LEASE TO OWN

The future of Wild Cherry Canyon may be subject to interpretation. How a new look at an old document could upend everything we thought we knew about the decades-old conservation effort.

BY TOM FRANCISKOVICH

In the age of the Internet, word travels fast. Here on the Central Coast, it was a few months back when locals woke up to shockwaves emanating from somewhere near the Diablo Canyon nuclear power plant. Only, this shake did not register on the Richter scale, and there would be no Fukishima-style radiation left in its wake. Instead, the rumbling was the result of a humble email with a subject line reading, "Please call me when you can."

The *Tribune's* headline blared in oversized letters: "Plans for massive 15,000-home city on Diablo Canyon lands uncovered in a private email." That missive, obtained by the paper through a public records request, outlined the vision for what would effectively become San Luis Obispo County's newest city rising up from 2,400 acres of pristine hillside oak woodlands. The first line of the message, written by developer Denis Sullivan, said, "I think we can get a deal with PG&E to get the fee."

The fee in this case is not what you think. It's not something you get in exchange for services, as in "the lawyer's fee is $75 per hour." Fee, as it relates to Wild Cherry Canyon, means ownership. And, ownership means millions, perhaps as much as a billion dollars in potential development profits.

At some point during the 1960s, the Marre family ran into some tough times. They had owned most of the 12,000 acres of land that spans from Montaña de Oro to the north and Port San Luis to the south. "Land rich, cash poor" is how some put it. With money tight, the development rights to the 2,400 acres known as Wild Cherry Canyon went to auction. An ownership group was formed to make the purchase, calling themselves "Pecho Limited Partnership" in a nod to the area where the land sits, on the Pecho Coast. However, when a clerk down at the County Recorder's office typed up the documents, the name was misspelled. Regardless, the company born from a typo, Pacho Limited Partnership, took possession of a very valuable asset: a 99-year lease with an option to renew for another 99-year term. But, it did not hold the fee, or fee title, which is ownership. Did the Pacho group have control? Yes. The right to develop? Yes. Ownership? No. Although, it does not possess the development rights, PG&E, to this day, ultimately holds the cards when it comes to Wild Cherry Canyon. There will not be a 15,000-home city on the hill—conservatively estimating three occupants per household, that's 45,000 people—unless Pacific Gas & Electric says so. And, since it is beginning the process of closing up shop with its nuclear facility, there is reason to worry that "maximizing shareholder value" could dictate the decision making at its high-rise San Francisco headquarters. Selling the fee title to the entity that owns the lease today, the deep-pocketed developer, Carlsbad-based HomeFed, which is owned by a bigger fish—a whale in Wall Street parlance—Leucadia National Corporation of Manhattan, sure would look slick on a quarterly earnings report.

Three years ago, locals nearly lost their minds when HomeFed announced its plan to develop a 1,500-home neighborhood in Wild Cherry Canyon. Hapless company representatives wandered into a buzz saw as they described a village of Italiante mini-mansions adorning the nearby hillsides at a special Avila Valley Advisory Council (AVAC) meeting. The executives' sales pitch, which focused on solving a vexing problem—the lack of affordable housing—with multi-million dollar estates, was tone deaf at best, and offensive at worst. Had the plan gone to a vote that night, the decision would have been a unanimous "No"—not just "No," but "Hell no."

On any given day, especially when the sun is shining, which is almost always, the one road going into and out of Avila Beach is a mess. The idea of adding 1,500-homes, each one with two or three cars, would mean 3,000 to 4,500 more vehicles. Multiply that number times the number of commutes to and from work and to soccer practice each day, and you start to get the idea. And, because these are very high-end properties we are talking about, that figure does not begin to account for the house cleaners, the pool guys, the landscapers, plus, for the kids, math tutors and piano teachers.

But, now, with the recent revelation that HomeFed is eyeing a development *ten times* the size they did in 2015—that's 15,000 homes—those same people who attended the AVAC meeting are not just concerned—they have gone, well, nuclear. Three years ago, the worry was over tripling the size of Avila Beach. With the developer's recent email, the issue is not the development of a new neighborhood, but the creation of an entirely new city—to put it in perspective, the city of San Luis Obispo has approximately 12,500 single-family homes—on the backbone of an already overburdened infrastructure, increasingly creaking under the weight of its popularity as a tourist destination.

The various efforts to preserve Wild Cherry Canyon have been as ferocious as the swells lapping its ocean cliffs during a winter's squall. Twice, local preservationists came tantalizingly close to realizing their dream of acquiring the property and then donating it to the state—forever protecting the land by connecting it with Montaña de Oro for one massive, contiguous state park allowing hikers to hear onshore winds rustling Coast Live Oaks as they walk from sea to shining sea. In 2000, county voters overwhelmingly approved the DREAM Initiative, formally known as the Diablo Resources Advisory Measure, a non-binding action, in essence a proclamation stating, "At such time when the Diablo Canyon Nuclear Power Plant closes, the land should be acquired for public use and recreation." In the aftermath, it was not difficult to read the writing on the wall, and Denis Sullivan, the same guy who sent the recent email, picked up the phone and called San Luis Obispo resident Sam Blakeslee, the initiative's author, to talk. For the right price, he said, HomeFed was willing to sell the land into conservation. Immediately after hanging up, Blakeslee dialed his then wife Kara Woodruff, who was working as a land conservation advocate at the Nature Conservancy. One thing led to another, and before long a contract was drafted and the two parties were in escrow; but by 2003, for a variety of reasons, the deal fell apart.

A couple of years later, in 2005, HomeFed was anxious to monetize the land they continued to carry on their books. It was dead weight at this point, an asset that was not generating any profit for its shareholders. By now, Woodruff was with the American Land Conservancy (ALC) when Sullivan reached out with a different offer. This time the path was less certain because the state informed the ALC that, in order to receive any California government grant funds, it would, in addition to >>

purchasing the lease held by HomeFed, also have to acquire the underlying fee title held by PG&E. Control wasn't enough; it needed full ownership. In other words, the deal just got doubly complicated.

The land at that time was appraised at $24 million. This was before the Great Recession knocked down real estate values everywhere. When the property was reappraised during the economic slowdown, it came back at $21 million—miraculously, exactly what the ALC had raised, both money in-hand and pledged. The deal was on. All that needed to happen was to get the purchase on the agenda at an upcoming Public Works Board hearing in Sacramento where the formality of allocating $6.5 million of State Park funds toward the purchase would be finalized and the transaction would be completed. Not so fast. Governor Schwarzenegger—still fuming over a fellow Republican, Sam Blakeslee, a state senator at the time who voted against his budget—worked behind the scenes to prevent Wild Cherry Canyon from showing up on the agenda. It was as if a cyborg teleported in from the future to terminate the deal. When Governor Jerry Brown took over, still more attempts were made. But, coming out of the economic malaise, Brown was not in a spending mood and massive deficits stretching out as far as the eye could see were not doing anything to help matters.

Developing 15,000 homes is no small feat. Aside from the truckloads of money it will require, the biggest hurdle, perhaps, will be in securing the go-ahead from the County Board of Supervisors. But, right now, the board may be as development-friendly as it has been in years, particularly with the state pushing it to add to its existing housing stock, hoping that upping supply will lower prices. Judging from the optimistic tone of Sullivan's email, it appears that HomeFed may be feeling good about its prospects on this front. "I can push with the Board of Supervisors that are in our favor at the moment to progress a deal to move to create a new community on the Ranch," Sullivan's email reads. So, assuming that it can clear the Board of Supervisors, there now appears to be another obstacle standing between Wild Cherry Canyon and HomeFed's bulldozers—the courts.

With the developer's latest salvo has come greater scrutiny, and a sharp-eyed San Luis Obispo lawyer may have upended the calculus when he dusted off and re-read the old Pacho lease recently. Up to this point, no one else has noticed—or, if they did, they kept it to themselves, hoping no one else would—a problem that could be spotted by a first-year law student: the rule against perpetuities. Each state has their own take on this legal principle. In California, leases are not allowed to exceed 95 years; a statute that was in place at the time the contract was signed. Remember, the original Pacho deal back in the '60s was for two back-to-back 99-year leases, which appears to be unlawful, or least cloudy. It has always been understood that HomeFed had the property tied up for 198 years, which is a whole lot different than 95 years when it comes to real estate development, particularly knowing they are fifty-some-odd years into the lease already. If the statute holds up, and HomeFed is in fact limited to 95 years total, it could be that there are only forty or so years of control remaining, which makes developing right now a highly risky proposition. Who in their right mind would buy a home on land which the developer, and therefore the homeowner, doesn't actually own? It may not matter so much if it were tied up with a controlling interest for 150 years or so, but 40 years changes the equation, a lot. The math is suddenly much less favorable, which means so, too, is the value of the asset, the lease.

Could it be that HomeFed has been bluffing all along? Have we been played by a bunch of slick New Yorkers messing with the lives of nearby Avila residents, who have been going about their days, minding their own business? Maybe. Maybe not. It is interesting to note, however, that in 2015 when executives were testing the waters locally with their smaller 1,500-home development idea, the word "fee" never came up. Something changed in the past three years; perhaps their lawyers started scrutinizing the documents a little more closely, too. In a recent Form 10-K Securities and Exchange Commission filing under the heading "Pacho Project (Wild Cherry Canyon)" HomeFed states, "If we are unable to obtain fee title to the property in a reasonable period of time, we may not develop the property and an impairment of the asset may be taken." This language stands in stark contrast to its website, which strikes a more optimistic tone under a heading labeled "Numerous Options Under Consideration."

Regardless of intent—who knew what when—ultimately, if the lease were challenged in court, no one knows for sure what may happen. A judge may decide it's all good, "Other than misspelling 'Pecho' it looks A-Okay to me." But, with this new revelation, HomeFed's interest is suddenly murky, and does not appear as rock-solid as once presumed. If that is the case, then it would be logical that the lease and the development rights that go along with it are not worth as much as we all believed either, particularly if the California statute prohibiting agreements with terms longer than 95 years holds up. Then, assuming that PG&E and HomeFed do not strike a deal for the fee title, it's just a matter of running out the clock. Four decades from now, the lease, and HomeFed go away; that is, also assuming PG&E does not renew it. However, there are a lot of if's, and's and but's to this story. Why not strike now while the economy is strong? Sacramento is flush with cash, and the new revelation concerning the old lease has upended bargaining positions.

Local preservationists have been watching Moby Dick frolic in the Pecho Coast waters for years, agonizingly close to shore, but just out of reach. It may be now that the elusive whale has dropped its guard and allowed the tide to pull it into range of Captain Ahab's harpoon. As is usually the case, it's a slip up borne of hubris that hastens the end. A moment of overconfident carelessness. The massive jackpot, a school of shimmering fish beckoning within earshot of the siren's song—"I think we can get a deal with PG&E to get the fee." Still, with the newfound revelation, and the crown jewel—the elusive whale—finally wandering into the kill zone, now is not the time to flinch. The greatest danger, according to advocates pressing to preserve the old Spanish land grant territory, is that locals blink. Become complacent. With the revelation that the lease may not be ironclad as once thought, it could be that everyone relaxes their guard just a bit, enough for the whale to slip away, once again. Now, with the tides shifting, and the winds favorable, this may very well be the one and only moment in history where preserving Wild Cherry Canyon in perpetuity is within reach, never to be discussed in the board room of a multi-national corporation ever again—no matter how much money is in the bank.

With the cloud hanging over the lease, its value is likely less than once calculated. The math has changed, and the question to ask the HomeFed boys is, "How long do you all want to wait?" And, if there is one thing that Wall Streeters understand, it's that a bird in the hand is worth two in the bush. There may be no greater time than today to do a deal with a spotlight now shining on the lease. That same spotlight also shines brightly on PG&E. How will they respond? How will the 50-year guest handle its exit from the Central Coast? Will they act in the best interests of the people who have supported them all this time, or will they look to make a quick buck? Why not donate the land to State Parks? At least on the surface, PG&E appears to be genuinely concerned about local input, as evidenced with the formation of its Decommissioning Engagement Panel, which is comprised of eleven community members, each with refreshingly diverse backgrounds.

It would seem then, the whale is finally in range. But, complacency looms. Without public action, without agitation, without all available hands on deck pulling the sails taut, nothing happens—Moby Dick swims away, again. The scene is all too familiar to Woodruff, who has been chasing down a preservation deal for Wild Cherry Canyon over the past 20 years. On her desk, during the good days and bad, she keeps a reminder, an old Calvin Coolidge quote. "Nothing in this world can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent." SLO LIFE