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ALISON E. BRENNEMAN

VIA CERTIFIED MAIL

May 1, 2007

Mike Ghizzoni
Chief Deputy
Office of County Counsel
105 East Anapamu, Suite 201
Santa Barbara, CA 93101

Re: Gaviota Coast Conservancy Appeal of "Case Number: 06APL-00000-00019"

Dear Mr. Ghizzoni:

This office represents Randy Welty and Lynn Ballantyne, the owners of APN 079-090-036 (hereinafter, the "Owners"), on matters related to an appeal of a Land Use Permit ("LUP") that was approved by the Planning Commission for a single family residence on the site (the "Project"). As you are aware, this appeal was filed by the Gaviota Coast Conservancy ("GCC") on November 20, 2006, but has not yet been heard by the Board of Supervisors ("BOS"). Based upon correspondence with County Staff, it is our understanding that the matter has been calendared for June 19, 2007.

The purpose of this letter is to inform both County Counsel and the BOS (a) that the GCC appeal has failed to meet certain threshold requirements and should be rejected as such by the BOS, (b) that, should the appeal nevertheless be heard, it must be denied on the merits and, (c) that any contrary decision would expose the county to legal action for, among other potential causes of action, those associated with due process and equal protection violations under the United States Constitution.¹

¹ This letter has been drafted as a cursory and preliminary response to County Staff members who have issued written opinions on the GCC appeal without the benefit of a full understanding of the factual or legal principles at issue. A more complete opposition brief that includes a full exhibit list will be submitted to the Clerk of the Board prior to the hearing in accordance with local procedure.

A. The GCC Appeal Is Barred Procedurally Both Because It Is Untimely And Because It Is Based Upon An Incorrect Case Number.

The GCC appeal of the LUP was untimely as a matter of law. "Final Approval" of the LUP was issued on November 8, 2006. Article III of Santa Barbara County Code §35-327.3 – the code section that was in effect at the time of the GCC appeal – specifically required appeal of any Planning Commission decision to be "filed with the Clerk of the Board of Supervisors ***within the ten (10) calendar days following the date of the Planning Commission's decision.***" However, as is apparent from the Clerk's stamp on the document itself, the GCC appeal was not filed until November 20, 2006, two days late under the plain language of the applicable county ordinance.²

There is no question that, based on the plain language of the applicable county code section, this appeal must be rejected by the BOS as untimely. It should be noted that this would not be the first time such an action was taken by the BOS. Indeed, many prospective appellants – including some represented by this firm – have had appeals rejected as untimely upon **11th day** filings.

Aside from the fact that the GCC appeal is statutorily untimely, it is also facially deficient. The case number enumerated on the face of the approved LUP itself (i.e. the Planning Commission decision purportedly being appealed by the GCC) is 05-LUP-00000-00611. ***However, the GCC did not appeal this case number.*** Instead, the GCC appealed "Case No. 06APL-00000-00019." This case number does not refer to the Planning Commission's decision to approve the LUP. Rather, according to documents provided by County Staff, this case number refers to the ***Owner's*** appeal ***to*** the Planning Commission of P&D's denial of the Project. In short, the appeal filed by the GCC presents no appealable issue for the BOS to hear because it does not relate to the Planning Commission's decision to approve of the LUP. According to applicable Santa Barbara County Code, Article III, §35-327.3, only "decisions" of the Planning Commission are appealable to the BOS. The Planning Commission's "decision" to approve the LUP is represented by case number "05-LUP-00000-00611" and not the case number that is enumerated in the GCC's appeal (06APL-00000-00019). As such, the Planning Commission's decision to approve the LUP is not properly before the BOS and cannot be heard as such.

To disregard these two fundamental principles would be to disregard statutory requirements and would constitute serious due process violations for the Owners of the Project.

² It should be noted that, unlike §35-327.3, Section 3582.20 of Santa Barbara County's "reformatted" Land Use and Development Code ("LUDC"), a code section which did not take effect until January 1, 2007, specifically allows for 11th and 12th day appeals in certain circumstances including holidays and weekends. The absence of such language from the former – and governing – code section simply establishes that which is facially apparent from the plain language of §35-327.3: that "10 calendar days" actually means "10 calendar days."

B. The GCC Appeal Fails On The Merits.

Should the BOS allow the appeal to be heard at all (and it should not), it must nevertheless fail based upon its patent lack of merit. The GCC Appeal rests entirely on two wholly specious allegations; first, that the Project does not conform to the "General Plan and zoning ordinance [sic] view policies" (Appeal, p. 2), and second, that the Project is required to go through "environmental review" because it is allegedly not "ministerial." (Appeal, p. 9) These issues are addressed separately below.

1. The Project Does Not Violate Any "Visual Resource" Policy, A Fact Which Has Already Been Established By A Myriad of Experts And County Staff.

The GCC's primary argument consists of the wholly unsupported allegation that the Project violates certain of the County's "visual resource" policies. The appeal states, for example, that the project does not comport with "Visual Resources Policy 2," which itself states the following:

In areas designated as rural on the land use plan maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment ...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. (Appeal, p. 2-3)

The appeal fails to point out, however, that **County Staff has already found that the Project comports with this policy and all others.** In its "Findings of Approval" for the Project, County Staff unambiguously stated that "the proposed development [the Project] conforms to the applicable policies of (1) the Comprehensive Plan and (2) the applicable provisions of this Article (Article III)." Specifically, County Staff has already made the following written findings related to the Project;

- (a) "The project conforms to applicable provisions in the Comprehensive Plan, Goleta Community Plan, and Article III, ***including the visual resources*** and hillside and watershed protection policies;"
- (b) "The height, scale and design of the proposed structures are compatible with the character of the surrounding natural environment;"
- (c) "[The residence] has been designed to follow the natural contours;"
- (d) "The residence will be subordinate in appearance to natural landforms;" and,
- (e) "The residence is sited so as not to intrude into the skyline as seen from public viewing places... [including] Highway 101, Farren Road, and other public viewing places."

These findings were based, at least in part, upon expert testimony and innumerable pages of expert documentation provided to the Planning

Commission and Staff, including those submitted by highly qualified architects, surveyors, and engineers.

Based upon the wealth of evidence presented to the Planning Commission and based upon the County's own stated position on the matter, it is abundantly clear that the GCC's "visual resource" allegations – which themselves have no basis in fact – are without merit.

2. The Project is Statutorily Exempt From "Environmental Review" Because The Project Is Ministerial Under Section 15268, et. seq. of the CEQA Guidelines.

The second argument made in the GCC appeal is that the project is required to undergo "environmental review" under CEQA. Again, the appeal omits mention of fundamental facets of law and fact that conclusively negate this assertion.

Section 15268 of the "Guidelines for Implementation of CEQA" states that "Ministerial Projects are exempt from the requirements of CEQA [including all requirements of "environmental review" associated with CEQA]." Section 15268(b)(1) of the same guidelines makes clear that the issuance of a building permit (including LUP's associated therewith) is "presumed to be ministerial" and therefore exempt from CEQA. Finally, Santa Barbara County Code, Article III, §§ 35-217.3.5 and 35-217.3.6 specifically permits "one single family dwelling unit per legal lot" and "one guest house or artist studio per legal lot."

Stated differently, the Owners have a right to build the Project on the 17 acre legal lot so long as they pay appropriate fees and comport with applicable laws. The LUP, therefore, cannot be characterized as anything other than a ministerial permit. Indeed, the purpose for requiring projects to go through the public hearing process – including the Board of Architectural Review and the Planning Commission – is to inform a project proponent of county policy restrictions such as those associated with height and placement. As is well known, this process often involves many project revisions and numerous re-submittals. ***However, once a project is submitted that comports with applicable ordinances and policies, the approval of the LUP is ministerial.*** That is, the Planning Commission has no choice – no discretion – but to approve the LUP. This distinction is fundamental to land use planning, and has been thoroughly discussed by California courts. See, among others, *Elysian Heights Residents Assn., Inc. v. City of Los Angeles* (1986) 182 Cal.App.3d 21, 31, 227 Cal.Rptr. 226 (building and land use permits are ministerial if compliance with other laws is present); and *Plum v. City of Healdsburg* (1965), 237 Cal.App.2d 308, 314-315, 46 Cal.Rptr. 827, and *Redwood City Co. of Jehovah's Witnesses v. City of Menlo Park* (1959), 167 Cal.App.2d 686, 335 P.2d 195 (an example of a ministerial act is the issuance of a zoning clearance where the proposed land development conforms to the ordinance).

Based upon this established legal principle, County Staff has ***always*** identified the Ballantyne Project as being exempt from environmental review due to its ministerial nature. Two examples of Staff's characterization of this LUP as "ministerial" are found in documents dated July 26, 2006 and September 15,

2006, respectively. In each, Staff identifies the Project as “Exempt as Ministerial Under §15628.” Staff has further issued documents identifying the Project as ministerial even **after** the Planning Commission’s approval of the LUP.

Perhaps more importantly, County Staff has treated literally hundreds of similarly situated proposals as ministerial in the recent past. Indeed, a cursory search of the Santa Barbara Planning Commission’s website returns a list of over **one hundred** new residence related LUP’s that have been categorized as “exempt as ministerial” over the past two years alone.

It would be inequitable and contrary to legal authority for County Staff to alter its longstanding – and currently enumerated – position with regard to the ministerial nature of this Project at this date. Moreover, applying disparate standards between this Project and other similarly situated projects would raise serious equal protection concerns under the United States Constitution.

3. This Project Is Statutorily Exempt From “Environmental Review” Because It Is Single-Family Residence As Enumerated in Section 15303 of the CEQA Guidelines.

Aside from it being statutorily exempt as “ministerial” under Section 15268, the CEQA Guidelines provide a wholly separate and independent exemption for the Project in the instant case. As written in §15303 of the CEQA Guidelines,

Class 3 exemptions consists of a limited number of new facilities and structures...[including] one single-family residence, or a second dwelling unit in a residential zone.

In short, CEQA itself specifically exempts the construction of single-family residences from environmental review. The purpose of this provision is to reduce the financial burden associated with environmental review for owners who are already overly burdened with costs associated with construction of their single-family residence. The GCC’s appeal wholly ignores this statutory exemption.

In summary, the GCC appeal must be rejected by the BOS based upon its failure to meet multiple threshold requirements. Should the BOS nevertheless decide to hear the appeal, it must be denied on the merits, as any BOS action other than denial would violate a myriad of clearly established constitutional protections.

As always, thank you for your attention to this matter. Please do not hesitate to contact me if you wish to discuss the matter further or if you have any questions or comments pertaining to the above.

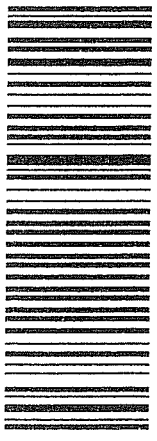
Sincerely,



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