

LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

June 2, 2017

County of Santa Barbara
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

2017 JUN -2 AM 11:36

COUNTY OF SANTA BARBARA
CLERK OF THE SUPERVISORS

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

RE: 6/6/17 Agenda Item #1: Short Term Rental Ordinance

Dear Chair Hartmann and Members of the Board of Supervisors,

This office represents the Gaviota Coast Conservancy (GCC) in this matter. GCC and its members are part of the diverse range of stakeholders that participated in the GavPac process and hammered out the details of the Gaviota Coast Plan (GCP). The GCP establishes "Farmstays" as a new allowable use on Ag-II zoned lands in the Gaviota Coast Plan area, providing sought-after lodging opportunities similar to Short Term Rentals (STRs) for visitors to the Gaviota Coast and additional income for agricultural landowners. Importantly the Farmstay concept was carefully crafted to avoid compromising long-term agricultural viability and disincentivizing participation in the County's Agricultural Preserve Program.

STRs on the other hand, are incompatible with the County's Agricultural Preserve Program and the Williamson Act, inconsistent with the Gaviota Coast Plan, and result in potentially significant impacts to agricultural resources pursuant to the County's adopted CEQA thresholds. Significantly, **the County's Agricultural Preserve Advisory Committee (APAC) unanimously voted that STRs are not a compatible use on Williamson Act Contracted lands, and cautioned against allowing STRs on non-contracted agriculturally zoned lands as well**, stating: "APAC is also concerned about potential impacts of allowing STRs on non-contracted agricultural lands. STRs can be very lucrative and the potential economic return could be an incentive for landowners to non-renew their agricultural preserve contracts to pursue this use on non-contracted lands." (APAC Letter to PC, 2/8/16)

Our December 2, 2016 letter (attached hereto), explains in detail why GCC supports allowing Farmstays *in place of* STRs on Ag-II zoned lands throughout the County. APAC's letter is attached as Exhibit 1 to our December letter. The Board Letter (p. 8) makes clear that this is a viable option for the Board to pursue, stating: "Farmstays could be allowed with a LUP or CDP in other agricultural zones located outside of the area that is subject to the Gaviota Coast Plan in addition to, or in place of, STRs."

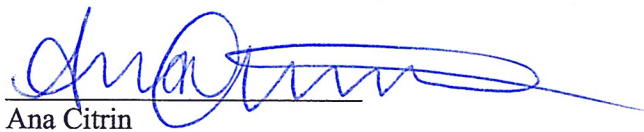
We respectfully urge the Board to follow option c) in the Board letter, and **direct staff to revise the proposed STR Ordinance to allow Farmstays in place of STRs on Ag-II zoned land**, and return and present the revised STR Ordinance to the Board at a future date.

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Respectfully submitted,

LAW OFFICE OF MARC CHYTILO



Ana Citrin

Attachment: GCC Letter to Board, 12/2/16

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

December 2, 2016

County of Santa Barbara
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

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

RE: Short Term Rental Ordinance

Dear Chair Adam and Members of the Board of Supervisors,

This office represents the Gaviota Coast Conservancy (GCC) in this matter. GCC and its members are part of the diverse range of stakeholders that participated in the GavPac process and hammered out the details of the Gaviota Coast Plan (GCP) that your Board recently adopted. The GCP establishes “Farmstays” as a new allowable use on Ag-II zoned lands in the Gaviota Coast Plan area, providing sought-after lodging opportunities similar to Short Term Rentals (STRs) for visitors to the Gaviota Coast and additional income for agricultural landowners. Importantly the Farmstay was carefully crafted to avoid compromising long-term agricultural viability and disincentivizing participation in the County’s Agricultural Preserve Program.

STRs on the other hand, are incompatible with the County’s Agricultural Preserve Program and the Williamson Act, inconsistent with the Gaviota Coast Plan, and result in potentially significant impacts to agricultural resources pursuant to the County’s adopted CEQA thresholds. For these reasons, detailed below, we urge the Board to *pursue Farmstays*, and *not STRs*, as a new allowable use on the County’s Ag-II zoned lands.

1. APAC’s Unanimous Recommendation

The County’s Agricultural Preserve Advisory Committee (APAC) unanimously voted that STRs are not a compatible use on Williamson Act Contracted lands, and cautioned against allowing STRs on non-contracted agriculturally zoned lands as well, stating: “APAC is also concerned about potential impacts of allowing STRs on non-contracted agricultural lands. STRs can be very lucrative and the potential economic return could be an incentive for landowners to non-renew their agricultural preserve contracts to pursue this use on non-contracted lands.” (APAC Letter to PC, 2/8/16 (Exhibit 1); also PC Staff Report, 7/27/16, Attachment H.) Further, APAC expressed support for the Farmstay concept and suggested “If the County Planning Commission is interested in new agri-tourism lodging uses on agricultural land, the APAC recommends the County consider these uses as part of the Gaviota Coast Plan and Agricultural Permit Streamlining projects instead of in isolation as part of the STR ordinance.” (*Id.*, emphasis added.)

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The letter APAC sent to the Planning Commission with its recommendation is not mentioned in the Board Letter, and is not separately attached or identified, but rather is buried in an attachment to a Planning Commission staff report. The Planning Commission Staff Report explains (on pp. 4-5):

4.3 Agricultural Preserve Advisory Committee (APAC)

On February 5, 2016, the APAC reviewed and considered the use of STRs on lands in agricultural preserve contracts and submitted a letter to the County Planning Commission outlining their recommendation on February 8, 2016 (Attachment G). The APAC unanimously voted that STRs are not a compatible use on contracted lands according to the Uniform Rules. The APAC is concerned that a commercial, non-agricultural use such as STRs can result in temporary increases in population and agricultural/urban conflicts could impact on-site and adjacent agricultural operations. The APAC is also concerned about potential impacts of allowing STRs on non-contracted agricultural lands since the potential economic return could be an incentive for landowners to non-renew their agricultural preserve contracts to pursue this use. The APAC recommends that the Planning Commission consider new agritourism lodging uses on agricultural land as part of the Gaviota Coast Plan and the Agricultural Permit Streamlining projects instead of in isolation as part of the STR ordinance. If the Planning Commission determines to allow the use on agricultural preserve lands, through a Land Development Permit or Coastal Development Permit, the permit application would still be reviewed by the APAC for a recommendation of use compatibility with the Uniform Rules.

The failure to identify this important recommendation of the County's own Committee before the Board opens all Ag-II lands to a new use that is incompatible with Williamson Act contract status and a disincentive to participation in the Agricultural Preserve Program is a serious error that jeopardizes the integrity of the County's Agricultural Preserve program and undermines compliance with state standards. Approximately 76% of the Gaviota Coast's privately held agriculturally-zoned lands are enrolled in the Williamson Act, as are 77% of the productive agricultural lands in private ownership throughout the County. We urge the Board to carefully read APAC's letter (Exhibit 1), follow APAC's advice, and consider establishing Farmstays as an allowable use on Ag-II zoned lands Countywide in lieu of STRs.

2. Unidentified Policy Conflict

The Policy Consistency Analysis (Board Letter, Attachment 19a) analyzes the ordinance's compatibility with several Gaviota Coast Plan agricultural policies, however omits Policy AG-1.I (Williamson Act) which states in relevant part that "The use of the Williamson Act (Agricultural Preserve Program) shall be strongly encouraged and supported." (GCP p. 3-10.) Discussed above, STRs are not a compatible use on Williamson Act contracted parcels, and may disincentivize participation in the Agricultural Preserve Program. Allowing such a use is directly contrary to the Board's obligation under GCP Policy AG-1.I to strongly encourage and support use of the

Agricultural Preserve Program. Due to this conflict, the Board is precluded from making the required findings that the Amendment is consistent with the requirements of the Comprehensive Plan, which includes the Gaviota Coast Plan. (*See e.g.* Board Letter, Attachment 1). Moreover, the conflict has California Environmental Quality Act (CEQA) implications, discussed below.

This conflict can be rectified by allowing Farmstays in lieu of STRs on Ag-II zoned lands, which we strongly encourage the Board to do.

3. Unidentified Potentially Significant Impact Renders NOE Inapplicable

Rather than conduct environmental review pursuant to CEQA, Staff prepared a Notice of Exemption (NOE), stating that the Ordinance amendment does not require CEQA review because it has “no possibility” of having any significant effect on the environment. (Board Letter, Attachment 2; *see* Public Resources Code (CEQA) § 15061(b)(3).) Exemptions to CEQA are narrowly construed in order to ensure that in all but the clearest of cases, a project will be subject to some level of environmental review. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125, *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.)

The County’s adopted Agricultural Resources Guidelines (August 1993) include the following threshold pertaining to impacts on agricultural resources:

Will the proposal result in the conversion of prime agricultural land to non-agricultural use, impairment of agricultural land productivity (whether prime or non-prime), ***or conflict with agricultural preserve programs?***

(County Environmental Thresholds and Guidelines Manual, p. 13; GavPlan EIR, Chapter 4.4, p. 4.4-24. (emphasis added).) APAC’s unanimous conclusion that STRs are not a compatible use on Williamson Act contracted lands and may dis-incentivize participation in the County’s Agricultural Preserve Program, leading to increased rates of conversion of agricultural lands, is substantial evidence of a potentially significant impact to agricultural resources. (*See Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 155) Furthermore, the above-identified conflict with Gaviota Coast Plan Policy AG-1.I is further substantial evidence of a potentially significant impact. (*See The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 930; Guidelines, App. G, § IX (b).

Moreover, the “reasons to support exemption findings” articulated in the NOE do not support a conclusion that the Amendment will have no impact to agriculture. Indeed, the NOE states that 75% of existing STRs paying TOT are in residential zones, so the Ordinance may reduce STRs in the County. (NOE p. 2). However, the reasonably foreseeable consequence of prohibiting STRs in the residential zones will be an expansion of STRs in the Ag-II zones, with resulting impacts to agriculture.

To avoid a serious CEQA violation, we strongly urge the Board to pursue allowing Farmstays – and not STRs – in the Ag-II zones.

4. Gaviota Coast Plan “Farmstay”

A key feature of the GCP is that it includes an amendment to the LUDC adding “Farmstay” as an allowable use on AG-II zoned lands (the dominant zone designation on the Gaviota Coast), defined as:

A type of working farm or ranch operation that is partially oriented towards visitors or tourism by providing guest accommodations. Such an operation may include interactive activities where guests participate in basic farm or ranch operations such as collecting eggs and feeding animals, or a work exchange agreement where the guest works a set number of hours in exchange for free or reduced rate accommodation.

To qualify for a Land Use Permit (LUP), the Farmstay would need to comply with a number of requirements including a 40-acre minimum lot size and consistency with Uniform Rule 2 (Compatible Uses within Agricultural Preserves), as well as limitations on the number of rooms, guests, and availability of food service. A Farmstay that does not meet all the requirements for a LUP, can be pursued with a Conditional Use Permit (CUP). Establishing the Farmstay as an allowable use on agricultural lands Countywide will be considered in the upcoming Agricultural Permit Streamlining project.

GCC is concerned that the broader allowable uses and comparable or more relaxed permitting requirements associated with STRs as an allowable use in AG-II zones will render the GCP’s carefully developed Farmstay program and selective entitlement meaningless. As proposed, a Gaviota Coast agricultural landowner can pursue a much more lucrative set of visitor accommodations and uses through STR with the same level permit and none of the GCP Farmstay requirements. The Farmstay program was judiciously crafted to ensure that opening the Gaviota Coast’s agriculturally zoned lands to overnight visitation does not compromise long-term agricultural viability and disincentivize participation in the County’s Agricultural Preserve program. We believe that the Farmstay program is a far more appropriate form of temporary visitation on agricultural lands throughout the County, and encourage your Board to consider expanding the Farmstay’s application Countywide and abandon STRs in the Ag-II zones.

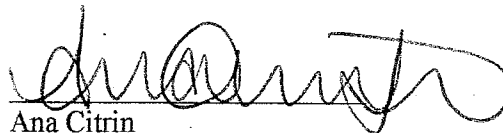
5. Conclusion

For the reasons stated above, we strongly encourage the Board to pursue Farmstays and not STRs for the Ag-II zones.

Chair Adam and Board Members
December 2, 2016
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Respectfully submitted,

LAW OFFICE OF MARC CHYTILO

A handwritten signature in black ink, appearing to read 'Ana Citrin', written over a horizontal line.

Ana Citrin
Marc Chytilo

Exhibit 1: APAC Letter to Planning Commission, 2/8/16

COUNTY OF SANTA BARBARA

Debbie Trupe
Chair



123 E. Anapamu St.
Santa Barbara, CA 93101
Telephone: (805) 568-2000

AGRICULTURAL PRESERVE ADVISORY COMMITTEE

February 8, 2016

Santa Barbara County Planning Commission
123 East Anapamu Street
Santa Barbara, CA 93101

Re: Short Term Rentals on Agricultural Preserve Contracted Land

On February 5, 2016, the Agricultural Preserve Advisory Committee (APAC) unanimously voted that Short Term Rentals (STRs) are not a compatible use on contracted lands according to the *Santa Barbara County Uniform Rules for Agricultural Preserves and Farmland Security Zones* (Uniform Rules). Land enrolled in the Agricultural Preserve Program must be principally used for commercial agriculture, and compatible activities should be supportive to that agriculture. The APAC is concerned that a commercial, non-agricultural use such as STRs can result in temporary increases in population and agriculture/urban conflicts impacting on-site and adjacent agricultural operations. Additional concerns include the lack of enforcement to monitor and enforce potential restrictions (e.g. limiting the number of rental days and owner requirements to be on the premises during the rental period) to ensure the short term rental remains incidental to the principal agricultural use of the land.

The APAC is also concerned about potential impacts of allowing STRs on non-contracted agricultural lands. STRs can be very lucrative and the potential economic return could be an incentive for landowners to non-renew their agricultural preserve contracts to pursue this use on non-contracted lands.

The APAC recognizes that opportunities exist for additional revenue streams that could be supportive of the primary agricultural use of the land. If the County Planning Commission is interested in new agri-tourism lodging uses on agricultural land, the APAC recommends the County consider these uses as part of the Gaviota Coast Plan and Agricultural Permit Streamlining projects instead of in isolation as part of STR ordinance.

The Gaviota Coast Plan Agricultural Tiered Permit Structure and Agricultural Permit Streamlining project are two planning efforts which would broaden and expand allowable uses

EXHIBIT 1

(both agricultural support and non-agricultural uses) on agricultural land. Both projects propose a new agri-tourism lodging opportunity to allow a small-scale guest ranch/farmstay to encourage overnight stays on farms and ranches where agricultural production is the primary source of income.

Truly yours,

A handwritten signature in black ink, appearing to read "D. Trupe", written in a cursive style.

Debbie Trupe, Chair,
Agricultural Preserve Advisory Committee

Cc: Agricultural Preserve Advisory Committee members