

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

July 8, 2008

Mr. Alex Tuttle
County of Santa Barbara
Planning and Development
123 E. Anapamu St.
Santa Barbara, CA 93101

*By hand delivery and by email to
atuttle@co.santa-barbara.ca.us*

RE: Las Varas Ranch Project EIR Scoping Document

Dear Mr. Tuttle,

Please accept the following comments on behalf of our clients, the Gaviota Coast Conservancy (GCC). We have reviewed the EIR Scoping Document for the Las Varas Ranch Project (Project), and offer the following comments and suggestions.

Las Varas Ranch provides habitat for several special status species including the monarch butterfly, California red-legged frog and white-tailed kite. The Project site is visible from Highway 101, as well as trails and potentially other public viewing places. Productive agriculture exists on the site. Given these sensitive resources, a more precise definition of building envelopes and building heights, as well as siting must be included in the Project Description to permit analysis of Project and cumulative impacts. Further, avoiding biological, visual, agricultural and other impacts may require, in addition to adjustments to structures' locations and off-site alternatives, conservation easements for the land outside designated building envelopes as mitigation.

The location and environmental setting of Las Varas Ranch has a profound influence on the Project's environmental impact. The Project is located on the Gaviota Coast, the last relatively undeveloped stretch of coastline in Southern California. There are currently at least 22 applications for development projects pending on the Gaviota Coast, most of which will result in residential development. The Santa Barbara Ranch Project, which proposes between 54 and 72 residences, is located in the immediate vicinity of Las Varas Ranch. The Makar property, much of which is already proposed for development, is located immediately south and east of Santa Barbara Ranch. The cumulative impact of this development on this portion of the coast, and the Gaviota Coast at large necessitates the identification and consideration of a regional alternative which clusters proposed structures together, to minimize adverse impacts to views, agriculture, and biological resources, to name a few. Additionally, the environmental review document must identify and consider other methods for avoiding the impacts, such as use of a transfer of development rights program, a partial or full buyout of development rights, clustering of development proposed on this and surrounding ranches, and similar creative strategies.

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1. Extended Public Review Period

Public review and comment on environmental review documents is “an essential part of the CEQA process.” Guidelines § 15201. CEQA imposes a “responsibility” upon every citizen “to contribute to the preservation and enhancement of the environment.” Pub. Res. Code § 21000(e). CEQA Guidelines § 15105 authorizes a public review and comment period for a DEIR beyond 60 days in “unusual circumstances.” Guidelines § 15105(a). This project presents such unusual circumstances which hinder the public’s ability to review, respond and comment upon the DEIR by the unusual circumstances presented in the Las Varas Ranch Project which substantially enhance the Project’s complexity beyond that of the run-of-the-mill project.

Not only is Las Varas Ranch located on the resource-sensitive Gaviota Coast, it is located in the immediate vicinity of two (or three) other residential development projects pending before the County: the Santa Barbara Ranch Project, with or without the Dos Pueblos Ranch, and the Makar Residential Development Project. The proximity of these other residential development projects adds considerably to the complexity of the Las Varas Ranch Project. For example, the Las Varas trail element should be designed to connect to the trail elements proposed for these other projects, and designed in such a way that cumulative adverse recreational impacts are minimized. Additionally, preserving the rural character of the Gaviota Coast may require a regional clustered alternative which integrates development proposed for the Santa Barbara Ranch, Dos Pueblos Ranch, and Makar properties.

Another unusual circumstance is presented by the multiple public review and agency decisionmaking processes underway – the Planning Commission then Board of Supervisors are considering the Santa Barbara Ranch project, and an environmental review document is being prepared for Makar’s residential projects. The County is reviewing changes to the Tajiguas Landfill, and there are numerous other Gaviota Coast projects under consideration. The prominence of the Gaviota Coast and its environmental resources in the community similarly justifies an extended public review period for this project. To comprehend the Project’s complexity and intelligently weigh-in on the environmental review process, the interested public needs more than 60 days to review and comment upon the EIR. Therefore we respectfully request that the County provide for a 90 day public review and comment period for the Draft EIR.

2. Transparency

Given reports of County Management manipulation of the environmental conclusions of Planning Department staff, this EIR should be prepared by an independent, qualified consultant. In the event that County Staff prepares the EIR, they must consult with qualified planning and

resource professionals in each subject area and incorporate the unaltered input of these professionals' objective opinions transparently on the record.

3. Potential Misuse of Lot Line Adjustment

Section 21-93 Chapter 31, Article III of the Santa Barbara Subdivision Regulations sets forth the findings required for approval of a lot line adjustment. It provides as follows:

all parcels resulting from the Lot Line Adjustment shall meet the minimum parcel size requirement of the zone district in which the parcel is located. A Lot Line Adjustment may be approved that results in nonconforming (as to size) parcels provided it complies with subsection a or b listed below:

- a. The Lot Line Adjustment satisfies all of the following requirements:
 1. Four or fewer existing parcels are involved in the adjustment; and
 2. The Lot Line Adjustment shall not result in increased subdivision potential for any affected parcel; and
 3. The Lot Line Adjustment shall not result in a greater number of residential developable parcels than existed prior to the adjustment...
- b. The parcels involved in the adjustment are within the boundaries of an Official Map for the Naples Townsite...

The proposed Lot Line Adjustment results in parcels smaller than the minimum parcel size within the existing zone district. Las Varas Ranch is not within the boundaries of the Naples Townsite, so the LLA must comply with all provisions in subdivision (a) above. Because the LLA results in a greater number of residential developable parcels, it may be impossible to make the required findings. As part of the impact analysis for land use and consistency with applicable policy, the EIR must evaluate the developability of each of the existing parcels in their current configuration. If any of these parcels are not developable due to site constraints, policy conflicts, access, septic limitations, etc., the final number of developable lots must be adjusted accordingly.

4. Unreasonably Large Buildings and Building Envelopes

The proposed three to five acre development envelopes are too large, accommodating estate structures that are unnecessarily out of character with the rural Gaviota Coast and which will result in avoidable significant impacts. The development envelopes must be reduced to avoid significant impacts to visual, biological, agricultural and other resources.

Similarly, the EIR must examine the sustainability of oversize houses, and recognize that extremely large houses involve consumption of inordinate amounts of resources and pollution, including greenhouse gases. Large houses, for example, are penalized in the LEED rating

system. See <http://www.usgbc.org/ShowFile.aspx?DocumentID=3638> (Home Size Adjustment, page Xiv). New homes that substantially exceed the average Gaviota Coast home involve incrementally greater impacts that must be recognized in the environmental review document. See Exhibit 5.

5. Seventh Lot Requires a Building Envelope

The seventh lot must have a development envelope identified. The area on which development would be allowed is too large to permit for analysis of the potential impacts of developing the seventh lot. Visual impacts for example cannot be assessed unless the Project Description delineates the general siting of proposed structures. Access to remote lots may also cause visual and other impacts, so these project details must be disclosed.

6. Trail Alignment

The proposed horizontal public trail is improperly located north of Highway 101. This trail alignment is inconsistent with a key objective of the California Coastal Trail, to “[p]rovide a continuous trail as close to the ocean as possible”. Completing the California Coastal Trail, attached hereto as Exhibit 2. There are two places where the trail can return to the north side of the highway; at the El Capitan Horse Ranch underpass, or the Gato Canyon under-crossing. Regional connectivity is necessary to complete the California Coastal Trail and should be a key consideration in the alignment of the trail easements on Las Varas Ranch.

7. 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.” Gaviota Coast Draft Feasibility Study and Environmental Assessment, Part 1, Chapter 3, attached hereto as Exhibit 1 and referenced due to its analysis of the significance of the Gaviota Coast’s resources, not for the point that a Seashore is suggested or appropriate. 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.

This exceptional environmental setting must be fully taken into account when evaluating the Las Varas Ranch Project. For example the cumulative visual impact of residential development extending from the Bacara all the way to Las Varas is fundamentally out of character with the rural Gaviota Coast and violates numerous County policies.

8. Project Description

A complete and accurate project description is a necessary element of an adequate EIR. “The project description must contain sufficient specific information about the project to allow the public and reviewing agencies to evaluate and review its environmental impacts.” *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26. “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. “A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” *Id.*, 71 Cal.App.3d at 198. CEQA Guidelines § 15124 directs that an EIR should include information “needed for evaluation and review of the environmental impact.” A project description that omits any “integral part of the project” is inadequate. *Dry Creek, supra*, citing *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829.

It is imperative that the Project Description for the Las Varas Project include as much specificity as possible regarding the development that will ultimately take place at the site. More precision is needed regarding structure siting, height, design, lighting and landscaping. Conceptual designs may be necessary to for evaluation of any adverse environmental impacts associated with the build-out of the Las Varas site. All agricultural elements of the project, including past and foreseeable future agricultural structures and activities affecting the environment, must also be identified as part of the Project Description.

9. Impact Analysis

a. Aesthetics/Visual Impacts

The visual impact of the residential development merits special attention. Discussed above, additional information regarding the siting, size, height, and design of structures is necessary to evaluate the Project’s visual impacts. Particularly because, as noted by staff, the development of seven estate homes may alter the visual character of the Gaviota Coast.

Visual simulations must be prepared for Project structures, and include all publicly accessible viewing places, including views from trails, El Capitan State Park (coastal and inland trails), Ferren Road and from the Pacific Ocean. Project and cumulative impacts to recreational users (beach-goers, boaters, hikers, birders, surfers, divers) must be considered from these vantage points. Further, visual simulations should be undertaken assuming no vegetation and screening.

To help ensure accuracy of the visual analysis, all Project structures must be story-poled and public site visits provided prior to the close of the scoping period and during the review period. It appears that certain building envelopes may be visible from the freeway (*see e.g.*

<http://www.californiacoastline.org/cgi-bin/image.cgi?image=200600413&mode=sequential&flags=0&year=current>) relocation of building envelopes may be necessary to avoid visual impacts and inconsistencies with visual policies.

i. Agricultural Resources

With estate residences proliferating, the future of Gaviota Coast agriculture is increasingly uncertain. Las Varas Ranch has prime agricultural soils and is the site of productive agricultural operations. Introducing non-agricultural uses associated with coastal mansions threatens to create conflicts with existing agriculture. The EIR must closely analyze the Project's potential direct impacts to agriculture and agricultural viability and must thoroughly evaluate the Project's cumulative impact on Gaviota Coast agriculture. Impacts should be avoided to the maximum extent feasible, then mitigated.

As stated above, all agricultural elements of the Project, including past and foreseeable future agricultural structures and activities affecting the environment, must be identified as part of the Project Description. This information is necessary to evaluate the Project's impacts upon existing agriculture. Further, because the site contains prime soils, some of which are designated as Unique Farmland or Farmland of Statewide Importance, the impact analysis include a detailed assessment of soil distribution and agricultural viability. The EIR must also evaluate whether the proposed lot sizes are sufficient to support continued agriculture.

ii. Air Quality

The EIR Scoping Document lists the 2004 Santa Barbara Clean Air Plan as a source of information on air quality. P. 8. The Santa Barbara County Air Pollution Control District adopted a new Clean Air Plan in August of 2007. *See* <http://www.sbcapcd.org/cap.htm>. The County should utilize the 2007 Clean Air Plan throughout the environmental review process.

The California Air Resources Board recently released a draft scoping plan to reduce California's greenhouse gas emissions by 30 percent over the next 12 years. "The draft plan encourages improvements to the ways we grow and build our communities to make more livable, walkable cities, and shorten commutes." Air Resources Board News Release, attached hereto as Exhibit 4. Rural residential developments such as the one facilitated by the Las Varas Ranch Project require longer commutes, extensive service and vendor support, disproportionate consumption of resources and emissions generation which must be considered in the EIR.

iii. Biological Resources

Las Varas Ranch supports habitats for numerous special status species including California red-legged frog, Coast range newt and white tailed kite, as recognized in the Scoping Document. All potential direct and indirect impacts to these species must be thoroughly analyzed in the EIR, including any impacts associated with the proposed bridge across Gato Creek. Cumulative impacts, including the cumulative loss of native vegetation and the loss of habitat for special status wildlife, must also be thoroughly assessed.

Four-season biological field surveys should be conducted by qualified personnel hired by the County that do not have allegiance or contractual affiliation with the Applicant. Extensive surveying in the winter and spring months is necessary because a population of Vernal Pool Fairy Shrimp was encountered near the Project site in 2001. *See Exhibit 6.* This federally threatened crustacean is only found in ephemeral vernal pools, but can survive in the soil until the pool reappears. *See Exhibit 3.* The cumulative effect of grassland loss and conversion, as well as other impacts to habitat, must be considered in the EIR. All lands that potentially qualify as environmentally sensitive habitat areas due to their ecological function and sensitivity must be identified. All wetlands must be carefully delineated, including ephemeral wetlands that may be apparent only periodically but provide important ecological function.

iv. Cultural Resources

The project area was the site of extensive occupation by native peoples. “Depending on the location of the building footprints, road improvements, water line trenching, and other ground disturbing activities, impacts to known archaeological resources could be potentially significant. In addition, grading and site preparation could result in potentially significant impacts to unknown archaeological resources given the general cultural sensitivity of the site.” Scoping Document, p. 11. These acknowledged potential impacts must be thoroughly evaluated by a qualified archaeologist unaffiliated with this or any other nearby development project, and that information integrated into the EIR. In addition, Las Varas Ranch is culturally and spiritually significant to native peoples and to Gaviota Coast Families and visitors. This cultural and spiritual significance must be evaluated in the EIR in addition to any archaeological significance. The County should immediately notify and initiate consultation with interested representatives of native peoples and tribal bands. In light of interest in the adjacent Dos Pueblos Ranch, the State Office of Historic Protection should be specifically consulted.

v. Fire Protection

Evacuation of the Project and surrounding lands in wildfire must be addressed as part of the project description. Fuel clearing practices must be described throughout the process as they affect environmental resources and issues including views, biology, habitat, light and glare, regional character, and others.

vi. Geologic Processes

The EIR must fully assess historic erosion of Edwards Point and projected future erosion in light of sea level rise, increased storm activity, and other global climate change concerns. The building envelope near the point may be inappropriate in light of potential erosion. Failure to properly account for erosion is of particular concern here, because Edwards Point is a prized surf spot, and a future seawall would detrimentally affect recreation. The EIR must also fully assess erosion along Gato Creek and the appropriateness of locating building envelopes along the Creek.

vii. Historic Resources

The Ranch is an historical landscape, defined as "a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person or exhibiting other cultural or aesthetic values" thus and an historical landscape study is required. Cooper's Comprehensive Environmental Desk Reference, page 163 (1996). A historical and cultural landscape study is required to determine the elements of this historical landscape and ensure the Project does not adversely affect it.

viii. Land Use

Conflicts with applicable policies designed at least in part to mitigate or avoid significant environmental impacts are considered significant impacts under CEQA. CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 934, 936. It is therefore imperative that the EIR evaluate policy consistency as part of the environmental impact analysis. The EIR must thoroughly evaluate the Project's consistency with the numerous policies contained in the Local Coastal Plan, Zoning Ordinance, Coastal Act and General Plan. Further the EIR must address land use conflicts between mansion living and adjacent agricultural operations, and identify these conflicts as potential adverse environmental impacts.

ix. Recreation

The EIR Scoping Document indicates that impacts to recreation are less than significant, so the EIR will not explore this area further. P. 21. We admonish against dismissing this area entirely, because the Project site has exceptional recreational value. A coastal trail easement could provide a vital section of the California Coastal Trail and link nearby trail segments. The site includes a surf spot known as "Eddies" and the beach has substantial recreational value. Public use of the area must be evaluated, and the potential effect of increased public use on resources at the site. Prescriptive rights may also exist on this or adjacent properties which must be

evaluated. Further, and as discussed above, allowing construction too near Edwards Point could impair or even destroy its recreational value. These issues must be evaluated in the EIR.

x. Water Resources/Flooding

The EIR must include detailed hydrological information in light of the new water well. The EIR must also thoroughly evaluate potential water contamination, bluff destabilization and other problems presented by locating septic systems near the Creek.

xi. Other Issue Areas:

1. Railroad Crossing Safety

The two bluff homes are proposed to be served by an existing ranch road that now crosses the railroad at the far west end of the property. It is an unregulated crossing, no flashing lights or barriers. See <http://www.californiacoastline.org/cgi-bin/image.cgi?image=200600411&mode=sequential&flags=0&year=current>. This unsignalized crossing may pose significant safety impacts which must be evaluated in the EIR.

2. Growth Inducement

The Project is on the Gaviota Coast beyond the urban limit line and may have growth inducing impacts that must be thoroughly evaluated in the EIR.

10. Alternatives and Mitigation

An EIR must describe a reasonable range of alternatives to the project, or to the location of the project, that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of the significant effects of the project. Guidelines, § 15126.6(a), (f). The proposed Project may fragment agricultural operations and impact biological and cultural resources, and the development of seven estate homes may alter the visual character of the Gaviota Coast. It is imperative that the EIR identify strategies to avoid these impacts or craft mitigation measures which eliminate them.

To protect sensitive resources, active management plans and Conservation Easements should be considered for the areas outside the development envelopes. The EIR should also consider placing limitations on the size of the building envelopes, as well as on structure size, height and design in order to mitigate adverse environmental impacts caused by the structures. Further, limitations on minimum lot size may be required to protect existing and future agricultural viability.

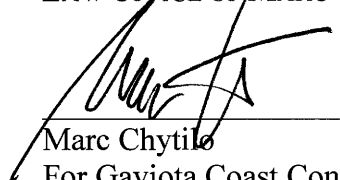
Avoidance of adverse cumulative impacts associated with locating so much residential development along a short stretch of the Gaviota Coast may require a regional clustered alternative. Such an alternative would cluster development at Las Varas with development proposed on the Makar, Santa Barbara Ranch and Dos Pueblos Ranch.

We appreciate the County's careful consideration of our concerns in this process.

Thank you for your consideration of these comments.

Sincerely,

LAW OFFICE OF MARC CHYTILO



Marc Chytilo
For Gaviota Coast Conservancy

- Exhibit 1: Gaviota Coast Draft Feasibility Study and Environmental Assessment, Part 1, Chapter 3.
- Exhibit 2: Completing the California Coastal Trail, selected pages.
- Exhibit 3: Species Account: Vernal Pool Fairy Shrimp, U.S. Fish & Wildlife Service, Sacramento Fish & Wildlife Office, downloaded from http://www.fws.gov/sacramento/es/animal_spp_acct/vp_fairy.pdf.
- Exhibit 4: Air Resources Board News Release, 6/26/08, downloaded from <http://www.arb.ca.gov/newsrel/nr062608.htm>
- Exhibit 5: Gaviota Coast Conservancy Gaviota Coast Home Size Survey, 11/2004
- Exhibit 6: Santa Barbara Ranch FEIR, selected pages.