Attachment-1:

Marc Chytilo Appeal Application, received December 16, 2013

PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: South of Highway 101 approximately 1 mile west of the City of Goleta, Gaviota area

ASSESSOR PARCEL NUMBER: 079-200-004; 079-200-008

PARCEL SIZE (acres/sq.ft.): Gross 64 acres; 78 acres Net 64 acres; 78 acres

COMPREHENSIVE/COASTAL PLAN DESIGNATION: Coastal Zone, Rural, AG-II ZONING: AG-II-100

Are there previous permits/applications? ☐no ☒yes numbers: see attached permit history
(include permit# & lot # if tract)

Are there previous environmental (CEQA) documents? ☐no ☒yes numbers: see attached permit history

1. **Appellant: Gaviota Coast Conservancy, Santa Barbara Surfrider** * Phone: see Attorney info. FAX: _____

Mailing Address: see Attorney info. E-mail: see Attorney info.
Street City State Zip

2. **Owner:** Brooks Street, Chris Yelich and Howard Zelefsky Phone: 949-833-0222 FAX: _____

Mailing Address: 1300 Quail Ave., Suite 100, Newport Beach, CA 92660 E-mail: _____
Street City State Zip

3. **Agent:** Dudek, April Winecki Phone: 805-963-0651 FAX: _____

Mailing Address: 621 Chapala St., Santa Barbara, CA 93101 E-mail: _____
Street City State Zip

4. **Attorney:** (for GCC) Ana Citrin, Law Office of Marc Chytilo Phone: 805-570-4190 FAX: 805-682-2379

Mailing Address: P.O. Box 92233, Santa Barbara, CA 93190 E-mail ana@lomcsb.com
Street City State Zip

Attorney for SB Surfrider: Ellison Folk, Shute Mihaly & Weinberger, 396 Hayes Street, San Francisco, CA 94102
Phone: 415-552-7272 X230 Fax: 415-552-5816 Email: Folk@smwlaw.com

*Santa Barbara Audubon and Peter Howorth join in this appeal.

COUNTY USE ONLY

Case Number: _____ *Companion Case Number:* _____
Supervisorial District: _____ *Submittal Date:* _____
Applicable Zoning Ordinance: _____ *Receipt Number:* _____
Project Planner: _____ *Accepted for Processing* _____
Zoning Designation: _____ *Comp. Plan Designation* _____

COUNTY OF SANTA BARBARA APPEAL TO THE :

__X_ BOARD OF SUPERVISORS

_____ PLANNING COMMISSION: _____COUNTY _____ MONTECITO

RE: Project Title _Paradiso del Mare Ocean and Inland Estates_

Case No._06CDH-00000-00038, 06CDH-00000-00039, 07CUP-00000-00065, 09CDP-00000-00045, 10-CUP-00000-00039, 10CDP-00000-00094, 09EIR-00000-00003_

Date of Action _December 4, 2013_____

I hereby appeal the _X__approval _X__approval w/conditions _____denial of the:

_____Board of Architectural Review – Which Board? _____

_____Coastal Development Permit decision

_____Land Use Permit decision

_X__Planning Commission decision – Which Commission? __County____

_____Planning & Development Director decision

_____Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

_____ Applicant

___X___ Aggrieved party – if you are not the applicant, provide an explanation of how you are and "aggrieved party" as defined on page two of this appeal form:

__Lead Appellants Gaviota Coast Conservancy and Surfrider Foundation each testified through_____

__members and representatives of each organization at the Planning Commission's approval hearing____

__and other hearings regarding this Project, expressing concerns and objecting to approval of the Project___

__and certification of the EIR. Members and representatives of Joining Appellant Santa Barbara Audubon__

__also testified and raised concerns before the Planning Commission. Joining Appellant Peter Howorth

__testified and raised concerns before the Planning Commission, including at the final approval hearing. _

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

_____Please see attached appeal letter_____

_____

_____

_____

_____

_____

_____

_____

Specific conditions imposed which I wish to appeal are (if applicable):

a. _____

b. _____

c. _____

d. _____

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Ana Citrin, Law Office of Marc Chytilo, for GCC — 12/16/13

Ellison Folk, Shute Mihaly & Weinberger, for SB Surfrider — Ellison Folk (by AC) — 12/16/13

Print name and sign – Firm — Date

Ana Citrin, Law Office of Marc Chytilo — 12/16/13

Print name and sign - Preparer of this form — Date

Print name and sign - Applicant — Date

Print name and sign - Agent — Date

Print name and sign - Landowner

G:\GROUP\P&D\Digital Library\Applications & Forms\Planning Applications and Forms\AppealSubReqAPP.doc

Permit History for Parcel 079-200-004

Parcel Information

Reference Address	Not Available
Legal Description	Not Available
Acreage	64.93
Supervisorial District	3
Zoning	AG-II-100

Parcel Holds/Notices

NO HOLDS

Parcel Geographical Data

BAR Jurisdiction	All or portion within Central BAR
California Natural Diversity Database	Check CNDDB - May Apply
Creeks	Check Hydro and Wetland layers - May Exist
Flood Hazard	Check Flood Hazard Overlay - May Apply
High Fire Hazard Area	Check Fire Hazard Maps
HMA	All or portion within the South Coast HMA
Oil and Gas Well Site	Check D.O.G. Wells - Oil & Gas Well(s) May Exist
Rural Region	All or portion within Gaviota Coast Rural Region
Trails	Trail Corridor Likely, Check Trail Layers
View Corridor	Check View Corridor Overlay - May Apply
X Coordinate	5977519
Y Coordinate	1986915
ESH RC Overlay	Check ESH and RC Overlays - May Apply
Home Exemption Value	0.00
Personal Value	0.00
Tax Rate Area	066083
Use Code	5816
CA Coastal Comm Jurisdiction	All or part within Appeal or Permit Jurisdiction
Coastal Zone	All or portion Within Coastal Zone
Comprehensive Plan	A-II-100
Rural	All or portion within Rural Area

Special Districts and Other Information of Interest (*derived from Tax Rate Area no.*)

GOLETA UNION ELEM. SCHOOL

SANTA BARBARA COUNTY FIRE PROTECTION

SANTA BARBARA COUNTY WATER AGENCY
GOLETA COUNTY WATER
GOLETA-IMPROVEMENT NO. 02 COUNTY WATER
SANTA BARBARA (SB1537) UNIFIED SCHOOL

Permit History

Case Number	Dept*	Filed	Planner	Project Name or Description	Status
05PRE-00000-00005	P	06/13/2005	AB	DOS PUEBLOS RANCH ESTATES	Closed
06BAR-00000-00225	P	08/18/2006	NL	Paradiso del Mare Ocean Estate	Preliminary Review
06CDH-00000-00038	P	07/27/2006	NL	PARADISO DEL MARE OCEAN ESTATE NEW SFD	Appeal Period In Progress
06CDH-00000-00048	P	10/13/2006	AB	CPH DOS PUEBLOS ASSOC CULVERT REPAIRS	Closed
06DRP-00000-00002	P	03/28/2006	DD	ARCO PIPELINE REMOVAL	Closed
06RDN-00000-00010	P	07/27/2006	AB	PARAISO DEL MAR NEW ROAD NAME	Closed
07CUP-00000-00065	P	08/09/2007	NL	PARADISO DEL MARE ESTATES WATER LINE	In Review
09CDH-00000-00039	P	11/16/2009	DD	ARCO PIPELINE REMOVAL	Closed
09CDP-00000-00045	P	07/21/2009	NL	PARADISO DEL MARE ESTATES WATER LINE	In Review
09EIR-00000-00003	P	08/25/2009	AB	PARADISO DEL MARE OCEAN ESTATE NEW SFD EIR	Open
10CDP-00000-00094	P	11/12/2010	NL	PARADISO DEL MARE OCEAN ESTATE PUBLIC TRAIL	In Review
10CUP-00000-00039	P	11/12/2010	NL	PARADISO DEL MARE OCEAN ESTATE PUBLIC TRAIL	In Review
10NGD-00000-00004	P	02/22/2010	DD	ARCO PIPELINE REMOVAL	Closed
11PMC-00000-00039	P	08/10/2011	DD	PERMIT COMPLIANCE FOR ARCO PIPELINE REMOVAL	Monitoring In Progress

*Dept Code: B=Building, E=Enforcement, P=Planning, R=pRoject, U=Unknown

Accela Land Use Management System is used by P&D to track (B)uilding, (P)lanning and (E)nforcement activity by parcel number.

Building Cases

Application Number	Description	Issuance Date	Finaled Date	Status	Misc.
127570	TANK REMV	12/20/88	02/24/89	F	
257785	RAMP	05/09/96	05/23/96	F	
258698	DEMO	08/19/96	00/00/00	A	
263283	GRADING	10/31/97	09/16/98	F	
263327	DEMO	10/31/97	00/00/00	A	

Building Cases from LIX, the previous P&D Land Use Management System.

Planning Cases

Application Number	Description	Submittal Date	Action Date	Status	Planner
74-GP-016		11/11/11	00/00/00		

74-RZ-028		11/11/11	00/00/00		
75-CP-090		11/11/11	00/00/00		
84-CP-087		11/11/11	00/00/00		
84-EP-001		11/11/11	00/00/00		
84-PP-001		11/11/11	00/00/00		
85-CP-077	SEE AGENDA	11/11/11	12/08/87	D	
85-CP-077 D	OILGASPROC	01/08/86	00/00/00	CO	EV
85-DP-049	SEE AGENDA	11/11/11	12/08/87	D	00
85-DPP-049	OILGASPROC	01/08/86	00/00/00	CO	DEV
87-CP-117	SEE AGENDA	11/11/11	12/08/87	D	
87-DP-050	SEE AGENDA	11/11/11	12/08/87	D	
88-GP-021 D	OILGASSTOR	05/11/88	09/18/90	A	KA
88-M-053	DETERMIN	12/01/88	05/03/89	W	
88-RZ-017 D	OILGASSTOR	05/11/88	09/18/90	A	KA
91-CDP-109	CLEAN UP	06/06/91	02/11/94	AC	KD
91-CP -085	GOLF CORSE	10/29/91	05/26/93	AC	SJG
91-CP -085	COMPLI/VAR	11/11/11	00/00/00		LF
91-CP -085	MODIFY	06/12/98	00/00/00		
91-CP -085	92-EIR-16	11/11/11	00/00/00		
91-EMP-006	CLEAN UP	11/11/11	06/07/91	AC	KD
91-PA -018	GOLF CORSE	07/16/91	00/00/00		
91-SUP-026	CLEANUP	11/11/11	01/10/94	AC	KD
91-SUP-026	93-ND-013	11/11/11	00/00/00		
96-CDP-066	ABAD FACIL	04/26/96	00/00/00		
97-CDP-127	ABAD FACIL	06/23/97	00/00/00		BB
98-CDP-241	SOIL REMD	11/09/98	00/00/00		AS
98-CDP-274	GOLF CORSE	12/03/98	00/00/00		
99-RN -002	DOSPUEBLOS	01/15/99	11/24/99	A	PDL
99-ZE-485 J	VEGREMOVAL	11/05/99	00/00/00		VD

Planning Cases from LIX, the previous P&D Land Use Management System

This version of the Permit History by Parcel is not an exhaustive list of all permits associated with a given parcel; some older permits may not be included. Check the microfiche records, available at either of our Zoning Information Counters, for a complete permit history for this property.

Permit History for Parcel 079-200-008

Parcel Information

Reference Address	Not Available
Legal Description	Not Available
Acreage	77.98
Supervisorial District	3
Zoning	AG-II-100

Parcel Holds/Notices

NO HOLDS

Parcel Geographical Data

BAR Jurisdiction	All or portion within Central BAR
California Natural Diversity Database	Check CNDDB - May Apply
Creeks	Check Hydro and Wetland layers - May Exist
High Fire Hazard Area	Check Fire Hazard Maps
HMA	All or portion within the South Coast HMA
Oil and Gas Well Site	Check D.O.G. Wells - Oil & Gas Well(s) May Exist
Rural Region	All or portion within Gaviota Coast Rural Region
View Corridor	Check View Corridor Overlay - May Apply
X Coordinate	5977552
Y Coordinate	1987539
ESH RC Overlay	Check ESH and RC Overlays - May Apply
Home Exemption Value	0.00
Personal Value	0.00
Tax Rate Area	066083
Use Code	5816
CA Coastal Comm Jurisdiction	All or part within Appeal or Permit Jurisdiction
Coastal Zone	All or portion Within Coastal Zone
Comprehensive Plan	A-II-100
Rural	All or portion within Rural Area

Special Districts and Other Information of Interest (*derived from Tax Rate Area no.*)

GOLETA UNION ELEM. SCHOOL

SANTA BARBARA COUNTY FIRE PROTECTION

SANTA BARBARA COUNTY WATER AGENCY

GOLETA COUNTY WATER

GOLETA-IMPROVEMENT NO. 02 COUNTY WATER

SANTA BARBARA (SB1537) UNIFIED SCHOOL

Permit History

Case Number	Dept*	Filed	Planner	Project Name or Description	Status
05PRE-00000-00005	P	06/13/2005	AB	DOS PUEBLOS RANCH ESTATES	Closed
06BAR-00000-00224	P	08/18/2006	AB	Paradiso del Mare Inland Estate	Preliminary Review
06CDH-00000-00039	P	07/28/2006	NL	PARADISO DEL MARE INLAND ESTATES NEW SFD	Hearing Pending
06RDN-00000-00010	P	07/27/2006	AB	PARAISO DEL MAR NEW ROAD NAME	Closed
07CUP-00000-00065	P	08/09/2007	NL	PARADISO DEL MARE ESTATES WATER LINE	In Review

*Dept Code: B=Building, E=Enforcement, P=Planning, R=pRoject, U=Unknown

Accela Land Use Management System is used by P&D to track (B)uilding, (P)lanning and (E)nforcement activity by parcel number.

Building Cases

No LIX Building Cases for this Parcel

Planning Cases

Application Number	Description	Submittal Date	Action Date	Status	Planner
74-GP-016		11/11/11	00/00/00		
74-RZ-028		11/11/11	00/00/00		
84-EP-001		11/11/11	00/00/00		
84-PP-001		11/11/11	00/00/00		
85-CP-077	SEE AGENDA	11/11/11	12/08/87	D	
85-DP-049	SEE AGENDA	11/11/11	12/08/87	D	00
87-CDP-016	AIRMONITOR	01/22/87	04/14/87	AC	SJG
87-CP-008 B	AIRMONITOR	01/22/87	03/13/89	A	AJ
87-CP-117	SEE AGENDA	11/11/11	12/08/87	D	
87-DP-050	SEE AGENDA	11/11/11	12/08/87	D	
88-GP-021 D	OILGASSTOR	05/11/88	09/18/90	A	KA
88-M-053	DETERMIN	12/01/88	05/03/89	W	
88-RZ-017 D	OILGASSTOR	05/11/88	09/18/90	A	KA
91-CDP-109	CLEAN UP	06/06/91	02/11/94	AC	KD
91-CP -085	GOLF CORSE	10/29/91	05/26/93	AC	SJG
91-CP -085	MODIFY	06/12/98	00/00/00		
91-CP -085	92-EIR-16	11/11/11	00/00/00		
91-CP -085	COMPLI/VAR	11/11/11	00/00/00		LF
91-EMP-006	CLEAN UP	11/11/11	06/07/91	AC	KD
91-PA -018	GOLF CORSE	07/16/91	00/00/00		

91-SUP-026	CLEANUP	11/11/11	01/10/94	AC	KD
91-SUP-026	93-ND-013	11/11/11	00/00/00		
96-CDP-066	ABAD FACIL	04/26/96	00/00/00		
97-CDP-127	ABAD FACIL	06/23/97	00/00/00		BB
98-CDP-241	SOIL REMD	11/09/98	00/00/00		AS
98-CDP-274	GOLF CORSE	12/03/98	00/00/00		
99-RN -002	DOSPUEBLOS	01/15/99	11/24/99	A	PDL

Planning Cases from LIX, the previous P&D Land Use Management System

This version of the Permit History by Parcel is not an exhaustive list of all permits associated with a given parcel; some older permits may not be included. Check the microfiche records, available at either of our Zoning Information Counters, for a complete permit history for this property.

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

December 16, 2013

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

By hand delivery

RE: Appeal of the Planning Commission's Approval of the Paradiso del Mare Ocean and Inland Estates Project and Certification of the Environmental Impact Report for that Project

Dear Chair Carbajal and Members of the Board of Supervisors,

This appeal is filed on behalf of the Gaviota Coast Conservancy (GCC) and the Santa Barbara chapter of the Surfrider Foundation ("Lead Appellants"). This appeal is joined by Santa Barbara Audubon, and by marine mammal expert Peter Howorth ("Joining Appellants"). We hereby appeal the Planning Commission's December 4th approval of the Paradiso del Mare Ocean and Inland Estates Project ("Project") and certification of the Environmental Impact Report ("EIR") for the Project. We hereby incorporate by reference all prior submittals by Lead Appellants and Joining Appellants, and we reserve the right to supplement this appeal with additional information prior to the appeal hearing.

The Project site consists of two non-conforming agriculturally zoned lots on the eastern Gaviota Coast, located immediately east of the Naples Townsite. The applicant's holding includes the two lots proposed for development, as well as 25 adjacent Naples Townsite lots. The Project includes a water supply pipeline that the EIR acknowledges will cause a Class I significant and unavoidable impact to an extremely sensitive cultural site, and will cause significant growth inducing impacts by extending urban services west to the 25 Naples Townsite lots. The proposed large estate homes and new bridge crossing the railroad also cause acknowledged Class I significant and unavoidable cumulative impacts to the aesthetics of the Gaviota Coast. Additionally, as explained below, although NOT recognized in the EIR, the Project will cause significant unmitigated impacts to biological resources including the Naples Seal Rookery and white tailed kites, and significant unmitigated impacts from the loss of existing coastal access across the Project site. The EIR does not include adequate disclosure and analysis of impacts to white tailed kites, the EIR is wholly lacking in disclosure and analysis of impacts to the Naples Seal Rookery caused by construction and occupation of the residences, and proposed mitigation for these vital biological resources is patently inadequate to reduce impacts below significant levels. Moreover, as a direct result of the defective impact disclosure, the EIR's alternative analysis fails to consider a reasonable alternative that would avoid the Project's undisclosed significant impacts. CEQA and administrative findings required for approval are also flawed, and unsupported by substantial evidence.

Public opposition to this Project has been substantial and unanimous, with no member of the public ever testifying in support of the Project during any of the multiple hearings extending back to

LAW OFFICE OF MARC CHYTILO
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email(s): marc@lomcsb.com (Marc); ana@lomcsb.com (Ana)

the 2009 draft EIR (which the applicant elected to entirely scrap at great cost and delay). Like the Santa Barbara Ranch Project, unfounded fear of potential future scenarios and shadowy legal threats from the applicant have propelled this Project forward, despite the substantial legal flaws and omissions in its environmental documentation, findings, and conditions.

We request that the Board grant this appeal, and either deny the Project, or direct that the EIR be revised and recirculated to address the CEQA issues raised herein.

1. The EIR Fails to Comply with CEQA

"A legally adequate EIR . . . 'must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.'" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733). The EIR "must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (*Sunnyvale* 190 Cal. App. 4th at 1388 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th at 449–450).) The Project EIR fails satisfy these legal requirements, for the reasons detailed below.

a. Incomplete Project Description

In order for an EIR to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 193).) As a result, courts have found that even if an EIR is adequate in all other respects, the use of a truncated project concept violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. (*San Joaquin Raptor*, 27 Cal. App. 4th at 729-30.) Furthermore, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." (*Id.* at 730 (citation omitted).) Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable.

An accurate description of the project is one that considers the whole project, instead of narrowly focusing on a particular segment. CEQA "mandates 'that environmental considerations do not become submerged by chopping a large project into many little ones—each with a . . . potential impact on the environment—which cumulatively may have disastrous consequences.'" (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452; *see also McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1146 (open space district "impermissibly divided the project into segments which evade CEQA review"); *Plan for Arcadia, Inc. v. Arcadia City Council* (1974) 42

Cal.App.3d 712, 726 (shopping center and parking lot projects are related and should be regarded as a single project for CEQA purposes).)

Here, the EIR has improperly segmented the development of two of the parcels owned by Project applicant from development of the remaining 25 Naples Townsite lots that are part of the contiguous landholdings owned by the Project applicant. The applicant has been quite clear that it intends to develop an additional 10 homes on the remaining Naples Townsite lots. This future development is not just an undefined hope of the developer, but has been put forth as a proposed settlement of litigation brought by the developer against the California Coastal Commission. As described in the EIR, pursuant to the settlement agreement the applicant "can apply to develop single-family residences on up to 10 lots on the Naples portion of its property, either separately or together with the application for non-Naples lots." (EIR p. 2.0-10.) A footnote to this text in the EIR explains, "The applicant indicates that because issues regarding development of the Naples lots on the Santa Barbara Ranch property immediately upcoast remain unresolved, no application with respect to CPH's Naples lots has been filed, nor has any determination been made when or how to proceed with a request to develop those lots, what level of development to propose, or where to locate any future development." (*Id.*)

While the settlement agreement may give the applicant discretion on whether to apply to develop the two larger lots together or separately from the 10 additional homes on the Naples Townsite lots, it is clear that the settlement itself envisions at least 10 additional homes.

Even if development of the Naples lots was not specifically contemplated by the settlement, CEQA mandates that reasonably foreseeable consequences of the Project, such as the potential development of the Naples Lots, be included in the Project Description so that the impacts associated with developing the 10 homes is analyzed in the EIR. The EIR's Project description explains how the Goleta Water District ("GWD") annexed both the Ocean Estate and the 25 Naples Townsite lots ("Naples lots") (the Inland Estate was already within the GWD). (EIR p. 2.0-21.) The proposed 10-inch potable and 4-inch reclaimed water pipelines would provide sufficient water to enable development of 12 homes, and would remove a key barrier to development of the Naples Townsite lots. Despite this, the EIR includes no substantive analysis of any of the environmental impacts of developing the Naples lots. This failure to analyze the impacts associated the Naples lots violates the requirements of CEQA. Because the Project as defined includes the annexed Naples lots, the EIR must evaluate the impacts of that annexation and the development that it will support.

The construction of infrastructure for the development of the two homes, including the installation of large water pipelines, road improvements, and the extension of utilities will facilitate this proposed additional development of the site. Because the Project will have these future uses, these impacts must be evaluated in the EIR. (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 396 (holding that analysis of future impacts is required under CEQA, regardless of formal approval, where such impacts are reasonably foreseeable consequences of the present project that would change its scope and nature.))

The failure to evaluate the whole of the Project renders every aspect of the EIR's analysis inadequate. Because the EIR did not analyze the full scope of the Project, its analysis necessarily underestimates the environmental impacts of the Project. Moreover, the EIR cannot include an adequate analysis of Project alternatives without consideration of development on the Naples lots. Although inclusion of these properties would greatly expand the options for clustering development and minimizing the conservation of open space and agricultural land to residential uses, the EIR provides only a cursory analysis with respect to the two properties and not the full Project. Such an approach violates the requirements of CEQA. (*Orinda Assoc. v. Bd. of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171-72 ("[a] public agency is not permitted to subdivide a single project into smaller individual subprojects in order to avoid the responsibility of considering the environmental impacts of the project as a whole.")) The EIR must include a description of the Project that includes *all* of the Project components and the EIR must evaluate the impacts of all aspects of the Project and alternatives to it.

One impermissible effect of this Project segmentation (or "piecemealing") is that the Class I impact to cultural resources will only be considered in the context of the current Project proposal, and not when an application for development of the Naples Townsite lots is put forward. Accordingly, future environmental review of development of the Naples Lots may not result in any Class I impacts. Class I impacts of course must be "overridden" with public benefits for the County to support the approval. Artificially limiting the Class I impact to the two Project lots, has enabled the applicant to provide "public benefits" associated with the two-lot development only. This point is very significant, because the only vertical beach access point that enables year-round beach access without disturbing the Naples Seal Rookery is located on the applicant's Naples Townsite lots. The applicant has insisted that they will not provide access at this preferred location (known as "Tomate West") precisely because the Naples Townsite lots are *not a part of the Project.* By artificially narrowing the Class I impact associated with the water line to the two residences rather than the twelve it could actually serve, the County and the public is deprived of any meaningful public benefit that could compensate for that Class I impact, which necessarily requires the siting of the coastal access trail at Tomate West through the Naples Townsite lots. This result is directly at odds with CEQA.

b. Inadequate Environmental Baseline

"Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the EIR cannot provide a meaningful assessment of the environmental impacts of the proposed project." (*Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal. App. 4th 99, 119 (citing Pub. Resources Code, §§ 21100, subd. (a), 21060.5).) "Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined." (*Id.*, quoting *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 952; Guidelines, §§ 15125 (a), 15126.2 (a).)

The EIR does not disclose the location, nature, or extent of the potential hazardous soil or groundwater contamination present on the site, associated with the extensive past on-site oil and gas activities. (*See* EIR p. 3.9-8). One abandoned oil well and an abandoned natural gas line exist within the agricultural envelope on the Inland Estate, and three abandoned oil wells exist within the development envelope on the Ocean Estate. (*See* EIR Figure 3.9-1 (Site Constraints Map); EIR p. 3.9-16). The EIR acknowledges, "existing conditions of known and potential contaminated soils and groundwater in the vicinity of the project site could lead to further contamination of soils, groundwater, and surface water on the subject parcels *from disturbance of the unremediated areas.*" (EIR p. 3.9-16). The EIR also acknowledges "there is a possibility for some oil, methane, or toxic gases (e.g., volatile hydrocarbons, hydrogen sulfide) to remain after remediation of the site has been completed". (EIR pp. 3.9-18 - 3.9-19).

Depending on the nature and extent of the contamination, it may be necessary to relocate development envelopes and/or the agricultural envelope, to avoid significant impacts, but this is not contemplated in the EIR. Proposed mitigation measures are limited to stopping work if "visual contamination or chemical odors are detected" (MM HAZ-3, FEIR p. 3.9-20). This mitigation is patently insufficient to address potential hazards and ensure that impacts are minimized.

At the March 20, 2013 hearing, the Commission requested additional information regarding potential hazardous soil contamination underlying the Ocean Estate. Since that hearing, AECOM prepared a document responding to comments from County HazMat staff, which unfortunately discloses that the extent of soil contamination is still largely unknown. Specifically, County HazMat asked AECOM to provide cross-sections showing impacted soil in the Ocean Estate development envelope. In response AECOM provided Figures 2 and 3, which marks the extent of contamination with question marks for both lateral and vertical directions, showing that the "Approximate extent of TPH impacts [is] quarried where uncertain". (*See* AECOM Report, 8/2/13, hereby incorporated by reference)

As explained in two comment letters to the Planning Commission from hydrologist and geochemist Mark Kram, Ph.D. dated 11/19/13 and 11/25/13 (hereby incorporated by reference), on account of this uncertainty, it is unknown what total amount of material would require remediation or removal. Further, if contamination extends to the water table, there would be an entirely new potential risk to be addressed. County HazMat staff clarified that an assumption was made that groundwater in the vicinity of the Ocean Estate would be too deep to be reached by any potential contamination, without any actual testing or knowledge of groundwater depth on site.

The failure to delineate the boundaries of known contaminated sites, and failure to determine the actual depth of the groundwater table also affects the adequacy of the EIR's analysis of significant project impacts. Because the EIR has not adequately characterized the level of contamination on the Project site, it does not adequately evaluate potential health and safety impacts associated with the development of the site. The EIR also fails to disclose, analyze or mitigate potentially significant impacts associated with remediation of contamination that may be much

greater than assumed in the EIR and would result in greater excavation of soils (which could be substantially greater than assumed in the EIR) and concomitant new significant impacts to biological, visual, recreational, biological, geologic, and water resources.

The failure to identify the location, nature and extent of soil and groundwater contamination existing on the site in the EIR itself constitutes a violation of CEQA, and is grounds for decertifying the EIR. (*See Save Our Peninsula Committee,* 87 Cal. App. 4th at 128).

Additionally, the EIR and RDEIR circulated for public review were wholly lacking in information and data regarding the baseline conditions of the Naples Harbor Seal Rookery. Rather, the baseline information was added to the EIR following its recirculation, which is not permissible under CEQA (*see Id.*, at pp. 127-128 (holding that the environmental baseline must be determined at the beginning of the environmental review process for the EIR to fulfill its function with respect to analysis and public participation). Moreover, the baseline information included in the revised EIR is based on extremely limited, and outdated, information, rather than best available science as required, discussed further in section c.i.2, below.

c. Inadequacy of Project Impact Analysis and Mitigation Measures

The discussion of a proposed Project's environmental impacts is the focus of an EIR. (*See* CEQA Guidelines § 15126.2(a) ("[a]n EIR *shall* identify and focus on the significant environmental effects of the proposed project") (emphasis added).) As explained below, the EIR's environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the Project. An EIR must effectuate the fundamental purpose of CEQA: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th at 1112, 1123 (*"Laurel Heights II"*).) To do so, an EIR must contain facts *and* analysis, not just an agency's bare conclusions. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.) Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational goal.

Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. (CEQA Guidelines § 15126.4.) Deferring the formulation of mitigation measures until after project approval is inadequate, unless specific performance standards are identified. (CEQA Guidelines § 15126.4(a)(1)(B), *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309.) Under CEQA, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . ." (Pub. Res. Code § 21002.)

Discussed below, the EIR's discussion of the Project's impacts and mitigation measures falls well short of CEQA's requirements, and fails to provide a basis for informed decisionmaking.

i. Significant Unmitigated Impacts to Biological Resources

1. White-Tailed Kites

The RDEIR's analysis of the impact associated with developing in close proximity to a successful kite nesting tree utilizes CLUP Policies 9-26 and 9-28 essentially as thresholds of significance. (*See* RDEIR pp. 3.4-101 – 3.4-105.) CLUP Policy 9-26 provides "There shall be no development including agricultural development, i.e., structures, roads, within the area used for roosting and nesting." CLUP Policy 9-28 requires that "Any development around the nesting and roosting area shall be set back sufficiently far as to minimize impacts on the habitat area."

The proposed 75-100 ft. buffer between the tree that supported an extraordinary 6-fledgling kite nest and the Ocean Estate development is not sufficient to achieve consistency with these policies, and is not sufficient to reduce impacts below significance. First, as explained in a letter report prepared for the County by biologist John Storrer, dated 7/22/13 and hereby incorporated by reference clarifies that "the area used for nesting" constitutes more than the tree itself, extending to the area defended from other kites or raptor species or even foraging habitat. (*See* Storrer Letter Report, 7/22/13, p. 6.) This conclusion is also reached by kite expert Mark Holmgren and by the Santa Barbara Audubon Society in their letter to the Planning Commission dated 10/28/13 and hereby incorporated by reference. (*See* Audubon/Holmgren letter pp. 12-13.) Accordingly, the proposed Ocean Estate is within the area used for nesting and accordingly conflicts with CLUP Policy 9-28.

Second, the Audubon/Holmgren letter includes extensive comments regarding the inadequacy of the proposed buffer. Furthermore, the below comments made by the County's biologist support the conclusion that development of the Coastal Estate will discourage kites from using the nest tree in the future.

> It's unlikely that kites would return to the "new" (2013) nest tree given the current development proposal . . . Considering the combined effects of lighting, dogs, vehicles and general human activity between all those features I don't see why kites would choose to nest there. They would be much more likely to select a more distant location, providing they can find a suitable nest tree within a reasonable distance from good foraging habitat. (Storrer Letter Report, p. 4).
>
> **Since it appears that a number of environmental, engineering, and economic considerations point to the current location of the Ocean Estate development envelope, I suggest "sacrificing" that area as a resource for kites** and looking to another part of the property that meets kite habitat requirements for preservation and improvement (i.e. management). **I don't think that the proposed development envelope can be adjusted (reduced, reconfigured) to ensure compatible use by kites and people.** (Storrer Letter Report, p. 5 (emphasis added)).

> I would always recommend a larger setback. On this specific site, the development setback is less than 100 feet for the Ocean Estate development envelope, **which in any serious discussion would be indefensible, in my opinion**. (Storrer Letter Report, p. 7.)

Third, the observed nest is no ordinary nest in that earlier this year, it successfully supported six fledglings – something unprecedented for the species. While the Dudek reports and RDEIR rely on the assumption that kites do not reuse nest trees to justify a finding of no significant impact, "A successful nest area is very likely to be one used again." (Holmgren, p. 11.) Accordingly, as to the tree at issue, the assumption that kites will not reuse the nest tree is false. Additionally, Mark Holmgren explained the implications of this unprecedented observation in his October 28, 2013 letter on the RDEIR:

> The Dudek team witnessed something that's never been documented before for this species. And they did it in a year that was exceedingly dry and in which no other pair of kites in Goleta raised more than three young. If Dudek is correct, then this is an extraordinary site and we would want to investigate its attributes before we jeopardize continued Kite use of the site by placing homes on it. Perhaps this area holds a template for restoration that we need to model in other places? What prey density exists here that is able to support such prolific breeding? How can we adequately protect or expand those habitats? Or, have the kites shifted their prey preference to some other organisms?
>
> The 2013 Kite report does not provide sufficient detail to weigh these four questions and select a defensible explanation. Until clarifications emerge, the 2013 Dudek Kite Nesting Study should be considered flawed and should not be used as the basis for decisions pertaining to set-backs or relocations of the home or driveway.

(Audubon/Holmgren Letter, p. 10.) Without any explanation why the kite nest in the Ocean Estate nest tree was more successful than any previously documented kite nest, and during an exceptionally bad year for kite breeding success, it would be reckless to "sacrifice" by developing in such close proximity and relying on the expectation that these kites will simply find another comparable habitat assemblage.

The record demonstrates that the 75-100 ft. buffer was devised because it is the largest possible buffer that would still enable development of the Ocean Estate in its current location, not because it is the distance adequate to protect the kite nest tree. A much larger buffer would be required before the County could reasonably conclude that impacts to kites are mitigated below significance, and that this Project complies with CLUP Policies 9-26 and 9-28 by avoiding development in the nesting and roosting area entirely and minimizing impacts to the surrounding habitat area that supported this extraordinarily successful nest site.

2. Naples Harbor Seal Rookery

The Naples Seal Rookery is one of a precious few seal rookeries remaining in the County, which "occupy an infinitesimally small parts of the mainland coast of Southern California." (Howorth letter, 10/15/13, pp. 1-2.) The Rookery is considered ESHA and is within the Naples State Marine Conservation Area (SMCA) (*Id.*). While public access in the vicinity of the rookery has been ongoing for generations and is part of the environmental baseline, constructing and occupying a residence in such close proximity to the rookery will introduce an entirely new and unfamiliar use that could be the final straw resulting in the loss of this precious local resource (*see* Howorth comments to Planning Commission). Discussed above, the baseline information with respect to the Naples Harbor Seal Rookery does not comply with CEQA. Additionally it appears that no marine mammal expert participated in the preparation of the EIR.

Marine mammal expert Peter Howorth submitted extensive comments (including comment letters dated 10/15/13 and 12/4/13, hereby incorporated by reference) criticizing the EIR's failure to adequately address the Naples Seal Rookery. Among his criticisms is the EIR's failure to analyze whether construction and occupancy of the Ocean Estate would result in impacts to the Seal Rookery. Additionally Mr. Howorth expresses numerous concerns regarding the proximity of the Ocean Estate and associated construction staging area so close to the seals, due to the potential for noise, lighting, vibrations, and human activity to impact the seals. The EIR, response to comment, and revised biological resources section do not include any actual data or analysis regarding whether occupant-related activity may cause continuing (post-construction) impacts and force abandonment of this site for a less-favorable seal haulout and rookery area. An ad-hoc explanation offered at the March 20th Planning Commission hearing by a member of the applicant's team (with no experience or credentials with respect to marine mammals), regarding construction noise is that passing trains have a similar noise frequency to construction noise. Of course, as clarified by Mr. Howorth before the Planning Commission, trains pass only infrequently where as construction noise would be more constant, resulting in substantially more disturbance to the seals. Impacts to the seals from transient noise and impacts from constant noise are not comparable, and are assessed and mitigated entirely differently.

In his comment letter Mr. Howorth specifically mentions the EIR's failure to discuss visibility from the ocean, and notes that "[t]he view from the ocean is also very important to harbor seals, which closely scrutinize the coast before venturing ashore" and "Harbor seals have good vision in air and frequently closely watch people on the beach from nearshore waters. Construction equipment, along with the dust it raises when operation, will present visual impacts that could affect haul-out patterns." (Howorth Letter, pp. 6-7.) The response to these RDEIR comments "the dwelling will not be visible from the harbor seal haulout" fails to address and answer the equally important question of whether the dwelling (and associated construction activity and equipment) would be visible from the ocean, which would deter use of the seal haulout as seals inspect the area prior to reaching the beach. (*See* Comment Response D2-21.) Individuals who regularly surf in nearshore waters off the Project site confirm that indeed the Ocean Estate would be readily visible from nearshore waters.

Mr. Howorth also testified regarding the patent inadequacy of the proposed mitigation measures to address construction and other impacts on the Naples Seal Rookery.

The EIR and RDEIR circulated for public review included no disclosure or analysis regarding the impacts of construction and occupancy of the residences on the Naples Seal Rookery. The ad-hoc discussion in the revised biological resources section is wholly inadequate, and it is apparent that no bona fide expert on marine mammals participated in its preparation. The comments from marine mammal expert Howorth by contrast, provide ample evidence regarding the inadequacy of the EIR's disclosure, analysis, and mitigation for impacts to the Naples Seal Rookery. Accordingly, the County lacks substantial evidence for concluding that the Ocean Estate will not significantly and adversely effect the Naples Seal Rookery, an extremely important biological resource.

ii. Significant and Unmitigated Impacts to Public Access and Recreation

The Project would terminate informal access across the site and to the beach and Naples-area surf breaks enjoyed by the public for generations and impliedly dedicated to the public for recreational use. The loss of this long-standing public access is a significant impact, regardless of whether or not the access is "unauthorized".[1] The offer to dedicate easements in the future does not effectively mitigate the loss of existing public access, since the County may never accept the easements or improve them for public use. The cost for installing any of the proposed beach access structures is conservatively estimated in excess of $750,000, in addition to the cost of environmental review. (Penfield & Smith Memo, 6/12/12, hereby incorporated by reference). The County found a comparable massive bluffside stair structure at Santa Barbara Ranch to be objectionable and this was ultimately eliminated from that Project. Without substitute access improvements as mitigation, the existing informal routes are closed and there is a Class 1 significant impact to recreational resources.

The 2009 DEIR prepared by AMEC Earth and Environmental, Inc. (hereby incorporated by reference) concluded that the Project would result in significant and unmitigable Class I impacts to public access and recreation from elimination of existing unauthorized public coastal access. (2009 DEIR, p. 3.13-20.) The 2009 DEIR found that the offers to dedicate lateral and vertical easements did not mitigate this impact below significance, reasoning as follows:

> The cost of designing and constructing the stairway could exceed one million dollars and the source of these funds is uncertain. The County and/or another appropriate agency would likely need significant time and resources to raise these funds. Additional time would be required to permit, design and construct the stairway. As a result, vertical access to the beach may not occur for five, ten or more years. In the interim, the project would result in the long-term closure of the existing unauthorized public access to the Naples surf break and Burmah

[1] Appendix G and the County's CEQA Thresholds provide an impact if a project would: "Conflict with established recreational . . . uses of the area."

> Beach. In addition, in contrast to the existing unauthorized coastal access points on the western portion of the project site and within the Naples Townsite, the proposed stairway would not provide surfers and other recreationists direct or consistent access to the Naples surf break. The proposed stairway [at Eagle Canyon] would join the beach more than 0.80 miles from the Naples surf break. The intervening beach and rocky points are often impassable during high tides. Based on these circumstances, the project would result in an *unavoidable and significant* impact to public recreation and coastal access (Class I).

(2009 DEIR p. 3.13-29.)

Additionally, the 2009 DEIR correctly noted that "The closure of the existing unauthorized coastal access at the project site could create a range of potential secondary impacts." Specifically,

> Past experience indicates that surfers and other recreationists would try to continue accessing the Naples surf break and Burmah Beach. Consequently, other existing unauthorized access trails through Eagle Canyon and other drainages on the project site are likely to receive increased use. Increased public access through Eagle Canyon could damage habitat of the California red-legged frog and other sensitive species. Use of other steep access trails could increase the risk of injury to recreationists climbing down steep canyons that occur along the bluff face. In turn, this could create demands for installing more fencing and security.

(2009 DEIR, p. 3.13-30.) The 2013 EIR did not identify this issue, or attempt to analyze or mitigate secondary impacts associated with the closure of beach access. This alone constitutes a serious flaw in the EIR.

In stark contrast to the 2009 DEIR, the 2013 EIR concludes that the Project's impacts to public coastal access is Class III, despite the fact that the 2009 DEIR evaluated a location for the Ocean Estate east of its currently proposed location where it would not physically block the existing public beach access trail to Naples surf break. The new, more impactful location of the Ocean Estate is the only change to the Project since 2009 that meaningfully affects the analysis of this impact. The 2013 EIR attempts to explain the differing conclusions with respect to this impact, but it is clear that none of them would meaningfully affect the conclusions reached in the 2009 DEIR (*see* EIR p. 3.13-19 – 3.13-20.) For example, the 2013 EIR identifies as a "distinguishing factor" that the project now includes all items in the 2009 DEIR Mitigation Measure REC-2a including a conditional easement dedication for a 20 vehicle parking lot, extension of the lateral Coastal Trail for an additional 150 feet, and access from the parking area to the lateral Coastal Trail over the UPRR tracks. (EIR p. 3.13-19.) However the 2009 DEIR expressly found that *even with these mitigation measures*, significant impacts from the loss of existing coastal access would remain. (2009 DEIR p. 3.13-29.)

In attempting to distinguish the 2009 DEIR's conclusion of a Class I impact, the 2013 EIR explains that the 2009 DEIR did not consider or address a number of issues. (*See* EIR pp. 3.13-19 0 3.13-20.) However, upon reading the 2009 DEIR it is clear that all these issues **were** considered.

One such issue included in the 2013 EIR and emphasized by the applicant before the Planning Commission is that the existing unauthorized access could be taken away at any time, without the proposed project. Of course, the CEQA analysis must be based on conditions existing at the time the EIR was prepared (*see* CEQA Guidelines § 15126.2 (a), (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322) which in this case included existing unauthorized public access. A second such issue is that the County's CLUP Policy 7-19 provides that access to the Naples Reef should continue to be by way of boats. However, both the County and the Coastal Commission approved beach access as a condition of the golf course project with this CLUP policy in existence, at a location (Tomate West) which is even closer to Naples Reef than the potential vertical access locations offered by the applicant. In short, the 2013 EIR's conclusion of a Class III impact is directly and irreconcilably at odds with the 2009 DEIR's conclusion of a Class I impact.

Moreover, the 2009 EIR identifies the access point west of the Project site on the applicant's Naples Townsite lots as a possible alternative that, unlike all of the possible locations identified for vertical access, would provide surfers and recreationalists direct and consistent access to the Naples surf break. This access point, sometimes called "Tomate West" is identified in the draft Gaviota Coast Plan as the proposed beach access location for Naples/Paradiso del Mare (*see* draft GCP Figure 4.5), and was conditionally dedicated to the County for public access as part of the Golf Course Project (*see* Irrevocable Offer to Dedicate Public Access Easements, 12/11/98, hereby incorporated by reference.) Discussed further in section I.d.ii, below, the applicant has refused to consider an access point west of the rookery that would allow access to Naples surfbreak year round. Without access at Tomate West, the Project clearly results in Class 1 significant impacts to biological and recreational resources.

d. Alternatives

A proper analysis of alternatives is essential for the County to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. (Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126.6(a); *Citizens for Quality Growth v. City of Mount Shasta* (1988), 198 Cal.App.3d 433, 443-45.) As stated in *Laurel Heights*, "[w]ithout meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." *Laurel Heights Improvement Assn., Inc. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 404 ("*Laurel Heights I*"). Here, the EIR's discussion of alternatives fails to live up to these standards.

Pursuant to CEQA's "substantive mandate" the County may not approve the Project as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the Project. (*Id.* at 564-565; Pub. Res. Code § 21002.) Discussed above, the Project, and in particular the Ocean Estate, results in numerous

significant impacts (as well as policy conflicts) that could be substantially lessened and/or avoided with a project alternative. Unfortunately the EIR's alternatives analysis is fundamentally flawed, and fails to analyze significant new information that arose after the close of the public comment period on the DEIR. Without an adequate alternatives analysis, the EIR is flawed, and CEQA's substantive cannot be fulfilled.

i. Alternatives Must Be Reevaluated following the Addition of Significant New Information

Despite Appellants' requests that the RDEIR reexamine the alternatives section in light of the newly discovered impacts to kites, and the comments of Mr. Howorth identifying impacts to the Naples Seal Rookery that were not addressed in the DEIR, the County declined to do so. As a result of this failure, the alternatives analysis is fundamentally flawed. Project alternatives including the "Coastal Commission" and "East-Side" alternatives would substantially reduce impacts to the seal rookery, impacts to white-tailed kite, would substantially reduce the extent of Project infrastructure including eliminating the new visual impact associated with constructing a new bridge over the railroad at the west end of the property, and further would reduce the growth inducing impact associated with extending the waterline to the western boundary of the site making water available to serve the applicant's 25 Naples Townsite lots.

Moreover, the design and profile of the residences have been substantially altered since preparation of the visual simulations included in the alternatives section of the EIR. Accordingly these visual simulations are outdated, and substantially overstate the visual impact of the alternatives relative to the proposed project.

Additionally, the existence of the covenant restricting development, discussed in the following section, was introduced into the record in comments on the DEIR, and its meaning explained in comments to the RDEIR. This covenant directly contradicts the statements in the EIR regarding the infeasibility of this alternative and its inability to satisfy project objectives, and accordingly the alternatives analysis should have been revisited to take account of this significant new information.

ii. An Off-Site Alternative Is Feasible and Capable of Satisfying Project Objectives

Consideration of alternative sites is necessary and particularly proper under CEQA where the developer owns or controls feasible alternative sites. (*Citizens for Goleta Valley,* 52 Cal. 3d at 575.)

One off-site alternative in particular that appears to be feasible and capable of avoiding or reducing numerous significant Project impacts is relocation of the Ocean Estate to the Applicant's "Naples Townsite" lots immediately west of the Project lots, north of the railroad right of way. These lots are undeveloped, and offer alternative locations for the Ocean Estate that would avoid impacts to

the seal rookery and white-tailed kite nest. These lots also include "Tomate West", the preferred location for vertical coastal access to the Naples surfbreak and Burmah beach (*see* section 1.c.ii, above). Additionally, these lots are linked to the Project because the 10-inch potable waterline would provide sufficient water to enable development of the Naples lots, which is recognized as a growth inducing impact of the Project. (*See* FEIR pp. 5.0-3 – 5.0-4),

The FEIR did not analyze this alternative in detail, summarily rejecting the use of the applicant's Naples Lots because:

> Irrespective of development on alternative parcels, these two existing legal parcels would continue to be subject to development requests consistent with the allowable use of construction of a single-family home on each parcel. This could create a circumstance where the alternative would foster increased development. Given these factors, analysis of off-site alternatives was considered both infeasible and unproductive.

(FEIR p. 6.0-6.)

At the March 20, 2013 Planning Commission hearing, we brought a document to the Commission's attention that was attached to a public comment letter and included in the FEIR. That document, a covenant restricting development pursuant to an agreement between the owners of the Project site and owners of the adjacent parcel to the east that provided a utility easement across that property, also restricts development on the two Project lots *as well as the applicant's Naples Townsite lots* to two homes. Specifically, the relevant provision of the covenant provides:

> 9. Covenant to Restrict Development. Grantee, for itself, and its successors and assigns, covenants and agrees for the benefit of Grantor and the Servient Property that Grantee shall not construct or install any improvements on the Dominant Property, except that Grantee may construct two homes that together with related structures permitted to support each such home, shall not collectively exceed 20,000 square feet for each home. The site for each home shall be limited to the approximate locations on Grantee's property shown on Exhibit C-1 attached hereto, provided, however, that Grantee may change the location of either or both of such sites: (a) if such change is required for approval of a site by the governing regulatory authorities, and (b) if Grantee provides Grantor with reasonable advance notice of any public proceedings respecting the change of such locations.

(FEIR p. 11.0-308.) The "Dominant Property" is defined by the agreement in Exhibit A (Legal Description for Dominant Property), which lists the following parcels (most described by APN number), which we've confirmed by reviewing APN maps at the County Assessor consist of the two Project lots and the Applicant's 25 "Naples Townsite" lots.

79-200-04, 79-200-08, 79-180-48, 79-180-50, 79-160-57, 79-180-59, 79-180-61, 79-180-54, 79-180-56, 79-180-66, 79-180-68, 79-180-49, 79-180-58, 79-180-60, 79-180-55, 79-180-69, 79-180-62, 79-180-64, 79-180-51, 79-180-65, 79-180-53, 79-180-70, 79-180-63, 79-180-52, 79-180-10, Parsons Pipeline Easement, Portions of Santa Lucia Avenue, Pompeii Avenue, 4th Avenue and 5th Avenue within the Townsite of Naples

(FEIR p. 11.0-315 – 11.0-323.)

This "Covenant to Restrict Development" contradicts the EIR's improper rejection of feasible off-site alternatives that can avoid and reduce significant Project impacts (above, *see* FEIR p. 6.0-6.) Because the applicant and its successors can only develop two homes on its entire holding per the covenant and agreement with the neighboring landowner, there is no basis for concluding that an off-site alternative which develops two homes on the applicant's entire holding is infeasible.

In response to repeated questions regarding this covenant, the applicant's agent expressed the opinion that Exhibit C-1, which depicts the two Project lots, demonstrates that only those two lots are covered by the covenant. Of course, the plain language of the covenant (above), clearly and unambiguously demonstrates that this opinion is blatantly false.

The applicant has also contended that "It is a private agreement entered into for the benefit of the two parties, enforceable only by those parties, and there was no intent to limit future development on the Naples lots." (Applicant's 11/15/13 letter to the Planning Commission, pp. 4-5.)

However, whether the agreement is private among parties does not change the fact that it exists and is binding on the applicant. In fact the applicant relies on the same private agreement to demonstrate to the County that they can bring water to the property. The Covenant is a matter of public record and recorded in the chain of title for the Project parcels. Moreover, while the applicant may unilaterally contend they had "no intent" to limit future development of the Naples lots, they represent only one side of the agreement and Covenant, and the plain language of the Covenant limits future development of the Naples lots. In sum, the record lacks substantial evidence supporting a conclusion that an off-site alternative using the applicant's Naples Lots is infeasible.

iii. Limiting Public Benefits to the Proposed Project Only Conflicts with CEQA

The EIR is unusual in that it specifies that only the proposed project in the applicant's preferred configuration would include public benefits including the public access offerings and the conservation easement. This impermissibly skews the alternatives analysis in favor of the proposed project. Additionally, the public benefits offered by the applicant are of course necessary for the County to make the Statement of Overriding Considerations. The Class I impacts to cultural resources and to the cumulative aesthetics of the Gaviota Coast would exist for all alternatives save the no-project alternative. Accordingly, were the County to conclude that an alternative was

environmentally superior, it would lack the ability to make overriding considerations supporting that alternative.

e. The FEIR's Responses to Comment Is Legally Inadequate

"The evaluation and response to public comments is an essential part of the CEQA process. Failure to comply with the requirement can lead to disapproval of a project." (Discussion following Guidelines § 15088). Responses to comments must describe the disposition of the "significant environmental issues" raised in the comments, and must address in detail "major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments". (Guidelines § 15088 (c)). Additionally "an adequate EIR must respond to specific suggestions for mitigation of a significant environmental impact unless the suggested mitigation is facially infeasible." (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal. App. 4th 1019, 1029-1030). "There must be a good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." (Guidelines § 15088 (c)). Where a comment proposes a new or modified mitigation measure, agencies must ascertain whether the impact it addresses is otherwise significant and unavoidable, and then assess the feasibility of the proposed mitigation measure.

There are numerous inadequacies in the Response to Comment ("RTC") included in the FEIR, many of which are identified in our prior submittals, incorporated hereby by reference. Key comments from experts Howorth and Holmgren were given short shrift or ignored all together. Comments regarding the feasibility of the off-site alternative raised in the context of the RDEIR were dismissed as "not relevant", although they are directly relevant to the avoidance of new impacts identified in the RDEIR. The result of this failure is that major environmental issues have been swept under the rug, directly at odds with CEQA.

2. Required Findings of Approval Are Not Supported by Substantial Evidence

To be legally adequate, administrative findings must be supported by substantial evidence in the record, and must "bridge the analytic gap between the raw evidence and ultimate decision or order". (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 514-515). When reviewing whether substantial evidence supports an agency's reasoning process, courts must look at the "whole record" and "consider all relevant evidence, including evidence detracting from the decision, a decision which involves some weighing to fairly estimate the worth of the evidence." (*Sierra Club v. California Coastal Com.* (1993) 12 Cal. App. 4th 602, 610). Findings required for approval of this Project are not supported by substantial evidence, as discussed below.

a. The Project Site Is Inadequate to Accommodate the Level of Development Proposed

Pursuant section 35-172.8 of the Article II Zoning Ordinance, the County must find that the "site for the proposed project is adequate in size, shape, location and physical characteristics to accommodate the type of use and level of development proposed." The Planning Commission's Finding summarily concludes that the property would be adequate to support all development proposed. Substantial evidence does not support this finding.

The Project is proposed on exceptionally constrained lands. The only available location to run Project utility lines including water is through a significant Chumash cultural site. The proposed location for the Ocean Estate is: 1) nesting and roosting habitat for white-tailed kite; 2) adjacent to the Naples Seal Rookery; 3) on top of the main existing public access route to the beach and Naples surf-break; 4) the site of three abandoned oil wells, and unknown soil contamination; 5) on prime agricultural soils; 6) vulnerable to bluff erosion and climate-change induced hazards. (*See* FEIR Figure 3.9-1 (Site Constraints Map), FEIR Figure 3.13-1 (Map showing existing Tomate Canyon beach access).)

These constraints demonstrate that the proposed Project site, particularly the Ocean Estate Lot, is not adequate in size, shape, location and most importantly, *physical characteristics*, to accommodate the large estate complex proposed.

b. Access to the Project from Highway 101 Is Inadequate for the Proposed Use

Pursuant to section 35-172.8 of Article II, the County must find that streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use. The proposed finding that access is adequate for the proposed project is directly contradicted letters regarding this Project submitted by Caltrans (hereby incorporated by reference). The Caltrans letter on the draft EIR for example provides, among other things: 1) "[t]he shoulder is not a structural section of pavement and is not designed for regular usage as is proposed", 2) "[t]he driveway flare is of unknown quality as it is not addressed within the analysis", 3) "the use of the shoulder for motor vehicle acceleration and deceleration has potential to create safety conflicts with bicycles using the facility", 4) "Caltrans disagrees with the conclusion obtained from the DEIR with respect to ingress and egress to the project driveway", 5) "[a]s early as the construction phase, with the addition of 62 ADT over a two-year period, the project will alter the transportation character at this location", and 6) "[t]he traffic study inaccurately used San Diego Association of Governments (SANDAG) trip generation manual which resulted in an underestimation of the proposed development's trip generation." (FEIR p. 11.0-12.)

The Responses to Comment merely restates the information in the DEIR that Caltrans is critical of. Alternative access, discussed in section 3.b.i, has not been studied and appears to be

inadequate for Project traffic including construction and emergency vehicles. The Commission cannot, under these circumstances, find that the Project has adequate access from Highway 101.

c. The Development Fails to Conform with Applicable Provisions of the Comprehensive Plan and Local Coastal Plan

Pursuant to section 35-169.5.3 of the Article II Zoning Ordinance, the Commission must find that the development conforms to the applicable provisions of the Comprehensive Plan and Local Coastal Land Use Plan (CLUP). The proposed finding refers to the policy discussion in the staff report, which is unresponsive to numerous provisions with which the Project conflicts. The following are some of the most glaring examples:

CLUP Policy 9-26 provides that "there shall be no development . . . within the area used for roosting and nesting" by white-tailed kites. The Ocean Estate is squarely within the area used for white-tailed kite nesting in clear violation of this policy.

CLUP Policy 9-28 requires that "Any development around the nesting and roosting area shall be set back sufficiently far as to minimize impacts on the habitat area." The proposed 75-100 foot setback has been described by the County's own biological consultant as "indefensible" and that it would result in the 2013 nest tree being "sacrificed," disallowing future use of this highly productive nesting tree by kites. There can be no question that the development is not set back sufficiently to minimize impacts on the habitat area.

CLUP Policy 2-6 requires adequate public services including roads. Caltrans' submittals clearly demonstrate that Project access to and from Highway 101 is inadequate, in violation of this policy.

CLUP Policy 8-2 prevents the conversion of parcels "designated for agricultural use" to nonagricultural use except for "priority uses under the Coastal Act" such as recreation. The Project converts the agriculturally designated site to a non-priority residential use. Staff relies on the lack of agricultural use and agricultural viability to find consistency, which are not mentioned in the policy.

In light of these clear conflicts with mandatory provisions of the CLUP, the County cannot find that the Project conforms with these applicable provisions.

d. The Project's Class I Impact to the Visual Character of the Gaviota Coast Is Not Mitigated to the Maximum Extent Feasible

The EIR finds that the Project will result in a Class I cumulative aesthetic and visual impact by facilitating transition of the Gaviota Coast from a predominantly rural area into one that is increasingly characterized by residential estates. The proposed luxury estate compounds are two to three times the average size of existing Gaviota Coast residences, and include building heights of up to 22 feet. Reducing the size and height of the compounds so they are comparable with the size and

height of existing Gaviota Coast homes could substantially lessen the Project's Class I impact. There is no evidence that such a reduction is infeasible.

3. Conclusion

The public has received no cogent explanation why the County abandoned the 2009 environmental review process for a very similar project and embarked on a redundant environmental review document. Regrettably, CEQA's basic requirements remain unfulfilled – impacts are overlooked and mischaracterized; alternatives are improperly eliminated from consideration; and applicant protestations of the infeasibility of their own lands are accepted without question. Basic resource and access protections mandated by the CLUP and California Coastal Act are ignored, and the impacts of developing this highly constrained site are accentuated, not avoided and reduced.

The substantial flaws and omissions in the EIR, and the lack of substantial evidence to support required findings, precludes approval of this Project. Accordingly we respectfully request that you grant the appeal, and deny the Project. At a minimum, additional environmental review is required.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO

Ana Citrin
Marc Chytilo
For the Gaviota Coast Conservancy

SHUTE, MIHALY & WEINBERGER, LLP

Ellison Folk (by AC)
Ellison Folk
For Santa Barbara Surfrider