

# LAW OFFICE OF MARC CHYTILO

---

ENVIRONMENTAL LAW

May 29, 2008

Mr. Allen Bell  
County of Santa Barbara  
Planning and Development  
123 East Anapamu Street  
Santa Barbara, CA 93101

*By Hand Delivery*

RE: Draft Mitigated Negative Declaration, Ballantyne Single-Family Residence, Accessory Structures, and Water Line

Dear Mr. Bell:

Please accept the following comments on behalf of our clients, the Gaviota Coast Conservancy (GCC). We have reviewed the Draft Mitigated Negative Declaration (DMND) for the Ballantyne Single-Family Residence, Accessory Structures, and Water Line (Ballantyne Project or Project) and find that the DMND suffers from various material flaws. The document systematically understates Project impacts and reaches conclusions contrary to those made by Planning and Development Staff and the Board of Architectural Review, the public, GCC, and our experts. The DMND offers scant evidence to support this radical shift.

In addition the record supports a fair argument that the Project may cause significant environmental impacts, and therefore an Environmental Impact Report (EIR) must be prepared and circulated prior to County action as required by CEQA. The Ballantyne property is located at the eastern gateway to the Gaviota Coast, a visually stunning and relatively undeveloped stretch of sensitive, unique, and highly valued coastline. The nature of the Project's setting must inform the assessment of environmental impacts. Here, a massive, prominently placed structure has been proposed, on visually sensitive, biologically valuable agricultural lands in defiance of a number of General Plan policies and development standards. The County is bound by its General Plan, its zoning ordinance, development standards, and by the requirements of CEQA, and therefore must determine the DMND is not adequate nor appropriate and commence preparation of a full EIR as required by CEQA.

Through preparation of an EIR, Project alternatives can be developed which simultaneously avoid environmental impacts and policy inconsistencies and achieve the main objectives of the applicant. Planning Staff and others have stated that the home could be re-sited further back on the property, taking advantage of natural landforms to shield it from view and avoiding the need for an artificial earthen structure which itself causes visual, geological and biological impacts and creates several policy inconsistencies. Through the proper uses of an environmental impact report and the development of a reasonable range of Project alternatives, views from the

MARC CHYTILO  
P.O. Box 92233 • Santa Barbara, California 93190  
Phone: (805) 682-0585 • Fax: (805) 682-2379  
Email: [airlaw5@cox.net](mailto:airlaw5@cox.net)

residence as well as important design elements and beneficial green components could be preserved. This win-win solution must be investigated through the EIR process.

1. The DMND Is Materially Flawed

The sufficiency of a negative declaration as an informative document depends largely on “whether policymakers have been adequately informed of the consequences of their decisions, and whether the public has sufficient information to evaluate the performance of their elected officials.” *Long Beach Sav. & Loan Ass'n v. Long Beach Redevelopment Agency* (Cal. App. 2d Dist. 1986)188 Cal. App. 3d 249, 259. The agency must in good faith strive to make the negative declaration as complete and comprehensive as possible. *Id.* at 264.

The DMND for the Ballantyne Project omits discussion of Project elements described in the record, fails to include illustrative site plans and other diagrams included in the record, and relies on insufficient visual simulation, among other deficiencies. Considering the wealth of information available in the record, the DMND’s highly constrained description and analysis of the Project does not evince a good faith effort to make the DMND as comprehensive and complete as possible. Omitting reference and consideration to important evidence in the record materially and adversely affects the impact analysis and resulting conclusions, deprives the public of their ability to comment, and precludes informed decisionmaking.

a. Omissions in the Project Description

"An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *McQueen v. Board of Directors* (6<sup>th</sup> Dist. 1988) 202 Cal. App. 3d 1136, 1143. The Project Description included in the DMND does not accurately describe the Project, and omits various Project elements from its description including the Project’s anticipated water demand and water and gas delivery infrastructure. This approach precludes intelligent evaluation of potential environmental effects of the Project, and as such the DMND must be thoroughly revised to provide a more accurate and complete description of the Project.

i. Project Water Demand

The proposed Project includes structures totaling nearly 15,000 square feet in area, as well as a pool, reflecting pool, and substantial amount of irrigated landscaping. DMND p. 2. The residence alone is anticipated to include 12 toilets and 22 sinks. The site has a large number of non-native trees and plants already installed, and consuming a considerable amount of water that is delivered by truck via a temporary Goleta Water District permit and use of a fire hydrant. The Project Description fails to include any data regarding the anticipated construction and operational water demand for water associated with the Project. Water usage associated with such would be anticipated to be substantially greater than water usage associated with a typical

sized residential development, and may constitute a potentially significant environmental impact. The DMND is defective in failing to describe the Project's water demand; without this information, it is impossible to assess the impacts the Project may have on water resources, as well as on public services and fire protection.

ii. Water and Gas Delivery Infrastructure

The Goleta Water District (GWD) has articulated significant concerns regarding their ability to provide adequate water service to the Project, and that additional infrastructure would likely be needed. Specifically, GWD Engineering Manager Gary McFarland stated “[t]o meet water quality, fireflow, and water pressure requirements, booster pumps, privately owned onsite water storage tanks and an onsite chlorination facility will probably be required.” Letter from McFarland to Ballantyne (March 7, 2007), attached hereto as Exhibit 1. Additionally, a letter from Allen Bell to Richard Adam, dated January 21, 2008 includes a site plan showing various elements associated with the water line, including pumps. Exhibit 2. The draft Project Description included in the letter states “[t]he project includes the actual water and gas lines and pumps, valves, regulators, meters, electric lines and related components.” This site plan is not included with the DMND and the pumps and other infrastructure is not described in the Project Description or elsewhere in the document. The location of the proposed water and gas lines is not described, depicted or analyzed, even though it appears that these Project components will involve extensive trenching on highly visible steep slopes, one or more booster pumps involving surface and sub-surface components, excessive energy consumption, potential connection to other portions of the Goleta Water District water supply system, and other physical changes.

These additional infrastructure elements are part of the Project and must be considered in the environmental review process. The failure to include these infrastructure elements in the Project Description and following impact discussion constitutes an omission which materially affects the adequacy of the environmental review process.

b. Inadequate Description of Environmental Setting

“Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.” CEQA Guidelines § 15125 (c). The proposed Project site is located at the eastern end of the Gaviota Coast, “one of the last remaining rural landscapes on the Southern California coast.” National Park Service, Gaviota Coast Draft Feasibility Study and Environmental Assessment, Part 1, Chapter 3, attached hereto as Exhibit 3, p. 51. The area “has retained much of the character and scenery of its ranching history.” *Id.* The visual, biological, agricultural, recreational, cultural and other resources of the Gaviota Coast are unparalleled. The Gaviota Coast is one of the rarest global biomes meets all four National Park Service criteria for national significance, 1) it is an outstanding example of several types of resources, 2) it possesses exceptional value in illustrating both natural and cultural

themes of our nation's heritage, 3) it offers superlative opportunities for public use and enjoyment, and scientific study of rich biotic and cultural resources and 4) it retains a high degree of integrity as a true, accurate, and relatively unspoiled example of these natural and cultural resources. *Id.* pp. 52-53.

As stated by the Board of Architectural Review in its consideration of the Project, “[v]isually the subject parcel is part of the Gaviota Coast, which is at a crossroads. Projects that affect Gaviota must be closely scrutinized.” Board of Architectural Review Committee minutes, Meeting of November 18, 2005, item 9, attached hereto as Exhibit 4.

The MND does not accurately describe the extremely sensitive nature of the Gaviota Coast in its discussion of the Project's environmental setting or elsewhere in the document. The impact analysis fails to heed the Board of Architectural Review's admonition to closely scrutinize Projects on the Gaviota Coast. The result of these failures is a wholesale discounting of the Project specific and cumulative impacts associated with the Ballantyne.

c. Failure to Include a Site Plan

The DMND does not include a site plan or other diagram depicting all elements of the proposed Project. Moreover, depictions of the residence may not be accurate, as discussed in the following section. The proposed water line is not depicted anywhere in the DMND. A letter from Allen Bell to Richard Adam dated January 21, 2008 and regarding the application for the water and gas line CDP, includes a site plan which depicts elements of the water delivery system including pumps, fire hydrants and other features. Exhibit 2. This letter and attached site plan are part of the record and should be included in the MND for the public's review and comment.

d. Reliance on Outdated Visual Simulations from Highway 101

The visual simulations submitted with the DMND were prepared in October of 2006 by B3 Architects. *See e.g.* Figure 10. B3 Architects originally designed the proposed residence, however we understand that a dispute arose which caused B3 to withdraw from the Project and deny the Ballantynes' use of the plans. For this reason we believe that the photosimulations may no longer accurately depict the proposed Project. Concern with the accuracy of the visual simulations was also raised in public comment on the DMND by Nancy Gardner. The accuracy of the visual simulations from Highway 101 prepared by B3 Architects must be determined, and if inaccurate, new visual simulations must be prepared.

e. Failure to Identify Public Viewing Places

The DMND incorrectly identifies Highway 101 as the only public viewing place from which the Project site is visible. The Project site is also highly visible from Farren Road, but the DMND improperly discounts the significance of Farren Road public viewing places and fails to provide

visual simulations of the Project as seen from Farren Road. Specifically, the DMND states “although it is a public roadway, Farren Road only provides access to a minimal number of private properties along Farren Road itself and does not provide a throughway for the general public. In addition, it is not formally designated as a public view corridor and other residences are already present along Farren Road north of the Project site. Consequently, Farren Road does not appear to meet any reasonable criteria for classification as a ‘public viewing place’...” P. 46.

The DMND’s arbitrary definition of public viewing place undermines a series of General Plan policies, Zoning Ordinance development standards and is inconsistent with the definition used in other environmental impact reports prepared by the county. For example the Santa Barbara Ranch EIR, discussed further below, expressly includes Farren Road as a public viewing place based in part on its recreational use. Exhibit 9. Santa Barbara’s Local Coastal Plan is illustrative of the proper definition. It states “[t]he primary concern of the Coastal Act is to protect views to these scenic resources from public areas such as highways, roads, beaches, parks, coastal trails and accessways, and vista points.” P. 33. Based on the Santa Barbara Ranch EIR and the Local Coastal Plan, the definition of ‘public viewing place’ is broad and does not require ‘formal designation as a public view corridor’ or limit public viewing places to ‘throughway[s] for the general public’.

In fact, Farren Road is renowned for its recreational value and is heavily used by a variety of public user groups for a variety of recreational purposes. Farren Road is depicted on the Comprehensive Plan Parks Recreation and Trails Map for the Santa Barbara –Goleta Area (PRT-3), attached hereto as Exhibit 5. This map, which is part of the General Plan, designates Farren Road as a proposed public trail consisting of both on-road and off-road components. In public testimony at the DMND hearing on May 14, 2008, Nancy Gardner, who resides in the vicinity of the Project site stated that Farren Road is heavily used recreationally, including use by the UCSB and City College track teams, as well as by photographers, artists, bird watchers, hikers and other recreational users.

There is extensive additional evidence of recreational use of the site, its surrounding area, and Farren Road. The site and surrounding lands are a popular birding location. The Santa Barbara Audubon Society sponsors bird walks and field trips on Farren Road. Exhibit 6. Santa Barbara County Birding’s website lists 174 messages regarding bird sightings and birding excursions on Farren Road. Exhibit 7. The SBslopers, a local sailplane and glider enthusiast group lists Farren Road as one of the four “best known and most easily accessible flying sites in Santa Barbara.” Exhibit 8. Farren Road is also a popular bike route described and rated on “mapmyride.com” a cycling website. Exhibit 19. In short, Farren Road is a well known recreational destination for many recreational users and the DMND arbitrarily discounts its significance as a public viewing place.

The evidence establishes that there is extensive public recreational use of Farren Road and environs. Cases establish that the Project impacts to recreational users may be considered

significant impacts. The General Plan, Local Coastal Plan and Zoning Ordinance establish various objective and subjective standards that the Project must meet. The only way to determine the significance of the Project's impacts to views is to conduct visual simulations, and the failure of DMND to include such visual simulations necessitates recirculation of a revised environmental review document before the County may consider action on this Project.

This conclusion is supported by the County's own practices in a nearby Project also under environmental review. The County's EIR for the Santa Barbara Ranch Project included Farren Road as a key observation point (KOP) from which views of the proposed Project were simulated and Project impacts and policy inconsistencies were analyzed. The Santa Barbara Ranch EIR specifically notes the sensitivity of recreational users viewing the Project from Farren Road, stating:

Due to the elevation of this vantage point...in addition to the lack of intervening structures or development, long scenic vistas are maintained from almost every angle in this area...Due to the nature of the existing scenic vistas, the overall visual quality from this KOP is rated as high. Since most viewers have chosen to visit this area for recreational purposes or are permanent residential viewers, the overall scenic quality is an essential component of these viewer types. Viewer sensitivity is therefore rated high. Although the number of viewers at this KOP might be low in relation to other KOP locations, the duration of views is high, the primary focus for recreational trail users is high, and therefore, viewer exposure in aggregate is rated moderate to high.

P. 3.9-27., attached hereto as Exhibit 9.

In light of this substantial evidence of moderate to high levels of aggregate viewer exposure at Farren Road, it is imperative that the MND for the Ballantyne Project acknowledge that Farren Road is a public viewing place, simulate views of the Project as seen from Farren Road, and thoroughly analyze Project impacts and policy inconsistencies resulting from the visibility of Project structures from vantage points along Farren Road.

In addition to Highway 101, Calle Real and Farren Road, there are public streets east and southeast of the Project site from which the Project may be visible. Dianne Meester Black Memorandum (October 27, 2006), p. 2, attached hereto as Exhibit 10. The DMND does not simulate or analyze visual impacts and policy inconsistencies from these vantage points. Rather, the DMND refers only to private properties, including those located in the Embarcadero West subdivision, from which the Project structures would be visible. P. 8. The Embarcadero West, or Rancho Embarcadero subdivision is not private, rather it is traversed by public roads; the DMND however omits reference to the public streets in the area from which these private properties are accessed. Absent identification of all public viewing places from which the Project may be visible, the analysis of visual impacts is incomplete.

f. Failure to Simulate Views of the Project from Public Viewing Places

Farren Road is identified in the DMND as a location from which the Project would be “highly visible.” P. 7. Discussed above, Farren Road is a public viewing place. Yet, the DMND provides no visual simulations of views of the Project from any point along Farren Rd. The only depiction of views from Farren Road is of the Project site without structures, indicating the “general area” in which proposed structures would be located. *See* Figure 19. Without visual simulations of the proposed Project from locations along Farren Road from which the Project site is visible, visual impacts and policy inconsistencies cannot be meaningfully analyzed.

Visual simulations of the Project site from Highway 101 are also lacking. Staff articulated concern regarding the southeast view photo simulation which shows the residence would not be visible without the berm, and stated that “[n]ew story poles would be required in order for us to verify the results of this photosimulation.” Exhibit 10, p. 2. It appears that these additional story poles were not erected and therefore this photosimulation may be inaccurate. Further, locations along Highway 101 from which the Project may be visible are identified, but not simulated, in the DMND. The specific issue, also raised in public testimony on the DMND by Joan Bolton, is that Figure 13 in the DMND identifies nine ‘lines of sight’ from Highway 101 to the Project site, yet the MND provides no visual simulation of the Project site as seen from most of these vantage points.

The DMND fails to assess the Project’s visibility from trails and roads in the Los Padres National Forest, including West Camino Cielo and residences in that area. The fabled Slippery Rock Trail is located north of the Project site, and views from that trail corridor should be included in the environmental review document and analysis.

The County Staff Report for Appeal of Land Use Permit Denial contains relatively detailed visual depictions of Project structures. Exhibit 11, Attachments D and E. No such visual depictions are now provided in the DMND. Overall, the DMND lacks sufficient information and visual simulation to justify conclusions that the Project will not violate visual policies and development standards, and will not generate visual impacts. The DMND’s conclusions lack a reasoned analysis and basis, and are contrary to the previous conclusions reached by County Staff, the Board of Architectural Review, and many members of the public. In order to allay concerns that this controversial Project will comply County policy and not generate visual impacts, it is imperative that the County supply new information and photo simulations, and thoroughly revise the DMND’s discussion of visual impacts and visual policy consistency.

g. Failure to Include Proposed Access Roadway in Visual Simulations

The Board of Architectural Review Committee reviewed the Ballantyne Project in 2005, and expressed concern about the visual impacts of the access roadway. Specifically, the Committee stated “[p]rominence and visibility of access roadway need to be diminished, not strengthened,

Road is fighting the natural contours of land. Row of trees proposed along length of road only emphasizes it.” Board of Architectural Review Committee minutes, Meeting of September 9, 2005, item 10, attached hereto as Exhibit 12. There is no indication that the proposal regarding the access roadway has changed since the BAR Committee discussion. The row of trees remains visually intrusive and incongruent. In light of this concern, and because CEQA requires the whole of a Project be analyzed in the environmental review document (*See Laurel Heights v. Regents of the University of California* (1988) 47 Cal. 3d 376, 396), the failure of the DMND to include simulations of the access roadway, or engage in any discussion whatsoever of potential visual impacts associated with the proposed roadway constitutes a serious failure which undermines the impact analysis and conclusions regarding visual impacts.

h. Failure to Simulate Views of the Project from the Ocean

Under CEQA, significant aesthetic impacts can arise where views from the ocean are adversely affected. The Project site appears to be visible from the Pacific, and the DMND should have included a simulation of these views. The Santa Barbara Ranch EIR simulated views of the Project from the ocean, and utilized those simulations to analyze the Project’s environmental impacts. Exhibit 9, pp.3.9-37 – 3.9-38. The DMND’s failure to simulate views of the Project from the Pacific affects the impact analysis. It is imperative that these simulations be prepared and analyzed in a recirculated environmental review document.

i. Failure to Simulate Night Views of the Project

Given its extremely prominent ridgeline location, night lighting in and on the Project site could potentially be highly visible from a number of locations in the region. It could also result in night sky lighting and cloud and fog illumination. The Board of Architectural Review noted the “[u]se of glass, reflectivity of materials, internal lighting would make [the] house very visible, especially at night.” Exhibit 12. Given these characteristics of Project structures, simulations of the Project at night are necessary to evaluate whether the Project may have a significant impact in this regard.

j. Failure to Characterize Affected Biological Resources

The area surrounding the site is rich in bird populations and diversity. Farren Road is a popular destination for birders due to the many raptors and other birds that routinely use the area and whose activities may be adversely affected by the Project. Notable species observed on or near the Project site include white tailed Kites, Golden Eagle, Costa's Hummingbird, Blue Grosbeak, Phainopepla, Raven, Lazuli Bunting, grasshopper sparrow and migrants. *See* Exhibit 7. The ecology of this area provides habitat for grassland and coastal sage scrub ecotone species. These bird populations have suffered from cumulative habitat loss and are projected to lose considerable additional habitat of this type as San Marcos Foothills and other Gaviota Coast lands are developed. Combined with other Gaviota Coast development, the cumulative effect of

the Project upon the roosting, feeding, sheltering, nesting and rearing activities could be significant. The DMND is silent about this important feature of this site.

k. Omission of Required Approval and Policy Discussion

County Land Use and Development Code Chapter 35.63, Ridgeline and Hillside Development, requires that any structure proposed “where there is a 16-foot drop in elevation within 100 feet in any direction from the proposed building footprint” must conform to development guidelines for ridgeline and hillside development. Compliance with these guidelines must be assessed by the Board of Architectural Review. These guidelines include that “Building rake and ridge line should conform to or reflect the surrounding terrain”, “Grading shall be minimized, in compliance with the Comprehensive Plan” and “Development on ridgelines shall be discouraged if suitable alternative locations are available on the lot.”

The Board of Architectural Review discussed the Ballantyne Project in 2005, and commented that the [l]ocation brings the project within the spirit, if not the letter, of the Hillside/Ridgeline Guidelines. House is in a de facto ridgeline location.” Exhibit 12. At a subsequent meeting, the BAR Committee stated more authoritatively, “Ridgeline development guidelines apply to this site.” Exhibit 4.

Notwithstanding BAR’s comments regarding the applicability of these policies to the Project, these policies are not even referenced in the DMND. The “required approvals” listed in the Initial Study do not include BAR review required by the Land Use and Development Code. Substantial evidence in the record supports an argument that these policies are applicable and that the Project violates these policies; the MND’s omission constitutes a serious flaw in the document.

If, as Staff indicated in the Planning Commission hearing on October 6, 2006, the failure to reference these policies stems from documentation submitted by the applicant showing the Project is just shy of the 16 foot drop required to trigger these policies, we would urge the County to conduct its own independent review of the site to independently determine the applicability of these policies.

l. Coastal Development Poorly Described

The DMND fails to provide any detail whatsoever concerning the elements of the Project located within the coastal zone and/or entailing Coastal Development Permits.

m. Agricultural resources

The DMND fails to evaluate the effect of covering agricultural soils and the conversion of the open, undeveloped agricultural site to a sprawling residential complex.

## 2. The County Must Prepare an EIR for the Ballantyne Project

CEQA establishes a low threshold for the preparation of an EIR, “which reflects a preference for resolving doubts in favor of environmental review.” *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal. App. 4th 689, 703. Accordingly, the lead agency must prepare an EIR, as opposed to a Negative Declaration or Mitigated Negative Declaration, whenever substantial evidence in the record supports a “fair argument” that the Project may have significant environmental impacts, even where substantial evidence also supports the opposite conclusion. *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75. “[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” Guidelines § 12080 (e)(1). Here, substantial evidence in the record supports a fair argument that the Ballantyne Residential Project may have significant environmental impacts; as such, the County must prepare an EIR in order to comply with CEQA. *See Id.*

The DMND systematically understates Project impacts with regards to land use impacts and policy inconsistencies, visual impacts, geologic impacts, water resource impacts and associated impacts to public services, fire protection as well as growth inducement impacts, among others. In numerous instances the DMND’s analysis of whether the Project may have a significant impact according to the County’s checklist lacks reasoned analysis; in other instances the particular effect at issue was not even addressed despite being raised previously in public comment, by Staff, and during BAR review of the Project. These failures are particularly troubling considering that opposite conclusions were made previously by County Staff, BAR as well as members of the public, based on carefully reasoned analyses. The below discussion addresses both defects in the DMND’s analysis, and presents substantial evidence in the record supporting a fair argument that the Project may have significant environmental effects requiring evaluation in an EIR.

### a. Substantial Evidence of Land Use Conflicts and Policy Inconsistency

Conflicts with applicable policies designed at least in part to mitigate or avoid significant environmental impacts are considered significant impacts under CEQA, requiring the preparation of an EIR. CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 934, 936. (EIR required where petitioner demonstrated substantial evidence supporting a fair argument that the Project conflicted with land use policy that was “adopted for the purpose of avoiding or mitigation an environmental effect”). Regarding the Ballantyne Project, there is substantial evidence in the record of conflicts with various land use policies designed for the purpose of avoiding and/or mitigating environmental effects, specifically aesthetic and geologic effects.

Reflecting this CEQA standard, the checklist used by the County to assess whether a Project may have land use related impacts includes the following factor: whether the proposal would

“[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigation an environmental effect.” For this factor, the MDND checks to box for “less than significant impact.” P. 27.

The following impact discussion states “[n]o conflicts with adopted land use plans and policies are anticipated and impacts would be less than significant.” This statement is incomprehensible given the substantial policy conflicts involving the proposed Project, and the Project’s history, including its initial denial based primarily upon violations of these policies. The minor changes made to the Project since its denial by the Planning and Development Director do not resolve all or even most of the policy violations. The proposed Project conflicts with policies in the General Plan, the Goleta Community Plan as well as with provisions of the Land Use and Development Code including Design Compatibility Standards. The discussion addresses each policy inconsistency in detail.

i. The Project Violates Visual Resources Policy 2 and Visual Resources Development Standard 1

General Plan Visual Resources Policy 2 and Design Compatibility Standard 1 in Section 35.30.060 of the Land Use and Development Code contain near identical language. Quoting the latter,

In an area designated rural on the Land Use Element Maps, the height, scale, and design of each structure shall be compatible with the character of the surrounding natural environment, as determined by the review authority, except where the review authority determines that technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms, shall be designed to follow the natural contours of the landscape, and shall be sited so as not to intrude into the skyline as seen from public viewing places.

The proposed Project violates this policy/standard in several regards. 1) the Project will result in skyline intrusion from public viewing places including Farren Rd. and public roads in the Rancho Embarcadero community, as well as from HW 101 as a result of the proposed berm; 2) the height, scale and design of the structures is incompatible with the character of the surrounding natural environment and technical requirements do not dictate otherwise (mere applicant preference); 3) structures are not subordinate in appearance to natural landforms; 4) the Project is not designed to follow the natural contours of the landscape.

The policy analysis contained in other County environmental review documents is illustrative. For example, the Final Mitigated Negative Declaration for Burinda Vesting Tentative Parcel Map (April 30, 2007) states regarding Visual Policy 2, “[i]n order for a structure to meet this

policy requirement, careful design consideration will need to be given to the location of the structure, as well as the height, bulk and scale.” Exhibit 13, P. 17.

### 1. Impermissible Skyline Intrusion

The proposed residence will intrude into the skyline as seen from public viewing places. The residence will intrude into the skyline as seen from Farren Road, looking south. This fact is apparent from the photo of the Project site from Farren Road (Figure 15) and admitted in the DMND (“Because the residence would be elevated above Farren Road and along the ridge, it would interrupt views of the existing skyline from Farren Road.”) The subsequent discounting of skyline intrusion from Farren Road, discussed at length above, is misplaced and inconsistent with fact and prior County practice. Farren Road is a public road, proposed public trail, and is heavily used recreationally. Skyline intrusion from Farren Road obstructs expansive and highly scenic public views of the ocean and constitutes a significant unresolved policy inconsistency, and significant environmental effect. Moreover, there is substantial evidence that the proposed Project structures may also result in skyline intrusion as seen from roads in the Rancho Embarcadero neighborhood to the east, also a public viewing place. Exhibits 14 and 15.

Berms have been incorporated into the Project design in an effort to resolve this policy inconsistency as it relates to views of the Project from Highway 101. The berm does not address skyline intrusion or Project visibility from Farren Road and other nearby public viewing places, and such is at best an incomplete solution to resolving this policy inconsistency. Additionally, the berm itself is a structure<sup>1</sup> that intrudes into the skyline as seen from public viewing places including Highway 101, obstructing public views of the mountains. The berm itself therefore generates a facial conflict with this visual policy.

Berms are ineffective in resolving this policy inconsistency for an additional reason. Visual Policy 2 and Visual Resources Development Standard 1 both require that *structures be sited* so as to avoid skyline intrusion from public viewing places. Rather than resiting the residence as required, the berming approach shields inappropriately sited structures.<sup>2</sup> These provisions require the residence be resited to avoid skyline intrusion; the minimal setback required by the Planning Commission is not sufficient resiting to does not resolve the skyline intrusion. County Staff has articulated this precise concern, stating for example, “[a]pplicable policies and zoning provisions requires structures to be sited so as not to intrude into the skyline. For that reason, the

---

<sup>1</sup> Structure (inland) is defined broadly under § 35.110.020 of the Land Use Code as “[a]nything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground, excluding trailers and sidewalks.”

<sup>2</sup> The berming proposed for the Ballantyne Project is readily distinguishable from the Bean Blossom case. First of all, the reverse berming employed in the Bean Blossom project was not designed to resolve skyline intrusion. Second, structures in Bean Blossom were resited 200 feet to the north to avoid impacts, alteration of natural landforms and policy inconsistencies. Third, Bean Blossom involved very careful and minor surficial recontouring (deploying small volumes of soil in manners honoring and reflecting natural topography) rather than the construction of a uniform, unnatural and massive dirt pile as proposed.

residence needs to be sited north of the ridge. This shift in location would lower the elevation of the residence and result in a structure that would not intrude into the skyline as seen from public viewing places to the south and north.” Exhibit 11, p. 8.

## 2. Incompatibility with the Surrounding Natural Environment

The proposed residence is 11,535 square feet, not including the attached garage, guest house, barn, reflecting pool, entry gate and walls, driveway and associated grading. MND p. 2. This massive structure stands in stark contrast to the surrounding agricultural environment, described as follows: “[t]he site is adjoined by large parcels that consist primarily of open grazing land. The site is generally surrounded by the larger agricultural parcels of the western extent of the South Coast Rural Region.” MND p. 3. Not discussed in the DMND, this agricultural land also happens to be prized for its visual resources and the conservation of its rural character happens to be a paramount concern of the public and County government alike. Comparison with the Rancho Embarcadero subdivision is inappropriate as Visual Resources Policy 2 and Visual Resources Development Standard 1 applies to rural areas and is therefore inapplicable to the urban neighborhood.

“The proposed residence would be highly visible from the adjacent segment of Farren Road...” DMND, p. 7. Notwithstanding this acknowledged fact, the DMND concludes the Project could be found consistent with the above policy because Farren Road is only lightly used. P. 46. As stated previously, this is an erroneous assumption.

The Santa Barbara Ranch EIR discusses views of that Project from Farren Road, stating: “The introduction of structures would contrast with the existing rural nature and character of the land, but visual contrast is rated only moderate because all of the structures would be in the midground and distant views, and only a small portion of the structures would be visible...” Exhibit 9, p. 3.9-27. By contrast, the structures proposed here will be in the foreground as seen from Farren Road; borrowing the analysis from the Santa Barbara Ranch EIR, the Ballantyne Project has a significant impact in this regard and violates visual policy.

Regarding the requirements of this policy/standard, BAR commented that the “[s]cale and design of house [is] not compatible with [the] natural environment. House proposed is too large. Design does not take an organic enough approach. Program exceeds the site’s ‘carrying capacity.’” Exhibit 4. At this same meeting BAR stated “[s]tylistically, a long mass of glass will not work in this setting.” Public comments have echoed these concerns. For example, comments submitted by Joseph Hackett state “The proposed design does not conform to the County’s visual resources policy in that the structure would have significant negative visual impacts. It would intrude into the skyline and would not be subordinate to surrounding landforms. Its large scale of approximately 14,000 square feet and more than 300 foot length, and its stark, massive glass and metal façade are incompatible with the character of the surrounding natural environment of grassland and pasture.” Exhibit 16.

### 3. Structures Dominate Natural Landforms

Considerable concern has been raised concerning the Project's lack of compliance with the requirement contained in Visual Resources Policy 2 and Visual Resources Development Standard 1, that structures be subordinate in appearance to natural landforms. For example, the BAR has stated "[the f]ootball field length of structure causes concern. The length of the structure increases its visual impact and apparent mass. The house reads as a large, unbroken mass." BAR Committee Minutes, Meeting of September 9, 2005. Staff stated that the "combination of siting, scale, design and materials would result in a residence that would not be subordinate in appearance to natural landforms." Ballantyne Appeal Staff Report, October 4, 2006. Moreover, County Staff specifically stated that "The revised plans and proposed berm do not effect or otherwise change the scale, design or exterior of the residence...P&D continues to believe that the scale and design of the residence would result in a prominent structure not compatible with the surrounding natural environment." Public comments also state that the Project structures, and the proposed berm is not subordinate to landforms. *See e.g.* Exhibit 14. GCC concurs in this common-sense conclusion based on the size of the structures, the size, volume and footprint of the berm, and the unique and renowned Gaviota Coast landform.

### 4. Structures Are not Designed to Follow Natural Contours of the Landscape

Visual Policy 2 and Visual Resources Development Standard 1 both require that structures be *designed* to follow the natural contours of the landscape. Comments from the BAR include "Building should be sited so that [it] can work more seamlessly with landscape, topography." Exhibit 12. Rather than resubmit a redesigned residence that better follows the natural contours of the landscape, the applicant proposed the berm. The proposed berm specifically alters the natural contours of the site in order to partially screen the massive proposed structures, and as such violates Visual Policy 2 and Visual Resources Development Standard 1.

At the public hearing on the adequacy of the DMND, commenters including Ed Easton and Joan Bolton discussed the visual policy inconsistency generated by the structures proposed for the Ballantyne property, and specifically noted the disconnect between the discussion with regards to this policy/standard in the DMND as compared with all previous proceedings that have taken place in the course of this Project's history. Planning and Development Staff emphasized this particular policy inconsistency as a primary reason for denying the Land Use Permit at the Director Level. Exhibit 17. GCC and members of the public raised this issue in their appeal to the Board of Supervisors and consistently at public hearings on this Project. In sum, not only is there substantial evidence in the record including expert BAR opinion that the Project may conflict with Visual Policy 2 and Visual Resources Development Standard 1, in fact far more evidence in the record supports this conclusion than the untenable and non-factual conclusion summarily reached in the DMND.

ii. The Project Violates Hillside and Watershed Protection Policy

The Santa Barbara County General Plan includes the following policies on hillside and watershed protection:

Policy 1: Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.

Policy 2: All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.

The DMND's discussion of these policies verges on being self contradictory, acknowledges the potential availability of additional mitigation measures to reduce the significance of impacts, and all but admits the necessity of an EIR to properly evaluate these issues and consider alternatives. The DMND states:

The project would require approximately 8,900 cubic yards of cut and 8,100 cubic yards of fill and would involve grading along a ridgeline. Location of the structures farther north on the project site, below the ridgeline, may incrementally reduce the amount of earthwork required and the alteration of natural terrain. In addition, elimination of the berm proposed to shield onsite structures from Highway 101 would reduce overall landform alteration...It could be argued that relocating the structure to another location onsite may incrementally reduce grading and landform modification. Similarly, reducing the size of the residence would reduce overall grading requirements.

DMND P. 47.

In admitting that grading and landform modification could be reduced is an admission that the development could be carried out with less alteration of the natural terrain. Given this, the proposed Project is contrary to Policy 1.

Of the concerns previously expressed regarding the Ballantyne Project, two which come up frequently in the record are 1) that the development involves unnecessary cut and fill operations and 2) that the development is not designed to fit the site topography. These concerns have also been expressed precisely in the context of the above Hillside and Watershed Protection Policies. For example, County Staff stated "Contrary to Policy 1, updated preliminary grading estimates

indicate that the proposed berm would require 10,000 cubic yards of fill. Contrary to Policy 2, constructing the berm would alter natural landforms seen from public viewing places.” Exhibit 11, p. 10.

These concerns, expressed by experts and non-experts alike constitutes substantial evidence that the Project may have significant environmental effects related to its inconsistency with these policies.

iii. The Proposed Project Violates Goleta Community Plan Policy

Goleta Community Plan Land Use Policy LU-GV-5 requires that “[a]ppropriate planning tools should be explored and adopted which provide for the clustering or relocation of development from environmentally sensitive or visually prominent areas, or other sites which are deemed unsuitable for development, to less sensitive areas or parcels.” As discussed at length above, the proposed residence could be relocated away from visually prominent areas. As stated by County Staff, “[t]he area north of the ridge is less visually prominent. Consistent with Policy LU-GV-5, relocation of the residence approximately 200 feet north could minimize visual impacts. The residence would be screened by existing natural landforms and would not intrude into the skyline.” Exhibit 11, p. 8. No relocation north of the ridge has been proposed; rather the applicant relies on berming to screen Project structures from Highway 101. This approach is contrary to LU-GV-5.

iv. The Proposed Project Violates Ridgeline and Hillside Development Guidelines

County Land Use and Development Code Chapter 35.63, Ridgeline and Hillside Development, requires that any structure proposed “where there is a 16-foot drop in elevation within 100 feet in any direction from the proposed building footprint” must conform to development guidelines for ridgeline and hillside development. Compliance with these guidelines must be assessed by the Board of Architectural Review. These guidelines include that “Building rake and ridge line should conform to or reflect the surrounding terrain”, “Grading shall be minimized, in compliance with the Comprehensive Plan” and “Development on ridgelines shall be discouraged if suitable alternative locations are available on the lot.”

As discussed in the context of other applicable policies, the proposed Project was not designed in such a way to conform or reflect the surrounding terrain, and does not minimize grading in compliance with the Comprehensive Plan. Alternative locations on the lot, specifically 200 feet to the north and away from the ridgeline are available. Compliance with the above policy requires the County discourage Project as currently proposed.

v. The Proposed Project Is Inconsistent with the General Plan as a Whole

The General Plan is the constitution for all future development; any decision of the County affecting land use and development must be consistent with the General Plan. *Citizens for Goleta Valley v. Board of Supervisors* (1990), 52 Cal. 3d 553, 570. Projects inconsistent with the General Plan may not be approved. *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (Cal. App. 3d Dist. 1998) 62 Cal. App. 4<sup>th</sup> 1332, 1336. “An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.” Governor’s Office of Planning and Research, General Plan Guidelines 128 (1998). A Project may be inconsistent with the General Plan even where the proposed development violates only one policy in the general plan. *See San Bernardino Valley Audubon Soc’y v. County of San Bernardino*, 155 Cal. App. 3d 738, 753 (Cal. App. 4th Dist. 1984); *see also Families Unafraid*, 62 Cal. App. 4<sup>th</sup> at 1341.

The situation in *San Bernardino Valley Audubon* is analogous to the Ballantyne Project in several respects (though the Ballantyne Project involves more than one policy inconsistency). The San Bernardino Development Code required the Board to find that a proposed Project is consistent with the goals, policies and standards of the General Plan. *Id.* A General Plan policy required protection of rare plants and animals and Staff had recommended denial of the Project because it would have an adverse impact on biota and cultural resources and therefore would conflict with the policy. The Board found “[t]he proposed use is consistent with the General Plan because although there are natural and cultural resources on the site, the potential impact of other uses currently permitted without approval are much more severe in nature.” The court rejected the adequacy of this finding in upholding the trial court’s determination that the record did not contain substantial evidence to support the Board’s consistency determination<sup>3</sup>. *Id.*

The conclusions in the MND regarding visual policy consistency and hillside and watershed policy consistency, among others, lack foundation and unjustifiably reject sound conclusions of Planning and Development Staff. There is no treatment of consistency with the County Open Space Element or its action program, even though the Open Space Element itself identifies site constraints of the type p[resent on the Project parcel as providing open space protections. Under *San Bernardino Valley Audubon*, the findings in the MND cannot be sustained. *See Id.* The below discussion demonstrates that there is substantial evidence in the record, overwhelming evidence in certain regards, that the Ballantyne Project is inconsistent with General Plan policies and that an EIR is required under CEQA.

---

<sup>3</sup> Note, the *San Bernardino Valley Audubon* case concerned the adequacy of an EIR and therefore was judged under a higher standard of review than the standard used for determining whether an EIR must be prepared instead of a Negative Declaration, as is the case with the Ballantyne Project.

b. Substantial Evidence of Impacts Associated with Providing Water to the Project

A letter from GWD's Engineering Manager Gary McFarland to Randy Ballantyne, dated March 7, 2007 and attached hereto as Exhibit 1, presents GWD staff's analysis of the preliminary application for water service to the Project site. This letter articulates numerous concerns of GWD related to providing water to the Project site. These concerns include that GWD will be unable to provide water pressure sufficient for fire protection purposes, that GWD may be unable to deliver water of adequate quality for residential use given the long distance the water would need to travel, and that a private treatment facility, other infrastructure, and/or an alternative pipeline size and configuration may be required. These articulated concerns, made by qualified agency experts and based on fact, constitute substantial evidence in the record that the Project may have significant impacts to water resources, public services and fire protection.

i. Impacts to Water Resources

Water is generally regarded to be a scarce resource in Santa Barbara County, and global climate change and other pressures threaten to further reduce water available in the area. Exhibit 21. Notwithstanding this reality, the DMND fails entirely to describe the proposed Project demand for water and to address the Project's potential impacts related to water resources. As compared with an average size house, the Project will consume a disproportional volume of water based on the 22 sinks and 12 toilets for a family of 2. There is substantial evidence in the record that the Project may have a significant effect on water resources; an EIR is therefore required.

1. Water Supply

The County's checklist for assessing water resources impacts includes whether the Project would result in "[s]ubstantial reduction in the amount of water otherwise available for public water supplies?" MND p. 36. The subsequent discussion concerning this factor is conclusory and lacks foundation. The DMND states "[t]he proposed project would not substantially reduce the amount of water available for the public supply as water service would be through the Goleta Water District...the water line would be the minimum size necessary to provide service to the proposed single-family residence and accessory structures, and would not serve existing or future residences or development...there has been no indication that the connection to the District is infeasible and the costs of needed onsite water infrastructure would be borne by the project applicant."

The DMND's discussion is directly contrary to evidence contained in the March 7, 2007 letter from GWD. The letter raises significant concerns about the feasibility of providing water to the site, and suggests various alternative mechanisms to the pipeline described in the MND, that may be necessary in order to provide water of sufficient quality and pressure for the Project. The alternatives suggested include providing a looped system by extending the water main from Vereda Leyenda to the east, and extending a water main from the Goleta West Conduit in

conjunction with constructing a privately owned water treatment facility. Given the cost and logistical concerns with each of these alternatives, the letter suggests that “[d]ue to these conditions, you may want to consider drilling a well and constructing your own well water system for your project.” The letter also specifically states that “[a] main larger than 8” in diameter may be required.”

The evidence contained in this letter is substantial and reveals that the DMND did not properly examine water resource issues, and that supplying water to the Project may entail significant environmental impacts in the form of growth inducement that must be evaluated in an EIR. The fact that the Project applicant would bear the cost of required water infrastructure is an insufficient basis for concluding there will not be significant impacts relating to water resources, where, as here, the required infrastructure may itself cause significant environmental impacts.

Additionally, in public comment on the adequacy of the DMND, Ms. Gardner, who lives near the Project site and witnesses daily operations on and around the Project site, described that truckload after truckload of water is currently transported up Farren Road to irrigate landscaping on the Project site. The frequency and amount of water application greatly concerns Ms. Gardner, and provides evidence that the Project will require excessive amounts of water related to landscaping, which also could entail impacts related to increased runoff and erosion. Further, in the event of water shortage, irrigation of the landscaping trees may be impossible, and any beneficial screening effect sought to be achieved by the landscaping would be compromised or lost.

Simply put, the water supply and related analysis in the DMND fundamentally misleads decisionmakers and the public. The DMND glosses over very real concerns that the Project will require unreasonable amounts of water, and ignores the opinion of the Goleta Water District itself that delivering such water may require substantial amounts of infrastructure and a larger diameter pipe or alternate routing. A larger diameter pipe could facilitate unreasonable water usage and, if sufficient to serve multiple residences, would entail growth inducing effects. Alternative routing may also enable further development and generate growth inducement impacts. An EIR is required to assess the full extent of the Project’s impacts on water supply and related issues including runoff, erosion, loss of visual screening and growth inducement.

## 2. Water Quality

The County’s checklist regarding water resources/flooding includes whether the Project will result in “alteration of surface water quality, including but not limited to temperature, dissolved oxygen, turbidity, or thermal water pollution.” The MND checks the box for ‘less than significant impact’ in this regard, however does not discuss the water quality issue at all in the document. There is in fact substantial evidence in the record that the steep and lengthy pipeline proposed to deliver water to the site will cause a significant water quality impact.

The March 7, 2007 letter from GWD provides under no uncertain terms that water quality is a potential problem associated with delivering water to the Project. The letter states

[t]he 2,300 feet of proposed pipeline would probably create a water quality problem as well. It is estimated that the water in this proposed pipeline will age about 7 days before it gets to the proposed water meter. The water will be much older than 7 days because it has to go through a long pipeline from the Corona del Mar Water Treatment Plant at the north end of Glen Annie Rd. to this location. Chlorine residual may be non-existent and bacterial growth may occur with taste, odor, or health issues. Increasing the pipe size from the proposed 8 inches would make this even worse. It is recommended that a thorough hydrolic (modeling) analysis be done including a water quality (modeling) analysis. The initial impression is that this pipeline extension would result in substandard water pressure and water quality conditions.

These statements by the GWD's Engineering Manager constitute substantial evidence in the record supporting a fair argument that the Project as proposed may have significant water quality impacts.

### 3 . Growth Inducement

Mr. McFarland of the Goleta Water District suggested that the applicant may wish to consider connecting their water system with a potential future water delivery system that would be associated with the Bacara owner's Tecolote Canyon residential Project. *See* Exhibit 1. The growth inducing effects of any such potential future water delivery configuration must be addressed.

#### ii. Impacts to Public Services

The County's checklist for assessing Project impacts to public services includes whether the Project would require "[t]he construction of new storm water drainage or water quality control facilities or expansion of existing facilities, the construction of which could cause significant environmental effects." In addressing this factor the MND states that "[n]o construction of stormwater drainage or water quality control facilities beyond what is necessary to handle runoff from the building site is proposed." The MND's discussion of this factor omits reference to water quality control facilities that will likely be required to treat water being delivered to the site. Substantial evidence in the record, presented above, shows that water quality is a major problem given the distance water would have to travel to reach the site, and that to resolve this problem "an onsite chlorination facility will probably be required." Exhibit 1.

Additionally the March 7, 2007 letter documents the considerable difficulty GWD will face in providing water service to this Project. In light of this evidence, it is entirely improper for the MND to have given such short shrift to Project impacts associated with delivering water service.

### iii. Impacts to Fire Protection

The County's checklist for assessing whether the Project would result in "[i]ntroduction of development into an area without adequate water pressure, fires hydrants or adequate access for firefighting." The MND does not discuss the issue of adequate water pressure, but concludes that the Project will have a less than significant impact in regard to this factor. Substantial evidence in the record however supports a fair argument that there is inadequate water pressure available for firefighting at the Project site.

The MND states that the Goleta Water District would provide water to the Project site for purposes including fire protection. The March 7, 2007 letter from GWD's engineering manager McFarland to Ballantyne however, articulates significant concern regarding providing sufficient water pressure to the site for fire protection purposes. Exhibit 1. Specifically, the letter states "[o]n-site water pressure is calculated at being marginal if not adequate. A booster pump system by Applicant subject to GWD's acceptance will most likely be needed." The letter then goes on to state that "[w]e apparently cannot deliver the required fireflow, the static pressure and residual pressure would be too low... Even if you add a booster pump to get the water to a useable pressure, you would probably still have the stagnant water issue [discussed above]"

Significant concerns regarding the ability of fire trucks to access the Project site were also raised in public testimony, discussed further in the Traffic Impacts section, below.

Vegetation management required for wildfire fuel reduction may result in less screening vegetation for the Project. Similarly, drought conditions could necessitate cessation of landscape watering and loss of many of the exotic trees and landscape plants. If these plants dry out and die, they increase fire risks.

### c. Traffic and Circulation Impacts

Public testimony at the Planning and Development Staff hearing on the DMND by Nancy Gardner included comments regarding Project traffic impacts. Ms. Gardner, who lives near the Project site, reported that Farren Road is in a state of disrepair and that trucks headed for the Project site have considerable difficulty traversing the steep road. She recounted an event she witnessed in which a truck headed up Farren Road could not make the turn, could not turn around, so had to back down the steep hill in reverse. Based on this, Ms. Gardner suggested that fire trucks would have a very hard time negotiating the turns on Farren Road. The MND does not appear to adequately address this issue.

Further, the same public commenter testified that Farren Road is heavily used for recreational purposes, including by the running teams of both UCSB and City College and by photographers and artists as well as more typical recreational users. This heavy usage is not accounted for in

the DMND, leaving open the possibility that the Project will have cumulatively considerable impacts on traffic and circulation.

The DMND must analyze the evacuation capacity of Farren Road in the event of a wildfire below burning up canyon. The absence of an alternative evacuation route, combined with the high fire hazard area, indicates this is a serious public safety risk issue. Given the steep slopes of Farren Road, it appears that emergency vehicles would have difficulty accessing the Project and residences above if there were evacuating traffic heading down-canyon, such as in a upper canyon wildfire scenario.

d. Impacts to Visual Resources

A central concern of County Staff, BAR and members of the public is the visual impact of the Project. Berming, as discussed previously, does not fully resolve the visual impacts of the Project and generates its own impacts and policy inconsistencies. The record is laden with testimony constituting substantial evidence of visual impacts. Rather than acknowledge this, the DMND relies on numerous faulty assumptions and improperly disregards views of the Project from public viewing places other than Highway 101.

The checklist utilized by Santa Barbara County in assessing the impacts of the proposed Project lists four factors relating to Aesthetics. The first of these factors is whether the Project would result in “obstruction of any scenic vista or view open to the public or the creation of an aesthetically offensive site open to public view?” The second factor is whether the Project will “change the visual character of an area?” The fourth factor, whether the Project will result in “visually incompatible structures.” The third factor relates to glare or night lighting. Substantial evidence in the record, indeed in the MDND itself, supports a fair argument that the project will result in the obstruction of scenic vistas and views open to public view, will create an aesthetically offensive site open to public views, and will change the visual character of the area. Accordingly the Project may have a significant environmental effect and must be evaluated in an EIR.

i. The Project will Obstruct Scenic and Public Views

The MDND states, “the proposed 11,535-square foot residence...would be located on a ridge that is at the highest point of the...site. Therefore it would be in a location that is visually prominent from portions of both Highway 101, a heavily traveled scenic corridor, and Farren Road, a lightly-traveled County road...” P. 6. The MDND further states “[b]ecause the residence would be elevated above Farren Road and along the ridge, it would interrupt views of the existing skyline from Farren Road.” P. 46. Figure 15 shows the public view that would be interrupted by the proposed Project.<sup>4</sup>

---

<sup>4</sup> The lack of a visual simulation of the Project from this viewpoint is a serious omission that prevents an accurate assessment of the Project’s visual impacts and consistency with General Plan Visual Policy 2.

Even without a visual simulation, the image provided of the existing view from Farren Road, coupled with the massive elongated nature of the structure, supports a fair argument that skyline intrusion and the obstruction of public views from Farren Road may be substantial. Further, County policy and land use standards mandate avoidance of skyline intrusion as seen from public viewing places. It follows that where structures result in such intrusion, they cause a significant adverse aesthetic impact. Moreover, the issue of skyline intrusion has been raised repeatedly by County Staff and members of the public, discussed in the above section on visual policy.

The berm itself is a structure, as defined by the County Zoning Ordinance. Given the small size of the visual simulations included in the DMND, it is difficult to ascertain the magnitude of the intrusion caused by the berm itself. Larger versions of the visual simulations should be prepared to illustrate the magnitude of skyline intrusion associated with the proposed berm.

ii. The Project will Create an Aesthetically Offensive Site Open to Public View

“[T]he opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic.” *Pocket Protectors, supra*, 124 Cal. App. 4<sup>th</sup> 903, 937, citing *Ocean View Estates, supra*, 116 Cal.App.4th at p. 402.

Numerous members of the public have expressed significant concern, even disgust, regarding the proposed Project’s design and conformity with surrounding landscape. For example Mike Lunsford commented at the November 18, 2005 BAR Committee Meeting “Project is starkly in contrast to [the] surrounding environment, disrespectful of landscape.” Exhibit 4. At the same meeting, Ed Easton commented that the “[p]roject design [is] not acceptable on the Gaviota Coast. Size, stark modern design, contrived landscaping make [the] house stand out. Highly visible on ridgeline, [and] breaks [the] skyline.” Susan and David Schwartz, neighbors to the site found the Project “[v]ery intrusive to public views.” Under *Pocket Protectors* and *Ocean View Estates*, these opinions constitute substantial evidence supporting a fair argument that the Project may have a significant aesthetic impact. Further, as discussed previously, BAR comments provide additional evidence that the Project will be aesthetically offensive as seen from public viewing places.

iii. The Project Will Change the Visual Character of the Area and Includes Visually Incompatible Structures

The proposed Project will change the visual character of the area in two regards. First, the addition of the earthen berm will change the visual character of the topography. Second, even with the berm however, “the proposed residence would be highly visible from the adjacent segment of Farren Road” and will change the agricultural nature of the surrounding landscape.

Further, the proposed residence is grossly disproportionate in size and style to other residences on the Gaviota Coast, further changing the area's visual character.

The MND states “[t]he proposed project involves the development of a 11,535 square-foot residence...on a prominent ridge in the central portion of the site...[t]herefore the project would therefore change the character of the site to some degree.” Immediately following this statement, the MND states “[h]owever, the proposed structure would occupy only about 2% of the 17.1-acre site. In addition, the proposed residence would be similar in scale to other residences farther west...as well as those farther north... Finally...the change to views from Highway 101, the primary view corridor in the area, would be minimal.” On this basis, the MND concludes “[t]herefore, although the proposed project would change visual conditions on portions of the project site, it would not fundamentally alter the visual character of the project area. Impacts would be less than significant.” P. 8.

The above reasoning is flawed in several regards. First, the proposed residence is not similar in scale to other residences in the area. The average size of proposed and existing residences on the Gaviota Coast is 2,852 square feet. *See* Exhibit 18. The proposed residence therefore is *over four times the size of the average home in the area*. Indeed, the size discrepancy between the proposed residences and residences in the development located immediately to the east is readily evident from a cursory examination of the Photosimulation Key Plan (DMND Figure 9). Second, although changes from Highway 101 may be minimal, the Project site is visible from other public viewing places including Farren Road.

Among the observations of area residents found to constitute substantial evidence of aesthetic impacts in *Pocket Protectors* is that the Project resulted in “the overall degradation of the existing visual character of the site from the excessive massing of housing with insufficient front, rear, and side yard setbacks.” 124 Cal. App. 4<sup>th</sup> at 937. Observations by members of the public regarding the Ballantyne Project include that the prominent location, as well as the massive size and length of the residences degrade the visual character of the site. *See* above section and Exhibit 16. Under *Pocket Protectors*, the evidence that the Project may adversely change the visual character of the area is substantial and therefore an EIR is required.

iv. Landscaping Is Insufficient to Resolve Visual Impacts and Inconsistencies with Visual Policies and Standards

Planning and Development Staff has raised significant concerns regarding the adequacy of the landscaping plan. “Based on the limited information in the revised landscape plan, staff concluded that the proposed trees are unlikely to fully block or screen the residence as seen from Farren Road to the north.” Planning and Development Memorandum, October 27, 2006, p. 4. Further, in its previous denial of the Project, Planning and Development Staff raises two additional concerns, 1) the three-year period required for the trees to mature will delay screening and 2) that “[t]here are many uncertainties about establishing and maintaining an orchard on this

steep south-facing slope.” Planning and Development, Denial Letter, P. 2. Public comment also expresses deep concern with the adequacy of the landscape plan. For example, Joan Bolton wrote “the applicant proposes planting eight oak trees and 10 California white elders...Alders are native to moist streambeds, not bare, windswept hillsides, and they drop all their leaves during winter. Furthermore, I fail to understand how eight oaks and 10 deciduous trees can sufficiently block views of a highly visible structure that intrudes into the skyline by more than the length of a football field.” Exhibit 14, p. 2.

e. Substantial Evidence of Impacts to Geology and Soils

The checklist used to assess whether a Project may have impacts to geology and soils lists various factors includes whether the Project would result in “permanent changes in topography.” For this factor, the MDND checks the box for “less than significant impact.” The impact discussion which follows states “[t]he proposed project would require permanent topographic changes.” This discussion is contradictory and substantial evidence in the record supports a fair argument that the permanent topographic change affected by the berm is significant.

Additionally, the amount of grading required for the berm generates other potential impacts. For example, the DMND states that “site grading could potentially increase erosion and sedimentation, which could affect nearby drainages.” P. 22. These impacts should be quantified. Sedimentation will impact coastal areas, including ESHA. The effects of the loss of vegetation on the site and extensive use of coir rolls to contain soils and slow erosion have created an unstable current condition. This is a Project impact that must be examined in the environmental review document.

f. Mandatory Findings of Significance Are Required

CEQA provides for certain situations in which the County must find that a Project may have a significant effect on the environment. *See* Guidelines Appendix G, § XVII. The County’s checklist for mandatory findings of significance includes the following situation: where “disagreement supported by facts, reasonable assumptions predicated upon facts and/or expert opinion supported by facts over the significance of an effect which would warrant investigation in an EIR[.]” DMND, p. 42.

The record in this case reveals substantial evidence of disagreement regarding the significance of the Project’s effect on visual resources and consistency with visual resource policy. As quoted throughout this letter, Planning Commission, Planning and Development staff, the Board of Architectural Review as well as the Project applicant and members of the public have all articulated opinions regarding the Project’s visual impact and consistency with visual policy, and have reached conflicting conclusions. This topic remains an area of significant disagreement, and indicates that an EIR must be prepared.

### 3. Deferral of Necessary Mitigation in Violation of CEQA

“The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA.” *Sundstrom v. Mendocino* (1988) 202 Cal. App. 3d 296, 306. Regarding impacts to geology and soils, the DMND defers a critical study required to determine the footprint of the proposed berm, and the amount of grading required. Discussed below, this approach masques potential impacts and stands in direct violation of CEQA. *See id.*

The DMND assumes that all conditions of approval applied by the Planning Commission would be implemented. Condition 4 of the draft Land Use Permit contains the following requirement: “[a] detailed geological and/or soils engineering study addressing the berm, structure sites and driveway shall be prepared to determine structural design criteria, as recommended by the P&D Building & Safety Division. The Study shall be submitted for review and approval by Public Works.” DMND, p. 21. Planning and Development Staff has stated that a “soils report and preliminary grading plan are required before we can accurately delineate the full extent of the grading for the berm or provide consistent cut and fill estimates for the berm. The amount of fill required for the berm may be greater than 4,600 cubic yards. The grading may extend beyond the footprint of the berm shown in the revised plans.” Exhibit 10, p. 2. It does not appear from the DMND that these issues were clarified, rather a ‘detailed geological and/or soils engineering study addressing the berm’ is required as a Land Use Permit condition. *See* p. 22.

Environmental review of this Project is severely hampered without the results of this study, particularly because the berm is relied upon to achieve consistency with applicable policies. If for example this study were to find significant concerns with the berm design, the berm may need to be altered. Subsequent environmental review would then be required to determine whether the new berm design sufficiently screens Project structures from public view.

In short, this study should be prepared prior to the drafting of the MND; postponing this critical study raises significant concerns regarding the accuracy of conclusions in the MND, particularly in the areas of aesthetics, geology, and land use/policy consistency.

### 4. Failure to Exercise Independent Judgment in Violation of CEQA

CEQA requires that the lead agency “independently review and analyze” the MND and “circulate draft documents that reflect its independent judgment.” Public Resources Code § 21082.1; *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1397 (Cal. App. 4th Dist. 1995).

As evidenced by statements in previous documents regarding the Ballantyne Project, County Staff has real concerns about the potential impacts of the Project. *See* Exhibit 11. Many of Staff’s concerns are addressed in the MND, then quickly rejected without adequate justification or explanation, and evidence supportive of Staff’s concerns was excluded from the MND.

We understand that this Project has a somewhat unusual history, and that Planning and Development Staff initially denied the Project outright. That denial was appealed and the Planning Commission, at which point the Commission imposed conditions on the Project and overturned Staff's determination. Even after the imposition of conditions, Staff continued to express significant concerns regarding the Project. Exhibit 10.

Staff did not prepare the MND, rather a consultant performed that task. We are concerned that the consultant has prepared a document which largely parrots the previous statements of the Planning Commission and glosses over the significant concerns previously raised by Staff and the public. It appears that evidence in the record was selectively used in order to support the Planning Commission's previous conclusions, as evidence adverse to the Commission's previous conclusions appears to have been systematically excluded. This approach violates Public Resources Code § 21082.1 and constitutes an abuse of the CEQA process.

#### 5. Improper Manipulation of the Environmental Review Process

The scope of the MND and indeed the decision to prepare an MND as opposed to an EIR, appear to be based, at least in part, on direction from the Board of Supervisors and County Executive Officer Michael Brown. *See* Exhibit 20. The manipulation of the scope and content of the environmental review document has compromised the integrity of the County's environmental review and planning process. The previous request for independent visual simulations was unilaterally rescinded at the direction of Executive Officer Brown. *Id.* As demonstrated above, this omission infects the adequacy of the DMND and was based on political expediency, not substantial evidence or professional judgment. Mr. Brown also directed the waiver of certain fees for the applicant and this project, a highly unusual action resulting in a public subsidy of the processing costs for this project. In this manner, County Officials improperly manipulated the environmental review process, contributing to the substantial technical and legal inadequacies associated with the DMND. The competency and independence of the environmental review process was compromised by the injection of political influence over the processing of this project.

#### 6. Global Climate Change

The proposed single family home is nearly 12,000 square feet. As discussed, the water usage associated with this massive structure, appurtenances, water features and landscaping is expected to be considerable. Further, construction of this massive Project will require vast amounts of raw materials, non-renewable resources and energy. Energy use following Project completion may also be considerable based on the house's size. For these reasons, an assessment of the Project's effect on global climate change is required, including an assessment of the Project's carbon footprint and energy consumption.

7. The Building Is Not “Green”

The applicant places considerable weight on the green building design as justification for allowing the Project to proceed, but this factor is irrelevant to the environmental review process. While laudable as a concept, green building design is not itself sufficient to resolve all environmental impacts and policy inconsistencies. Nor can this house qualify in any way as a legitimate green building. This house, designed to house two persons, will require grossly disproportionate amounts of raw materials, non-renewable resources and energy. Its sprawling layout and excessive size entails an inordinate consumption of non-renewable resources. The County would set an adverse precedent if it were to allow faux green building design or other factors to compensate for the significant impacts and policy inconsistencies associated with this Project.

8. Conclusion

The proposed Project will cause various significant environmental impacts and policy inconsistencies, which the severely deficient analysis contained in the DMND all but admits. An environmental impact report is required due to the ample substantial evidence of significant Project impacts to visual resources (including the expert testimony of Ken Doud, submitted under separate cover), biological resources, soils and geology, water supply and distribution and Project inconsistencies with the General Plan, zoning ordinance and development standards. The County must respect the mandates of CEQA and observe the requirements of County policy and ordinance. Through the environmental review process, the County could conceivably condition and refine the Project in such a way that the impacts and policy inconsistencies are avoided, however the DMND fails in this effort and significant impacts remain.

In light of the severity of these issues, we request that the County prepare and circulate a response to the comments submitted to this DMND. We believe the Project should be redesigned and a revised environmental review document circulated before the County initiates further proceedings regarding this Project.

Sincerely,

---

Marc Chytilo

- Exhibit 2: Letter from Alan Bell of County Planning and Development to Richard Adam (January 21, 2008)
- Exhibit 3: Gaviota Coast Draft Feasibility Study and Environmental Assessment, Part 1, Chapter 3, National Park Service (April 2003)
- Exhibit 4: Board of Architectural Review Committee minutes, Meeting of November 18, 2005, item 9
- Exhibit 5: Comprehensive Plan Parks Recreation and Trails Map for the Santa Barbara –Goleta Area (PRT-3)
- Exhibit 6: Santa Barbara Audubon Society Field Trips Webpage (printed May 28, 2008)
- Exhibit 7: Santa Barbara County Birding’s website, search for ‘Farren’ (printed May 28, 2008)
- Exhibit 8: SBslopers Webpage (printed May 28, 2008)
- Exhibit 9: Revised Draft Environmental Impact Report for the Santa Barbara Ranch Project (November 2007), selected pages
- Exhibit 10: Dianne Meester Black Memorandum (October 27, 2006)
- Exhibit 11: County Staff Report for Appeal of Land Use Permit Denial (October 4, 2006)
- Exhibit 12: Board of Architectural Review Committee minutes, Meeting of September 9, 2005, item 10
- Exhibit 13: Final Mitigated Negative Declaration for Burinda Vesting Tentative Parcel Map (April 30, 2007), selected pages.
- Exhibit 14: Bolton Comment Letter to the Planning Commission (November 8, 2006.)
- Exhibit 15: Photo looking towards Project site from Vereda Leyenda, photographed and submitted by Joan Bolton (September 4, 2006)
- Exhibit 16: Hackett Comment Letter to the Planning Commission (October 2, 2006)
- Exhibit 17: County Denial Letter, Ballantyne Single-Family Residence and Accessory Structures (June 14, 2006)

Mr. Allen Bell – Ballantyne DMND Comments

May 29, 2008

Page 30

Exhibit 18: Average Gaviota Home Size

Exhibit 19: Mapmyride.com website printout, Farren Road bike route (printed May 28, 2008)

Exhibit 20: Letter from John Baker of Planning and Development to Richard Adam (September 18, 2007)

Exhibit 21: Water Worries Return, The Goleta Grapevine, Santa Barbara Independent (May 19, 2008)