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**Date:** June 12, 2008

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**cc:**

**Re:** Ballantyne Single Family Residence IS/MND Revisions

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As requested, this memorandum provides Rincon's suggestions with respect to addressing the public comments regarding the analysis of aesthetic impacts to the Farren Road corridor contained in the Ballantyne Single Family Residence Initial Study/Mitigated Negative Declaration (IS/MND). As you are aware, the draft IS/MND concludes that aesthetic impacts would be less than significant and that the project would not violate County visual policies, based largely on the conclusion that Farren Road is not an important public view location. This conclusion was reached based on the limited public use of the roadway and lack of any formal designation as a scenic corridor.

A number of commenters on the draft IS/MND stated disagreement with the conclusion regarding the importance of Farren Road as a view location. At least one commenter, Marc Chytilo, provided evidence of fairly extensive recreational activity (hiking, biking) along Farren Road and, more importantly, noted that the Santa Barbara Ranch EIR prepared by the County specifically identifies a point along Farren Road as a "key observation point." That EIR describes key observation points as "locations that represent key sensitive viewer types or potentially significant visual impact locations." Although the impact of the Santa Barbara Ranch project was determined to be mitigable, the EIR stated that "due to the nature of the existing scenic vistas, the overall visual quality from this KOP is rated as high." The EIR also states that "[s]ince most viewers have chosen to visit this area for recreational purposes or are permanent residential viewers, the overall scenic quality is an essential component to these viewer types."

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Given that County has released a public document suggesting that Farren Road is an important view location, and in light of Mr. Chytilo's documentation of the ongoing recreational use of Farren Road, we believe that it could reasonably be argued that the EIR commenters have raised a "fair argument" that this is the case. The IS/MND acknowledges that the proposed residence would be highly visible from Farren Road and relies heavily on the notion that Farren Road is not an important view corridor to support the conclusion that the visual change from Farren Road is not a significant impact under CEQA and would not violate County visual policies. Therefore, we believe that the identification of Farren Road as a key observation point in the Santa Barbara Ranch EIR could be found to contradict this position.

In instances where evidence in the record supports a fair argument that a significant impact may occur, CEQA suggests that an EIR should be prepared rather than an MND (*No Oil Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75). The EIR need not necessarily conclude that impacts would be significant, but would need to air the differences of opinion regarding the significance of project impacts.

Based on the above, our recommendation would be to prepare a focused EIR that, at a minimum, addresses aesthetics and County visual policies. Otherwise, we believe that the County would be vulnerable to legal challenge with respect to the above points. Of course, this is a legal question so we also suggest consulting with the County Counsel in order to determine an appropriate course of action.

If the County elects to move forward with the processing of an MND for the proposed project, we would suggest making the following revisions to the discussion to address the various comments made with respect to the analysis of impacts and policy consistency with respect to Farren Road.

Revise the fourth paragraph under Item 1.a to read as follows:

The proposed residence would be highly visible from the adjacent segment of Farren Road, intruding on foreground views from portions of this road (Figure 15 shows the location of the proposed residence as seen from Farren Road – the residence would be near the top of the ridge in the central portion of the photograph). The new structures would alter views from various vantage points along Farren Road, but would not block views of an identified scenic resource as views of the Pacific Ocean would be retained. The Goleta Community Plan designates the segment of Farren Road that fronts the project site as a "proposed on-road trail" and the paved road is currently used informally as a recreational trail by both hikers and bicyclists. However, Farren Road is not identified as a scenic corridor and travelers along Farren Road are largely primarily limited to recreational users and the handful of residents along the Farren Road corridor. In addition, ~~the project would be visually similar to existing residences along this corridor~~ although the proposed residence would be larger than existing residences in the area, other residences are present along the Farren Road corridor and other residences, including those associated with the Embarcadero West subdivision, are readily visible from Farren Road. Therefore, the proposed project would not introduce a new use that is not already present and readily visible. Finally, the Land Use Permit approved by the Planning Commission at their hearing of October 4, 2006 includes the following conditions to ensure that site development blends in with the surrounding environment and minimize the visual impact from Farren Road:

Also, revise the second paragraph under Section 9.2 of the Policy Consistency section to read as follows:

The proposed residence would be located on a ridge that is at the highest point of the project site and is therefore in a location that is visually prominent from portions of both Highway 101, a designated scenic corridor, and Farren Road, a lightly traveled County road that has no formal designation as a view corridor, **but that is used regularly by hikers and bicyclists accessing points north of the site.** As illustrated on figures 10, 11, and 12, the proposed structures would be only minimally visible from Highway 101 and the berm proposed along the south side of the residence would completely shield the structure from Highway 101; therefore, the residence would not intrude into the skyline from Highway 101. Because the residence would be elevated above Farren Road and along the ridge, it would interrupt views of the existing skyline from Farren Road. However, although it is a public roadway, **travelers on Farren Road only provides access to are limited to recreational users (bicyclists and hikers) and motorists accessing** a minimal number of private properties along Farren Road itself. ~~and~~ **As such, views from Farren Road are available to a limited number users and the roadway does not provide a throughway for the general public. In addition, because other residences are already present within the Farren Road viewshed, the proposed project would not introduce a new use that conflicts with the visual character of the area. Finally, # Farren Road** is not formally designated as a public view corridor, **nor has it been formally identified as an important public viewing location in any adopted County policy document** ~~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 an **important** “public viewing place” and, **although** the proposed project **would be visually prominent from portions of Farren Road,** it could be found to be consistent with this policy.