DAVIS

TPD/NC
Enclosures

cc: Arnie Wensinger, Esq.
Steven E. Sletten, Esq.

Locations of Excelaron Site and Northwest Rancho Huasna



— INT-01.0E Site Boundary

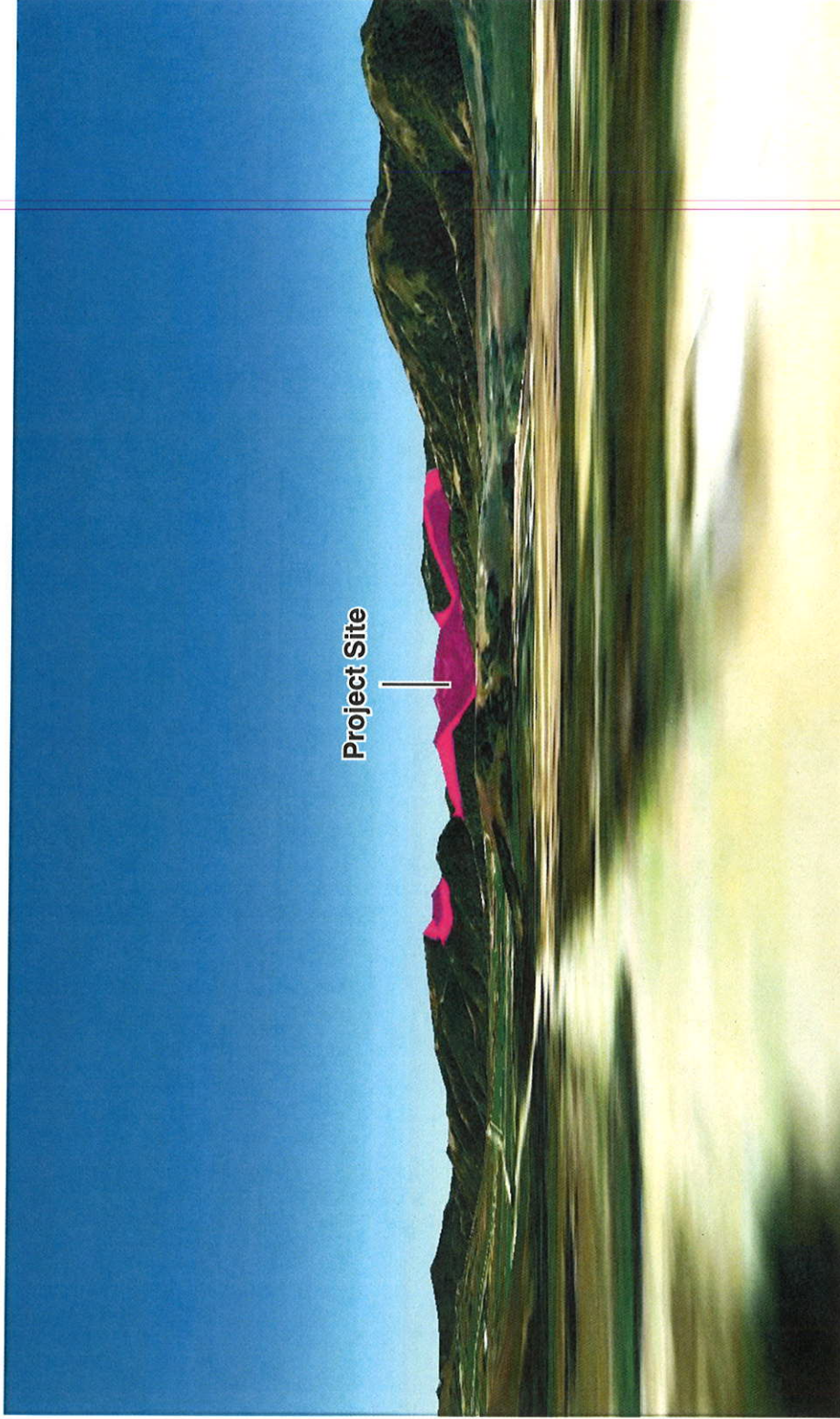


Source: Google Earth, San Luis Obispo Tax Assessor's Map

Huasana Properties
INOT-01.0E

The Planning Center | DC&E • **Figure 1**

Eye-Level View of Project Site from Northwest Rancho Huasna



— INOT-01.0E Site Boundary

Source: Google 2011

Huasana Properties

INOT-01.0E

NOT TO SCALE

