

**Lenzi, Chelsea**

---

**From:** Carmen J. Borg <Borg@smwlaw.com>  
**Sent:** Monday, November 07, 2016 9:49 AM  
**To:** sbcob  
**Cc:** Lackie, David; Harris, Julie  
**Subject:** Gaviota Coast Plan  
**Attachments:** BOS FEIR Comment Letter 11-07-16.PDF

I submit the attached comments on the Gaviota Coast Plan and EIR on behalf of Surfrider Foundation. Please confirm receipt of these comments via email.

Carmen Borg, AICP  
Urban Planner  
Shute, Mihaly & Weinberger  
396 Hayes Street  
San Francisco, CA 94102  
415-552-7272  
<http://www.smwlaw.com/>

SHUTE, MIHALY  
 WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: (415) 552-7272 F: (415) 552-5816  
www.smwlaw.com

ELLISON FOLK  
Attorney  
folk@smwlaw.com

November 7, 2016

**Via Electronic Mail Only**

County of Santa Barbara  
Board of Supervisors  
123 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101-2058  
sbcob@co.santa-barbara.ca.us  
gaviotacoastplan@countyofsb.org

Re: Final Environmental Impact Report for the Gaviota Coast Plan  
(SCH#2014011027)

Dear Chair Adam and Honorable Supervisors:

This firm represents the Santa Barbara Chapter of the Surfrider Foundation. We submit these comments on the Final Environmental Impact Report for the Gaviota Coast Plan (“Plan”). This firm previously submitted comments on the Draft Environmental Impact Report (“DEIR”) and the Final Environmental Impact Report (“FEIR”), together referred to as “EIR”, for the Gaviota Coast Plan (“Project”). Those comments included a proposed alternative that prioritized protection and enhancement of the Gaviota Coast’s unique resources while allowing for limited development. That alternative was substantively considered as Alternative 2 in the EIR. Surfrider Foundation is pleased that staff incorporated selected policies into the Plan, including Policy Rec-8, Policy Rec-9, Action Rec-8 and Action Rec-9, which address coastal land, public recreation, and open space acquisition and protection and potential right-of-way use.

However, we are disappointed that additional policies in Alternative 2 were not included. As explained in our previous comments, that alternative is consistent with the Comprehensive Plan and emphasizes consistency with applicable guidance provided by the California Coastal Commission. Multiple policies proposed by Surfrider Foundation would afford greater protection to the Gaviota Coast than the proposed Plan, yet the County fails to include these measures and fails to provide a satisfactory explanation for the omission. Moreover, Alternative 2 in its entirety is identified as the Environmentally Superior Alternative, and as such, would provide the greatest protection

of our coastal resources. As the Findings prepared by staff indicate, Alternative 2 would reduce impacts in several issue areas including land use; visual resources; parks, recreation, and trails; and Agricultural Resources. See Staff Report dated October 18, 2016, Attachment 1 Findings at page 11 and 12. The County has an obligation to adopt these policies to mitigate Project impacts to the degree possible. The most critical policies are described below.

In addition, the EIR relies on inaccurate build-out assumptions, which in turn, implicates the EIR's analyses of impacts on visual, biological, and other sensitive resources. In the absence of analysis of full buildout and recirculation of the EIR, the County should adopt Alternative 2, the environmentally superior alternative in lieu of the Project. This approach will provide a Plan that includes the necessary additional mitigation in the form of more robust policies and would ensure the highest protection possible for these important resources.

#### **I. The EIR Fails to Analyze Full Buildout Potential Under the Plan.**

As explained in our previous comments, the EIR fails to analyze full build-out conditions under the proposed Plan. The EIR acknowledges that more intensive development than analyzed could take place. FEIR at response 4-9, p. 9-24. But it fails to analyze the worst case scenario and instead analyzes the "maximum theoretical buildout". FEIR at response 4-13, p. 9-27. This approach violates CEQA because it ignores the full level of development permitted by the plan.

If the EIR is to be limited to analyzing a certain level of growth, the Plan must itself include firm limits on development to ensure that development does not occur at levels higher than assumed in the EIR. In the absence of such limits on development, the County is obliged to analyze the full build out potential of the Plan. Moreover, the EIR fails to include mitigation in the form of policies that would limit the size of residential developments.

The law is clear that the EIR must analyze the total *potential* development approved in the General Plan, even if the County views that total as "unrealistic" as of a certain cut-off date. The EIR's failure to do so understates the Project's impacts and precludes the County from considering "broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." CEQA Guidelines § 15168(b)(4).

Alternatively, the County can adopt the additional policies and revisions below, and described in Alternative 2, the environmentally superior alternative. This

approach will incorporate additional mitigation in the form of more robust policies and ensure the highest protection possible for these important resources.

**Revised Policy LU-4: Development Scale and Siting of Non-Agricultural Development.** ~~Non-agricultural~~ Development shall be scaled, sited and designed to reduce impacts to resources such as environmentally sensitive habitat, agriculture and visual resources, and to respect site constraints such as steep slopes. Measures to reduce impacts to resources shall ~~at a minimum~~ include consideration of the following: color; reflectivity and height of structures; length of roads and driveways; number and size of accessory structures; configuration and size of development envelopes including concentrating development in existing developed areas close to existing roads; amount and location of grading; vegetation removal; and night lighting. Primary residences shall not exceed 3,000 square feet in size, and residential development shall not exceed 5,000 square feet per legal parcel, except as allowed under Policy LU- xx: Transfer of Development Rights.

**Revised Policy VIS-12: Critical Viewshed Corridor.** Protection of the ocean and mountain views of the Gaviota Coast from ~~Highway 101~~ public view areas is critically important. Therefore, a Critical Viewshed Corridor Overlay, providing more protective viewshed policies for development permits within the overlay, is designated for all of the Gaviota Coast Planning Area. The Overlay includes public views of the Gaviota Coast from the ocean and from all area roadways, including Highway 101, West Camino Cielo, and from all roads extending from Highway 101 to the mountains (such as Farren Road and Refugio Road). The overlay should also include views from Hollister Ranch and Jalama Beach County Park.

**II. Alternative 2 is a Feasible, Environmentally Superior Alternative That Will Accommodate Limited Development and Prioritize Conservation of the Area's Resources and Character.**

Lead agencies are required to select the environmentally superior alternative unless it is infeasible. Under CEQA, lead agencies may not approve a proposed project if there are feasible alternatives or mitigation measures that would substantially lessen the effects of the project. PRC § 21002. In addition, PRC § 21081, subdivision (a) requires public agencies to refrain from approving projects with significant environmental effects if 'there are feasible alternatives ... that can substantially

lessen or avoid those effects’.” *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597.

In this instance, the EIR’s Alternative 2 would reduce or avoid many significant impacts of the Project. As the EIR and the Findings acknowledge, Alternative 2 addresses significant effects on visual resources, biological resources, and recreation that have been identified for the proposed Plan, and prioritizes conservation of the area’s resources and character when considering development proposals. It presents different policy approaches that are capable of a higher level of conservation and providing better access to the coast in the Plan Area. FEIR at S-3; Staff Report dated October 18, 2016, Attachment 1 Findings at page 11 and 12. For this reason, Surfrider Foundation supports approval of Alternative 2 over the Proposed Plan. It is identified as the environmentally superior alternative, and as such, would provide the greatest protection of our coastal resources. *Id.*

### **III. The County is Obligated to Adopt Feasible Measures to Mitigate the Project’s Significant Impacts.**

The EIR determined that the Project would result in numerous Class 1 impacts (significant/unavoidable impacts) to biological resources, historical and archaeological resources, and agricultural resources (EIR at S-5). When an EIR makes a finding of significant environmental harm from a project, as it does here, CEQA requires the public agency carrying out the project to adopt all feasible mitigation measures to lessen that harm, or to adopt a feasible alternative that would do less environmental damage. Pub. Res. Code §§ 21002, 21081 & 21081.5. If the public agency rejects a mitigation measure or alternative as infeasible, the agency must make specific findings, supported by substantial evidence, that a mitigation measure or alternative is not feasible. Pub. Res. Code §§ 21081 & 21081.5.

In our comments on the EIR, we requested that the document evaluate several new and revised policies because they would also reduce the Project’s impacts to sensitive resources. *See* FEIR at 9-365 to 9-373. Despite these feasible suggestions for mitigation, the EIR ignores many of the suggested measures. Moreover, neither the EIR nor the Findings for Approval (“Findings”) submitted to the Board along with the Staff Report dated October 18, 2016, provide a reasoned explanation for why these measures were rejected. The Findings state only that “the remaining components of this alternative have been deemed infeasible for social, economic and other reasons.” *See*, Staff Report dated October 18, 2016, Attachment 1 Findings at page 12. The EIR fails to provide any evidence to support this statement or evidence that the recommendations are not feasible.

Below we have included a list of the critical policies that should be added to Alternative 2 to direct development away from sensitive resources to areas more suitable for development; to reduce Class 1 impacts and to preserve viewsheds and public beach access in the Plan area under full build-out conditions:

**Policy LU–X: Transfer of Development Rights.** No later than 1 year after certification of this Plan by the Coastal Commission, the County shall establish a transfer of development rights program for the Gaviota Coast Planning Area. Under this program, the County will establish a minimum lot size for residential development and a maximum house size in the Gaviota Coast Planning Area. Parcels that do not meet the minimum lot size (“nonconforming parcels”) will be assigned a transferable right to additional square footage that can be used only when transferred to parcels that meet the minimum lot size for residential development. Property owners who wish to build a house in excess of the maximum house size must acquire additional square footage rights from nonconforming parcels. Upon transfer of such development rights, the development rights on the transferring nonconforming parcel shall be extinguished. The County may provide for additional incentives to transfer development rights and/or restrict development on receiving parcels only to the extent necessary to ensure the success and financial viability of the program and to ensure that the program does not result in an unconstitutional taking of private property.

As discussed in more detail in our previous comments, this policy is feasible as shown by the successful implementation of such policy in other jurisdictions and in the County on the Naples property. See SMW NOP letter dated February 24, 2014 at 3 and 4 and DEIR letter at 8. This policy is consistent with the County’s Coastal Land Use Plan (“CLUP”) Policy 2-13 requiring the County to “discourage development of the existing lots” and to “encourage and assist the property owners in transferring development rights . . .”

While we are pleased that Action LU–2 directing the County to develop a Transfer of Development Rights Ordinance is included in the Plan (Plan Ch. 5 Land Use at 5-20), this Action should specify a timeline for the County to implement it. The County has contemplated such a policy for more than a decade. The County should commit to drafting this ordinance within one year of plan approval.

**Policy LU-X: Contiguous Land Holdings.** When considering development applications to determine the legally permitted uses of the property, the County shall treat contiguous non-conforming parcels as a single unit based on (1) the degree of contiguity, (2) the dates of acquisition, (3) the extent to which a common development scheme applied to the parcel, (4) the extent to which the parcel has been treated as a single economic unit, and (5) the extent to which the regulated lands enhance the value of the remaining lands.

As discussed in our previous comment letters, this policy is designed to address the fact that many landowners in the Gaviota area hold large areas of land that may include substandard lots. This policy would allow the County to consider contiguous non-conforming parcels owned by the same applicant as one unit when reviewing development applications. An approach that focuses on the extent to which the property owner has treated separate legal parcels as a single unit has been endorsed by federal courts addressing takings claims. *Forest Properties, Inc. v. United States*, 177 F.3d 1360, 1365 (Fed Cir. 1999).

The County should consider the revised and new policies below related to recreation related to protection of historic public-use of recreation areas and acquisition of coastal lands for future use:

**Policy REC -8: Protection of Existing Coastal Access.** Ensure to the extent feasible that development does not interfere with the Public's right of access to the sea where acquired through use. Access acquired through informal use, included but not limited to, where prescriptive rights exist shall be protected.

**Policy REC-X Restoration of Public Coastal Access Areas, Where Necessary.** The County Parks department shall restore public access areas under its control that become degraded, by such means as revegetation, trail improvements, installation of boardwalks, and informational signing, as funds and staffing or volunteer support permit.

**Policy REC-X: Policy LU-X: Sea Level Rise and Bluff Retreat.** The County shall analyze direct and indirect impacts of accelerating bluff erosion on recreation facilities, including secondary impacts of increased sea level rise and coastal erosion on lateral and vertical access.

**Revised Action TEI-4 Frontage Road Utilization.** When opportunities arise, the County shall work with state agencies and the local community to plan for future uses of underutilized frontage roads. Existing frontage roads and rights of way ~~should~~ shall be ~~considered~~ maintained for utilization as bikeways or coastal access points.

#### IV. Conclusion

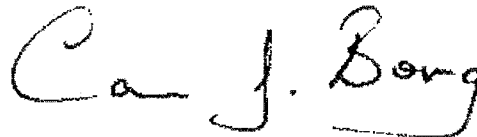
As discussed in our previous comments and set forth above, the EIR suffers from flawed analysis and inadequate mitigation. In order to avoid analysis of full buildout and recirculation of the EIR, the County should adopt Alternative 2, the environmentally superior alternative, to include the revisions discussed above. This approach will provide the necessary additional mitigation in the form of more robust policies and ensure the highest protection possible for these important resources.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk



Carmen J. Borg, AICP  
Urban Planner

cc: Bob Keats, Surfrider Foundation  
Julie Harris, County Planning