



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Planning and  
Development  
Department No.: 053  
For Agenda Of: February 4, 2014  
Placement: Departmental  
Estimated Tme: 2.5 hrs  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

---

**TO:** Board of Supervisors  
**FROM:** Department Glenn Russell, Ph.D. Director, Planning and Development  
Director (805) 568-2085  
Contact Info: Alice McCurdy, Deputy Director, Development Review  
(805) 568-2518  
**SUBJECT:** Appeals (Case No. 13APL-00000-00037 and 13APL-00000-00038) of the County  
Planning Commission's Approval of the Paradiso del Mare Ocean and Inland  
Estates Project (Case Nos. 06CDH-00000-00038, 06CDH-00000-00039, 07CUP-  
00000-00065, 09CDP-00000-00045, 10CUP-00000-00039, and 10CDP-00000-00094)

---

**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:** N/A

**Recommended Actions:**

Consider the appeals of the County Planning Commission's December 4, 2013 approval of the Paradiso del Mare Ocean and Inland Estates Project.

Staff recommends that your Board take the following actions:

1. Deny the appeals, Case Numbers 13APL-00000-00037 and 13APL-00000-00038;
2. Make the required findings for approval of the project specified in Attachment-1 of this Board Letter, including CEQA findings;
3. Certify the Environmental Impact Report, 09EIR-00000-00003 (included as Attachment-3 to the January 21, 2014 Board Letter) as modified by the August 2013 Updated Biological Resources Section (3.4) of the EIR (included as Attachment-4 to the January 21, 2014 Board Letter), EIR Revision Letter RV1 dated March 19, 2013 (included as Attachment-5 to the January 21, 2014 Board Letter), and EIR Revision Letter RV2, (included as Attachment-6 to

the January 21, 2014 Board Letter) and adopt the mitigation monitoring program contained in the conditions of approval; and,

4. Approve *de novo* the project, Case Numbers 06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 07CUP-00000-00065, 10CUP-00000-00039, and 10CDP-00000-00094 subject to the conditions of approval included as Attachment-2 to this Board Letter.

Alternatively, refer back to staff if your Board takes other than the recommended action for appropriate findings and, if necessary, conditions of approval.

### **Summary Text:**

Two timely appeals of the County Planning Commission's December 4, 2013 approval of the Paradiso del Mare Ocean and Inland Estates project (06CDH-00000-00038, 06CDH-00000-00039, 09CDP-00000-00045, 07CUP-00000-00065, 10CUP-00000-00039, and 10CDP-00000-00094) were filed on December 16, 2013. The first appeal was filed by the Office of Marc Chytilo on behalf of the Gaviota Coast conservancy, the Santa Barbara Chapter of the Surfrider Foundation, the Santa Barbara Audubon Society and Mr. Peter Howorth. The second appeal of the Planning Commission approval was filed by the Santa Barbara Trails Council. The proposed project is located on two lots of 64 acres (coastal) and 78 acres (inland) separated by the Union Pacific Railroad and is located south of Highway 101 on the Gaviota coast. The project includes the development of two residences of approximately 6,000 square feet (coastal) and 7,000 square feet (inland) with guesthouses and appurtenant structures, an access driveway and bridge, and extension of Goleta Water District water lines to serve the proposed residences. The project also includes dedications for public access easements for 1) lateral and vertical access across the property, 2) parking, 3) a 117-acre open space conservation area, 4) on-site habitat restoration and 5) construction of a portion of the California Coastal Trail. Please refer to the February 21, 2013 Planning Commission Staff Report, March 19, 2013 Memo to the Planning Commission, and the November 12, 2013 Memo to the Planning Commission (Attachments 8-10 of the January 21, 2014 Board Letter) for further details on the proposed project and for a comprehensive policy consistency analysis.

### **Appellant Issues and Staff Responses:**

#### **LAW OFFICE OF MARC CHYTILO**

#### **APPEAL ISSUE 1: Inclusion of Naples Townsite Lots (Chytilo appeal letter pages 1-4).**

- a. Appellant asserts that, in addition to the applicant's proposed project, the project description and EIR analysis should include analysis of the development of 25 lots on the Naples Townsite that are also owned by the applicant.
- b. Appellant asserts, in part, that analysis of development of the Naples lots should occur because the applicant has a "Standstill and Settlement Agreement" with the California Coastal Commission that allows two homes on the subject properties and up to 10 homes on the 25 Naples lots owned by the applicant.

- c. Appellant states that the construction of the waterline and driveway to serve the two proposed homes will be used in the future to serve the applicants Naples lots and that, therefore, without analyzing development of the offsite Naples lots owned by the application, the “whole of the project” is not considered.
- d. The EIR identifies a Class I impact to cultural resources as a result of the waterline extension to serve the two proposed homes. The appellant asserts that by not considering development of the Naples lots as a part of the proposed project for two homes *“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.”*

**Staff Response:**

- a. The proposed project includes a request for two homes on two legal lots zoned AG-II-100, a zoning designation for which single-family homes are a principally permitted use. The applicant has submitted no plans or applications for development on the Naples lots thus the EIR analysis is appropriately restricted to the two home project at hand.
- b. The “Standstill and Settlement Agreement” is an agreement between the Coastal Commission and the applicant. County approvals and analysis occur through a separate process that is not bound by the Agreement. Nonetheless, the Agreement specifically allows for the processing of the two lots currently proposed for development and the applicant-owned Naples lots to occur separately. The Agreement states that the applicant “may” apply for up development of up to 10 lots. However, the applicant has not submitted any plans or applications for development on the Naples lots.
- c. Again, the applicant has submitted no plans or applications for development of the Naples lots. Therefore, the Naples lots are not a part of the proposed project. The EIR does conclude that the extension of the waterline to serve the proposed homes would have a potential growth inducing impact as a result of the size of pipeline and due to the available water supply that will be provided by the waterline (please see Section 5.2 of the EIR for a full discussion of growth inducing impacts). The assertion made by the appellant that the waterline will be used to serve the Naples lots at some point in the future is precisely why the EIR considers the project to be growth inducing. Acknowledgement of the growth inducing effects of the waterline construction is the appropriate way to treat this issue, as compared to considering the Naples lots to be a part of the project, as suggested by the appellant. However, both the size of the waterline and the flow rate of water within the line are driven by County Fire Department requirements for the two homes. In addition, the use of water tanks (in lieu of a waterline extension) on the subject property would not meet the requirements of the County Fire Department for fire protection. The EIR does not conclude that construction of the driveway to serve the two proposed homes to be growth inducing.
- d. The EIR identifies a Class I impact to cultural resources as a result of the waterline extension to serve the two proposed homes and a Class I cumulative impact to aesthetic resources of the Gaviota Coast associated with residential development of the two subject lots, in combination

with pending and potential future development along the Gaviota Coast (e.g. Santa Barbara Ranch, Las Varas Ranch, the Naples Townsite). As discussed in Finding 1.4 in the Findings for Approval (Attachment-1), the identified Class I impacts would be mitigated to the maximum extent feasible. As discussed in Finding 1.7 (Statement of Overriding Considerations) *“The project includes a number of offers to dedicate (OTD) easements for both vertical and lateral public access and recreation facilities, which would provide a significant social benefit to the general public,”* including: a segment of the California Coastal Trail along the length of the ocean lot including construction of approximately 1,600 linear feet of the total length of the trail by the applicant; vertical access to the beach from the California Coastal Trail at one of seven potential vertical beach access trail locations; access from the existing site entry from Highway 101 to a public parking lot for up to 20 vehicles; pedestrian access from a parking lot and over the Union Pacific Railroad tracks from the inland lot to the Coastal Trail; and, access along the length of the property on the beach from the base of the bluffs to the mean high tide line. The proposed dedications and development of a segment of the California Coastal Trail are an important step toward achieving State and County public recreation and coastal access goals for the Gaviota Coast. Additional public benefits associated with the project include the offer of an 117-acre Open Space or Conservation Easement to be managed to protect and enhance white-tailed kite habitat; 23.56 acres of direct habitat restoration; clustering of development and maintenance of a large majority (over 80%) of the site in open space. Therefore, the project already includes significant public benefits that override the identified Class I impacts associated with aesthetic and cultural resources. Consideration of Naples lots as part of the project (as suggested by the appellant) would not grant the County the ability to require siting of the applicant-offered vertical access point at Tomate Canyon. Furthermore, as described on pages 3-4 of the November 12, 2013 Planning Commission Memorandum (Attachment 10 to the January 21, 2014 Board Letter) mitigation measures have been applied to the project which reduce the Class I cultural resources impact to the maximum extent feasible and ensure consistency with applicable Coastal Land Use Plan (CLUP) Policies such as CLUP Policies 10-1, 10-2 and 10-3.

**APPEAL ISSUE 2: Hazardous Materials (appeal letter pages 5-6).**

- a. Appellant asserts that, *“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,”* and the *“EIR fails to disclose, analyze, or mitigate potentially significant impacts associated with remediation that may be much greater than assumed in the EIR.”*
- b. Appellant contends that the extent of soil contamination is largely unknown and thus the EIR *“has not adequately characterized the level of contamination on the project site, [and] does not adequately evaluate potential health and safety impacts associated with development of the site.”*
- c. Appellant asserts that groundwater contamination is a risk and that the County Hazardous Materials Unit staff’s determination that the ground water in the vicinity of the Ocean Estate would be too deep to be reached by potential contamination was made without testing or knowledge of ground water depth on site.

**Staff Response:**

- a. Remediation of the former oil and gas facilities at the project site is a separate project from the proposed project. Remediation activities are required to be completed by the former oil and gas operator ARCO/BP, regardless of development by the project applicant. Remediation of the site is an ongoing separate process that has been underway for the past 10 years, with much of the remediation already complete. As noted under response “b” below, the development envelopes for the proposed project have been tested for hazardous materials. Both the EIR and the testimony of County hazardous materials experts support the conclusion that the ocean and inland estates may be safely developed with residential structures with application of the recommended mitigation measures. Existing mitigation measures applied under the EIR require that, prior to issuance of Coastal Development permits for the two proposed residences, a County approved remedial action plan (RAP) with review and oversight by the County Hazardous Materials Unit (HMU), be developed, implemented and completed. It will not be necessary to relocate the development envelopes proposed as a part of the project because (as discussed in detail in item b. below) the extent of contamination has been sufficiently characterized to confirm that residential development can occur in the locations proposed. If for some unexpected reason, relocation of either estate became necessary, the applicant would need to return for a revision to the project or for a new permit approval.
- b. As discussed at the Planning Commission hearings of November 20, 2013 and December 4, 2013, and in P&D's November 12, 2013 Memo to the Planning Commission, the “extent of contamination” at the development envelopes is known and the location of abandoned oil wells adjacent to the inland estate and ocean estate development envelopes is also known. The appellant's reference to “question marks” on an exhibit in the August 2, 2013 AECOM letter has been mis-represented and was addressed by expert testimony at the hearings on November 20, 2013 and December 4, 2013. Expert testimony was provided at both hearings by County Hazardous Materials Unit (HMU) staff members Paul McCaw and Tom Rejzek. The HMU representatives confirmed that the vertical and lateral extent of contamination was sufficiently defined using standard, accepted techniques and practices currently employed in the industry.

Specifically, with regard to oil wells, there are no abandoned oil wells on or adjacent to the inland estate development envelope. There are three abandoned oil wells outside of the ocean estate development envelope. Existing mitigation measures/conditions applied to the project require a minimum 10 foot setback between the three abandoned oil wells and the ocean estate development envelope. The setback is not mandatory under County or State regulations but has been required to allow for access to the well sites in the future. The project applicant has prepared an exhibit (included as Attachment-3 to this Board Letter) documenting that all three wells will be more than 10 feet from the edge of the development under the final development envelope configuration.

As summarized in a memo (Attachment-4) from AECOM (consultant for ARCO) dated August 23, 2013, the inland/northern development envelope (NDE), *“has been adequately characterized and soil sampling results show that the former oil production activities have not impacted the soils in the NDE. Therefore, remediation of soils is not required in the NDE and development for residential purposes is feasible from an environmental risk standpoint.”* In addition, a

Development Envelope Human Health Risk Assessment was provided by AECOM (consultant for ARCO) on October 25, 2013. The Assessment analyzed both TPH (total petroleum hydrocarbon) and metals and specifically looked at the coastal/Southern Development Envelope (SDE). The Assessment concludes, *“The results of this assessment show that the risks and hazards associated with petroleum-related soil chemicals are less than the levels considered of concern. For this reason, additional assessment or the establishments of risk-based petroleum cleanup levels are not required for the development of these areas for future residential use.”* Separately from hydrocarbons, the Assessment showed naturally occurring metals at levels that will be required to be addressed by the required Remedial Action Plan. The conclusions of the Assessment clearly show that the extent of contamination is not “unknown” as asserted by the appellant.

- c. All water for the proposed project (domestic, agricultural and fire protection) would be provided by the Goleta Water District and no water wells or use of groundwater is proposed. Nonetheless, the topic of groundwater was addressed extensively at the November 20, 2013 and December 4, 2013 Planning Commission hearings (please refer to pages 191-192 of Attachment-5, the transcript for the November 20, 2013 Planning Commission Hearing and pages 45-46 of Attachment-6, the transcript for the December 4, 2013 Planning Commission Hearing). Expert testimony was provided by County Hazardous Materials Unit (HMU) staff members Paul McCaw and Tom Rejzek. The HMU representatives confirmed that groundwater was not encountered in borings drilled up to 75 feet below the surface and that both S.B. County and the Regional Water Quality Control Board hold the position that groundwater investigations are not warranted when groundwater is that far below the known area of contamination. Therefore, there is no concern that residents of the proposed homes would be exposed to groundwater contamination.

**APPEAL ISSUE 3: White Tailed Kites (Chytilo appeal letter pages 7-8).**

- a. The appellant asserts that impacts to nesting kites would occur because the 75-100 foot development setback from the nest tree observed in spring of 2013 is inadequate; that the 75-100 foot development setback is inconsistent with Coastal Plan Policies; and, that *“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.”*
- b. The appellant asserts that the 75-100 foot setback was created so that it would enable development of the Ocean Estate in its current location and that the area used for nesting includes more than just the tree itself, extending to foraging habitat.
- c. The appellant asserts that development of the Ocean Estate will discourage kites from using the nest tree in the future and that the determination that kites will not reuse the nest tree is false.
- d. The appellant asserts that observation of six (6) fledglings produced from a single nest on the property in 2013 indicates that this is an extraordinary site in terms of its capacity to support white-tailed kites.

### **Staff Response:**

Responses to issues raised by the appellant pertaining to white-tailed kites were prepared with the assistance of County-qualified biologist John Storrer. In multiple sections of the appeal letter, the appellant references a letter from John Storrer, dated July 22, 2013. The July 22, 2013 letter was written as a preliminary letter prior to the completion of all research and analysis for the EIR. The conclusions included in the EIR represent the final conclusions of Mr. Storrer.

- a. Discussions regarding potential project-related impacts to kite nesting should begin by taking into account site context and the project as a whole. Specifically, the following factors should be considered:
  - On the subject property, kites have not nested in the same tree from year to year;
  - Kites, as a species, demonstrate a weak tendency toward nest site fidelity (i.e. kites do not typically return to nest in the same tree from year to year). This is particularly true in areas where there are multiple suitable nest trees, such as the subject property (which contains over 300 potentially suitable nest trees). Therefore, kites are not expected to return to the nest tree utilized in spring of 2013; and
  - The adequacy/availability of foraging habitat is of particular importance when kites select nesting locations. The proposed project includes over 117 acres of open space that would be managed with the primary goal of sustaining breeding and foraging habitat for the white-tailed kites.

Within this context, kites are not expected return to the nest tree observed in spring of 2013 but are expected to nest on-site in the future in one of the numerous potential nesting locations and, perhaps increasingly, in proximity to the improved foraging habitat on-site.

Contrary to the appellant's inference, coastal policies are not thresholds of significance. However Coastal Plan Policy 9-28 does require that development be set back from nesting and roosting areas. Specifically, Coastal Plan Policy 9-28 states, "*Any development around the nesting and roosting area shall be set back sufficiently far as to minimize impacts on the habitat area.*" Therefore, although kites would not be expected to return to previously used nest trees, establishment of a buffer from the 2013 nest tree has been required by the County. While kites are known to nest in proximity to occupied dwellings (i.e. within 50-100 feet), setbacks of 75 feet for the driveway and 100 feet for the residence were determined to be the minimum reasonable setbacks by the County's biologist, John Storrer. The minimum setback was established based upon consideration of white-tailed kite nesting activities and the project as a whole, as discussed above. In a letter dated December 23, 2013 Mr. Storrer states, with regard to Coastal Plan Policy 9-28, "*Assuming that the intent of the policy is to ensure long-term utilization of the site for nesting by white-tailed kites, then I would argue that preservation and management of a large, contiguous tract of land specifically for that purpose is more essential and constitutes better mitigation than preservation of a single tree that has been used for nesting on one occasion.*" Consistency with Coastal Plan Policies pertaining to white-tailed kites is discussed in greater detail under Appeal Issue #12, below.

- b. The current location of the ocean estate residence is 30 feet from the 2013 nest tree. Recommended mitigation measure MM-BIO-9a (condition 16) requires reconfiguration of the

ocean estate such that the development must be moved to 75-100 feet from the nest tree. Therefore, the required setback does not enable the ocean estate residence to remain in its current location, as asserted by the appellant.

Biologically, the definition of a “nesting area” or of kite “habitat area” may be defined in multiple ways, including just the nest tree itself, or the nest tree and the area used for foraging habitat in proximity to the nest tree. Consideration of all foraging habitat in proximity to the project site and nest tree would expand the “nesting/habitat area” to an area encompassing four or five parcels and up to 400 acres on and adjacent to the project site where foraging is known to occur. This is clearly not the intent of the required set back discussed in Coastal Plan Policy 9-28. As discussed in item a, above, the intent of Coastal Plan Policy 9-28 is to ensure “*long-term utilization of the site for nesting by white-tailed kites.*” As discussed in item a, above and under Appeal Issue #12, below, the proposed project, including the recommended 75-100 foot buffer, and management of over 117 acres of open space for white-tailed kite breeding and foraging habitat, would be consistent with Coastal Plan Policy 9-28.

- c. Please refer to the discussion under item a, above. Kites are not expected to return to the 2013 nest tree due to a number of factors, particularly the fact that the species does not typically return to nest in the same tree from year to year. With numerous potential nesting trees on-site, in proximity to improved foraging habitat, kites would be expected to select another nesting location further from human activity.
- d. The appellant asserts that the six fledglings observed by Dudek denote an exceptionally important nesting site. However, the success of the nest may be more accurately attributed to the biological fitness of the nesting pair. Biologist John Storrer’s analysis (included in a letter to Planning and Development dated December 23, 2013, included as Attachment-11 to this Board Letter) of the significance of the six fledglings is included below:

*“Production of six (6) young from a single nest is apparently unprecedented and is accurately termed ‘extraordinary.’ But the implications of this single event are vastly overstated. The assertion that this site has a unique ability to support white-tailed kites ignores the following facts:*

- *Successful nesting has been documented only twice in 11 years since surveys for white-tailed kites have been conducted on the property. Systematic surveys for white-tailed kites covering both the breeding and non-breeding season have been performed by professional biologists in at least six years: 2002; 2005; 2006; 2007; 2011; and 2013 over that 11-year span. During that period, successful nesting has been documented twice, in 2002 and 2013. In each of those two years, second pairs of kites attempted to breed, but were unsuccessful. Compare this with “traditional” coastal kite territories such as Ellwood Mesa and More Mesa where breeding by at least one pair of kites has occurred almost, if not every year during that same period.*
- *In 2002, a single nest produced five (5) fledglings, which is also considered unusual, if not extraordinary. Since then, kites were not documented nesting anywhere on the property until 2013, in a different tree than the one occupied in 2002.*



- *Failure of the second nest in both 2002 and 2013 suggests that perhaps factors other than prey availability or accessibility were responsible for the unusually high production of the two successful nests. I believe it is more likely that individual fitness or experience of individual adult pairs of kites was responsible for successful reproduction.*

*While it would perhaps be interesting or even useful to be able to investigate the factors influencing reproductive success or failure for this particular site, the scope of such studies would be well beyond the level of detail required for CEQA analysis. White-tailed kite use of the site was thoroughly researched given the best available information. The research included a comprehensive literature review and field surveys. This information indicates that the site has been used for foraging on a year-round basis in most years, with an increase in foraging activity near the end of the nesting season by both mature and immature birds. Nesting has occurred on an occasional basis. Nighttime communal roosting has not been documented. The EIR offers the following summation of white-tailed kite activity on the Paradiso property:*

*'The resulting information indicates that the site has been used for foraging on a year-round basis in most, if not all years and that nesting has occurred in some, but not all years. Observations also suggest that the site is used for foraging post-breeding, by adult and juvenile kites that may have nested on adjacent properties.'*

*This characterization is both accurate and supported by the best available evidence."*

Therefore, the 2013 nest site is not an extraordinary site in terms of its capacity to support white-tailed kites.

#### **APPEAL ISSUE 4: Harbor Seals (Chytilo appeal letter pages 9-10)**

- a. The appellant contends that no marine mammal expert participated in the preparation of the EIR.
- b. The appellant contends that the baseline information with respect to the Naples Harbor Seal Rookery does not comply with CEQA.
- c. The appellant contends that visibility of the residence from the haulout and ocean were inadequately addressed.
- d. The appellant contends that potential impacts to the seal haul-out as a result of construction activities and noise and post-construction occupation and lighting are inadequately addressed.

#### **Staff Response:**

Responses to issues raised by the appellant pertaining to seals were prepared with the assistance of County-qualified biologist John Storrer.

- a. A County-qualified biologist, Mr. John Storrer, assisted in the preparation of the biological resources section of the EIR, helped prepare EIR responses to comment, and responded to

questions during the Planning Commission hearings. Mr. Storrer has 37 years of experience with marine mammals, including collection, necropsy, survey, census, and capture and tagging. In addition, Mr. Storrer has served as a National Marine Fisheries Service-approved marine mammal monitor for near shore and offshore oil and gas projects under contract to the County of Santa Barbara, City of Goleta, California Coastal Commission, and California State Lands Commission. A more detailed statement of his credentials is included as Attachment-7. Planning and Development (P&D) consulted with Mr. Storrer on the responses contained herein pertaining to harbor seals.

- b. The discussion of the Naples harbor seal rookery in the DEIR was expanded in the response to comments section of the EIR in consideration of Mr. Howorth's comments on this subject. CEQA Guidelines Section 15088 permits responses to comments to take the form of a revision to the Draft EIR. The text was revised to include a description of regional context, regulatory status, and (most importantly) data collected during a year-long study of the Naples haulout site completed under the supervision of Dr. Charles Woodhouse, former curator of Vertebrate Zoology and Marine Mammalogy at the Santa Barbara Museum of Natural History. This information was used as a basis for the impact analysis and development of mitigation measures. The baseline information, impact analysis, and compensatory mitigation do comply with CEQA guidelines. The expanded analysis was completed largely by Mr. Storrer. In addition Mr. Storrer provided testimony regarding the baseline conditions at the site during the November 20, 2013 and December 4, 2013 Planning Commission hearings, supplementing the discussion in the EIR.
- c. An exhibit (included as Attachment-8) presented at the November 20, 2013 Planning Commission hearing in response to public comment, clearly demonstrates that the proposed ocean estate development will not be visible from the seal haulout. While the home may be visible from points out in the water, it will be from a long distance (i.e. approximately 1000 feet) and harbor seals are not particularly averse to lighting or human activity while in the water (Storrer, personal communication, December 23, 2013). They are commonly observed in Santa Barbara Harbor, for example. In addition, harbor seals at the Carpinteria haul-out have increased their use of that site in recent years despite the presence of an industrial pier and parking lot with associated lighting and human activity on the adjacent bluff (Storrer, personal communication).
- d. Construction will occur during daytime hours only and the related effects of noise, vibration and visual disturbance will be less than significant on the seals. These issues were addressed through a number of mitigation measures included in the EIR, in the response to comments, and were addressed with extensive staff testimony at the November 20, 2013 and December 4, 2013 Planning Commission hearings. As described by biologist John Storrer, *"The Naples site has been and is currently used primarily, though perhaps not exclusively, as a nighttime haul-out. This was evident during the study done by UCSB/SBMNH in the mid-1970s when 49 visits were made to the site were made during a five-month period (late October to mid-April). The haul-out pattern was established through (8) visits during nighttime hours, 13 visits during daytime hours, and 28 visits from dawn until sunrise. This pattern more than likely results from daytime use of the beach for recreation. For purposes of comparison, the Carpinteria harbor seal haulout was used primarily during nighttime hours prior to controlling public access."*

Applicable mitigation measures pertaining to noise generation ensure that construction noise at the boundaries of the development envelopes remains below the County threshold of 65 decibels, resulting in even lower noise levels at the seal haulout (located a minimum of 326 horizontal and 55 vertical feet from the development area). Please refer to conditions 67 (Noise-02 Construction Hours) and 68 (Noise-04 Equipment Shielding-Construction) for noise control measures, and conditions 10 (MM-AES-4), 24 (MM BIO-17b Night lighting limitations) and 92 (Lighting) for light control measures. Additional mitigation measures and conditions pertaining to construction activities include (in summary), fencing of development envelopes, permit compliance monitoring, training of construction workers regarding sensitive biological resources (such as the seal haulout), and a requirement for construction personnel to stay in the development envelope when on-site (conditions 89 and 90). All conditions are included in of Attachment-2 to this Board Letter.

Finally, the proposed project, as mitigated, would have an overall beneficial effect with regard to protection of the seal haul-out and would bring site use into greater conformity with applicable Coastal Land Use Plan Policies in comparison to baseline conditions, as discussed on pages 27-28 of the Planning Commission Staff Report (Attachment-8 to the January 21, 2014 Board Letter) and as discussed below:

***CLUP Policy 9-24 Recreational activities near or on areas used for marine mammal hauling grounds shall be carefully monitored to ensure continued viability of these habitats.***

Testimony from the public, including members of Santa Barbara Surfrider and local trails groups has indicated that the existing unauthorized trail on-site that connects to the beach at the approximate center of the seal haul-out area may be used by up to 100 individuals per day. Currently, there is no monitoring program, no posted signage, and no other restrictions in place to protect seals from human disturbance during the pupping/breeding season. However, following implementation of the proposed project, mitigation measures MM-BIO-12 and MM-BIO-13 (conditions 20 and 21) require that access to the beach be closed 300 yards in each direction of the harbor seal haulout during the harbor seal pupping/breeding season, posting of informational signage, and restriction of the development of future vertical beach access to the eastern portion of the ocean lot. In addition, the proposed project includes the deposit of \$20,000 of seed money by the applicant for the formation of a Gaviota Seals Watch volunteer group. This group is intended to operate in a manner similar to the Carpinteria Seals Watch, which monitors the Carpinteria haulout during the pupping/breeding season. Please also refer to pages 7-10 of the December 4, 2013 Planning Commission hearing transcript (Attachment-6 to this Board Letter) and the discussion contained herein under appeal Issue 4, item d. for a further discussion of protections afforded to seals. Therefore, the project would include monitoring of recreational activities at the marine mammal hauling grounds.

***CLUP Policy 9-25. Marine mammal rookeries shall not be altered or disturbed by recreation, industrial, or any other uses during the times of the year when such areas are in use for reproductive activities, i.e., mating, pupping, and pup care.***

As discussed above, the proposed project, as mitigated, would improve existing conditions with regard to protection of the seal haul-out and would provide specific protections to the on-site

haul-out during the pupping/breeding season (such as monitoring, partial beach closure and posting of educational signage).

***CLUP Policy 9-33:*** *Naples reef shall be maintained primarily as a site for scientific research and education. Recreational and commercial uses shall be permitted as long as such uses do not result in depletion of marine resources.*

The proposed project does not include alteration of Naples reef and would re-locate public access further from the reef itself.

***CLUP Policy 7-19:*** *In order to protect the marine resources of Naples Reef and the adjacent beach as a hauling out area for harbor seals, intensive recreational use shall not be encouraged. Access to the site should continue to be by way of boats.*

The proposed project does not include alteration of Naples reef and would re-locate public access further from the reef itself, thereby increasing the distance between recreationalists and Naples reef and decreasing the potential for disturbance from the public to marine resources

#### **APPEAL ISSUE 5: Recreation (Chytilo appeal letter pages 10-12).**

- a. Appellant asserts that the loss of one unauthorized trail at the project site would be a Class I recreational impact and compares the project EIR to an uncertified 2009 EIR that was prepared for a different project proposal on the subject property and which found recreational impacts associated with the 2009 project to be Class I.
- b. Appellant asserts that the County may “*never accept the easements or improve them for public use.*”

#### **Staff Response:**

- a. The project would not result in a Class I recreational impact. As discussed in Section 3.13 (Recreation) of the EIR, the project would result in a Class III (less than significant) impact due to the fact that the proposed coastal estate would block access to the primary, existing, unauthorized, trail used to access Burmah Beach and the Naples Reef surf break. Specifically, pages 3.13-19 through 3.13-27 of the EIR (included as Attachment-9 to this Board letter) include an extensive discussion supporting the conclusion of a Class III impact and clearly differentiating the currently proposed project from the project that was the subject of the 2009 EIR. Notably, the 2009 project proposal did not include the offering of public access dedications whereas the currently proposed project offers numerous public access dedications. On page 3.13-27, the EIR summarizes the Class III determination as follows:

*“Compared to the current unauthorized access, the proposed project creates the opportunity to provide safe, legal, environmentally beneficial, and lasting public access to the shore and coastal recreational opportunities. With the proposed access dedications, the public would enjoy legal access to the site in perpetuity, whereas increased security measures could be implemented at any time under current conditions, thereby eliminating the existing informal access. As*

*proposed, the project would ultimately result in safer access to the shoreline, would make the area available to a greater variety of recreational users, and would secure the legal right for the public to access the property. Additionally, other existing off-site and on-site unauthorized access points and legal access at Haskells Beach would remain. As discussed in Section 3.4 Biological Resources, construction of the proposed dedications could have a beneficial effect by re-directing public access away from the seal haulout near Naples Reef. Finally, acquisition and development of a segment of the California Coastal Trail is an important step toward achieving State and County public recreation and coastal access goals for the Gaviota Coast. Therefore, the project's adverse impact on recreational values, considered in its entirety, is less than significant."*

Moreover, the proposed public access offers to dedicate, and the County's acceptance of those offers, would be consistent with the public access provisions of Chapter 3 of the Coastal Act which require acceptance of offers of dedication and acquisition of public access easements.

- b. The appellant provides no substantiation for the claim that the County will "*never accept the easements or improve them for public use.*" Acceptance or non-acceptance of the offers-to-dedicate (OTD's) will be at the discretion of the Board of Supervisors. The OTD easements are included as a part of the proposed project, and specific project conditions outline the procedures, timing and other details of the County's acceptance of the offers-to-dedicate. The OTD easements are offered by the applicant and are not mitigation measures. The relevant conditions are the "Public Access Dedications" portion of the project description (condition 1) and conditions 93 through 96 (included in Attachment-2 to this memo). In addition, consistent with condition 96, the applicant has already prepared and submitted to the Planning and Development Department an irrevocable OTD (offer-to-dedicate) to the County all areas on the Inland and Ocean lots within which permanent public easements for public pedestrian access and passive recreational use are proposed. It is recognized that development of public lands does normally take time and that funds would be required to complete physical improvements on-site for legal public access. However, the acquisition and acceptance of public access offers-to-dedicate easements is the first critical step in providing legal public access on the subject property (as envisioned for the California Coastal Trail in the Gaviota Coast Plan).

**APPEAL ISSUE 6: Alternatives Analysis (Chytilo appeal letter pages 12-15).**

- a. Appellant asserts that the EIR should reexamine the alternatives section based upon impacts to white-tailed kites discussed in the re-circulated biological resources section and based upon comments from Peter Howorth that "*were not addressed in the DEIR.*"
- b. Appellant asserts that the design and profile of the residences have been substantially altered, that the visual simulations in the EIR are outdated, and that the visual simulation of alternatives substantially overstate the visual impact of the alternatives relative to size of the current proposed project
- c. Appellant asserts that a private covenant which restricts development applies to the project and that the existence of the covenant supports the argument for analysis of an off-site alternative location for the project development.
- d. Appellant asserts that "*Project alternatives including the "Coastal Commission" and "East-Side" alternatives would substantially reduce impacts to the seal rookery, impacts to white-*

*tailed kite, and 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."*

**Staff Response:**

- a. As discussed in Section 6.0 (Alternatives) of the EIR, the *State CEQA Guidelines* state that "the range of alternatives required in an EIR is governed by a rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to:
  1. Ones that would avoid or substantially lessen any of the significant effects of the project; and,
  2. The EIR need examine in detail only the [alternatives] that the Lead Agency determines could feasibly attain most of the basic objectives of the project.

The existing alternatives section of the EIR considers a reasonable range of alternatives that meet the criteria identified above. The EIR did not identify significant and unmitigable effects to kites or seals. Instead, the EIR found that impacts to kites and seals could be feasibly mitigated to less than significant levels. Therefore reexamination of the alternatives section is unnecessary. Finally, comments from Peter Howorth were addressed in the response to comments in the EIR and orally at both the November 20<sup>th</sup> and December 4<sup>th</sup> hearings. In fact, P&D staff recommended, and the Planning Commission accepted, a number of modifications to conditions based, in part, upon comments received in a letter from Mr. Howorth.

- b. The visual analysis contained within the EIR considers development within two development envelopes, an inland estate envelope and an ocean estate development envelope. The EIR analysis considers the fact that, by creating the envelopes, future development could occur anywhere within the boundaries of each envelope, unless otherwise restricted. Therefore, the EIR looked at build-out of the envelopes, not just the proposed structures and applied mitigation measures to account for future build out of the envelopes. For example, MM AES-3c (condition 8) places a permanent height limit on future construction on-site. The design of the inland estate and development envelope for that estate has not been altered and the development envelope for the ocean estate would remain the same. Pursuant to biological resource mitigation measure MM-BIO-9a (condition 16) structures within the ocean estate development envelope must be reconfigured to create a buffer from the white-tailed kite nesting tree identified in 2013. However, as discussed above, build-out of the development envelope was considered in the EIR. In addition, as demonstrated by the draft site plan for the ocean estate included as Attachment-3, the ocean estate development will be located further from public view, and in a more clustered configuration than originally designed. Specifically, the guesthouse is now clustered to a greater degree with the main house and the overall alignment of development will be less visible from Highway 101. The existing EIR analysis and mitigation measures continue to be adequate for the ocean estate. Biological resource mitigation measures requiring reconfiguration of the ocean estate and a reduction in the overall scale of development will result in lesser, and not greater,

visual impacts to the public. The appellant provides no specific information to provide a basis for the statement that the visual simulation of the alternatives overstates the visual impact of the alternatives relative to size of the current proposed project. The visual analysis contained within the EIR appropriately used the same points for visual analysis of the alternatives and the proposed project.

- c. The question of a private covenant that the appellant asserts restricts development was previously raised and was addressed at the November 20<sup>th</sup> and December 4<sup>th</sup> Planning Commission hearings. The document referenced by the appellant is a private agreement between neighboring property owners, is not binding on the County, and could be renegotiated by the two private parties at any time. Moreover, there is disagreement between the applicant and appellant on the meaning of the agreement. While the appellant contends that the agreement is binding on the lots proposed for development and on the applicant-owned Naples lots, the applicant believes that the agreement applies only to the two lots proposed for development under the proposed project, as these are the lots referenced and illustrated in the exhibit attached to the covenant. As discussed in item "a" above, the alternatives analysis contained within the EIR is adequate and meets all applicable CEQA requirements.
- d. The project EIR considers a reasonable range of project alternatives for both the inland and the ocean parcels. Section 6.0 of the EIR contains a detailed analysis of these alternatives. The alternatives considered for the Inland Estate include both the "Coastal Commission" and "East-Side" alternatives addressed by the appellant. In addition, one location on the Ocean Estate was evaluated as an alternative location for development on that parcel. This range of alternatives is reasonable since both the ocean and inland parcels are legal lots of record, and the applicant has applied for permits for reasonable use of each parcel. Furthermore, an alternative limiting development to two inland sites could not be feasibly accomplished even with an accompanying lot line adjustment as the inland and ocean parcels are separated by land owned by the Union Pacific Railroad.

Nonetheless, it is important to note that the alternatives analyzed including the "Coastal Commission" and "East-Side" alternatives would result in greater impacts in the areas of recreation and aesthetics than the proposed project. The "Coastal Commission" and "East-Side" alternatives would also result in similar or greater impacts to biological resources overall in comparison to the proposed project. Impacts to seals have been identified as Class II (less than significant with mitigation) throughout the EIR process. Mitigation measures applied to the project will successfully reduce the project's impacts on seals to a less than significant level. With respect to white tailed kite nesting, the "Coastal Commission" and "East-Side" alternatives would result in biological impacts that would be similar to or greater than the impacts of the proposed project. As discussed in Section 6.0 of the EIR, the "Coastal Commission" inland estate site would result in greater impacts to kite foraging habitat and wetlands than the proposed project, and would preclude the beneficial impact of the 117-acre open space area included in the proposed project. Also, the "East-Side" alternative would result in greater impacts to purple needlegrass and special status plant species and would also preclude the beneficial impact of the 117-acre open space area included in the proposed project. Finally, while it is true that the "East-Side" and "Coastal Commission" alternatives would result in lesser infrastructure development, as noted above, a reasonable alternatives analysis would consider development alternatives on

the ocean lot itself and would therefore still require access over the Union Pacific Railroad tracks and the extension of water lines.

**APPEAL ISSUE 7: Appellant states that “the EIR is unusual in that it specifies that only the proposed proje<sup>ct</sup> in the applicant’s preferred configuration would include public benefits including the public access offerings and the conservation easement” and that this is “impermissible” (Chytilo appeal letter pages 15-15).**

**Staff Response:** The proposed public access offerings are not required mitigation measures and are offered at the discretion of the applicant. The offerings on the part of the applicant are dependent upon a configuration that provides an adequate distance between the proposed homes and the public access offerings. The appellant has not demonstrated how the conditional offerings are “impermissible.”

**APPEAL ISSUE 8: Appellant asserts that the County’s responses to comment are inadequate. (Chytilo appeal letter page 16).**

- a. Appellant asserts that “*comments from experts Holmgren and Howorth were given short shrift or ignored altogether.*”
- b. Appellant asserts that “*comments regarding the feasibility of the off-site alternative raised in the context of the RDEIR were dismissed as ‘not relevant’.*”

**Staff Response:**

- a. The response to comments prepared for the EIR and the recirculated biological resources section, in particular, include extensive and detailed analysis of the issues raised by Mr. Holmgren and Mr. Howorth pertaining to kites and seals. In addition, planning staff consulted extensively with resource experts including biologists, archaeologists, and hazardous materials experts in the preparation of the response to comments. As discussed under Appeal Issue # 3, above, Mr. John Storrer, a County-qualified biologist with more than 37 years of experience, assisted in the preparation of EIR responses to comment for the recirculated biological resources section. Mr. Storrer has extensive experience as a biologist, including specific expertise on marine mammals and specific, widely acknowledged expertise in the area of white-tailed kites. As discussed under Appeal Issue # 6, above, P&D staff recommended, and the Planning Commission accepted, a number of modifications to conditions based, in part, upon comments received in a letter from Mr. Howorth. The same is true for comments received from Mr. Holmgren. P&D staff and biologist John Storrer also provided extensive oral responses at the November 12<sup>th</sup> and December 4<sup>th</sup> Planning Commission hearings on comments made by Mr. Holmgren and Mr. Howorth pertaining to harbor seals and white tailed kites.
- b. As discussed under Appeal Issue # 6, above, the existing alternatives section prepared for the EIR is adequate and meets the criteria set forth under CEQA for consideration of alternatives. As discussed in Section 6.0 (Alternatives) of the EIR, the *State CEQA Guidelines* state that “the range of alternatives required in an EIR is governed by a rule of reason” that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to:



- 1) Ones that would avoid or substantially lessen any of the significant effects of the project; and,
- 2) The EIR need examine in detail only the [alternatives] that the Lead Agency determines could feasibly attain most of the basic objectives of the project.

Section 6.0 (Alternatives) of the EIR considered but dismissed off-site development of the proposed homes 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.”* Section 6.0 (Alternatives) of the EIR also considered but dismissed clustering of development with the Naples lots. Please refer to the EIR for a full discussion of why this alternative was dismissed.

**APPEAL ISSUE 9: Appellant asserts that the required findings are not supported by substantial evidence (Chytilo appeal letter pages 16).**

**Staff Response:** The administrative findings for the project are supported by substantial evidence within the record, including, but not limited to the EIR, staff report, staff memo, numerous special studies and expert testimony during project hearings from specialists in biology, hazardous materials, cultural resources, and transportation/traffic.

**APPEAL ISSUE 10: Appellant asserts that the project site is inadequate to accommodate the level of development proposed (Chytilo appeal letter page 17).**

**Staff Response:** The proposed EIR project includes a request for two homes, on two legal lots totaling 143 acres. Of the 143 acres, the applicant has offered over 80% of their property, 117 acres, to be held in permanent open space and trails. As discussed in Finding 2.1 in Attachment-A to this memo, adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. As discussed in the alternatives section of the EIR (section 6.0) while the property is constrained by biological and cultural resources and other constraints, the proposed home sites provide the most preferable location for development based upon consideration of those constraints. No alternative to the proposed project would eliminate the unavoidable Class I cultural resource and Class I cumulative aesthetic impacts.

**APPEAL ISSUE 11: Appellant asserts that access to the project from Highway 101 is inadequate for the proposed use (Chytilo appeal letter page 17).**

**Staff Response:** The adequacy of access to the property has been covered extensively. Adequacy of access is discussed in the Transportation and Traffic portion of the EIR (Section 3.14), was addressed in detail in staff's memo to the Planning Commission dated November 12, 2013, and was addressed by Senior Transportation Planning Supervisor, Will Robertson from the Public Works Transportation Division at the November 20, 2013 Planning Commission hearing. The infeasibility of obtaining access via an alternative route to the one proposed is discussed extensively on pages 6.0-6 and 6.0-10 of the Alternatives Section (6.0) of the EIR. The County's traffic consultant, ATE, has confirmed that the project meets County traffic thresholds and Caltrans design criteria, has confirmed that appropriate trip

generation methodology was used in the traffic analysis, and has clarified that the project would “generate a relatively minor amount of traffic and would not significantly impact US HWY 101 operations.” The intersection for access to the project, following the addition of traffic from the proposed project, would operate at Level of Service (LOS) B. This LOS provides a better LOS than the County’s minimum acceptable “LOS C” operating standard for intersections. As discussed on pages 3.14-18 through 3.14-21 of the Final EIR, existing conditions provide a recessed access opening consistent with Caltrans criteria, site distance above Caltrans requirements, and adequate spacing between access openings per Caltrans requirements. Accident data for the project intersection is below the statewide average for similar intersections. The conclusions of the EIR have all been reviewed, and substantiated at hearing, by Senior Transportation Planning Supervisor, Will Robertson from the Public Works Transportation Division. In addition, at the December 4, 2013 Planning Commission hearing, pursuant to the request of the Commission, mitigation measure MM-TR-1 was expanded to include additional language limiting the traffic movements of construction vehicles, as follows:

**53. MM TR-1. Traffic Control Plan.** *The owner/applicant shall submit to P&D and Caltrans the expected project construction schedule. The County shall allow concurrent construction of the project improvements. The plan shall specify that northbound construction vehicles shall be prohibited from accessing the site via the at grade crossing but rather shall use CalTrans offramps and overcrossings to access the site from the southbound Hwy 101 lane. **Plan Requirements:** The owner/applicant shall submit the traffic control plan. **Timing:** The traffic control plan shall be submitted to P&D for review and approval prior to Coastal Development Permit issuance. **Monitoring:** The owner/applicant shall provide P&D compliance monitoring staff with proof that all traffic control plan requirements have been met.*

**APPEAL ISSUE 12: Comprehensive Plan and Coastal Land Use Plan (CLUP) Policy Consistency (Chytilo appeal letter page 18).**

- a. Appellant asserts that the development does not conform to CLUP Policies 9-26 and 9-28 and raises arguments using quotes from a preliminary July 22, 2013 letter from biologist John Storrer. .
- b. Appellant asserts that the development does not conform to CLUP Policy 2-6, specifically with regard to access from Highway 101.
- c. Appellant asserts that the development does not conform to CLUP Policy 8-2.

**Staff Response:**

- a. **Coastal Plan Policy 9-26:** *There shall be no development including agricultural development, i.e., structures, roads, within the area used for roosting and nesting.*

Because no roosts have been documented on-site, there would be no development within roosting areas. However, nesting was documented on-site in 2002 and 2013. The closest documented nesting area to the proposed development is a cluster of Monterey pine trees located within the proposed ocean estate development envelope. The cluster includes a successful nest tree utilized in 2013 and surrounding trees (which provide a screening buffer to the nest tree).

As mitigated, the development (including agricultural areas and driveways) would be reduced and/or reconfigured to avoid the nest tree and surrounding trees. In addition, as mitigated, all structures would be located a minimum of 100 feet away from the canopy of the nest tree and the driveway would be located a minimum of 75 feet from the nest tree, consistent with minimum setback recommendations from the County's consulting biologist, John Storrer. Therefore, there would be no development within nesting areas. Mr. Storrer's letter dated July 22, 2013 was written as a preliminary letter prior to the completion of all of his research and analysis for the EIR. The conclusions included in the EIR represent the final conclusions of Mr. Storrer and County Planning and Development staff. In addition, a number of the quotes referenced by the appellant have been taken out of context.

***Coastal Plan Policy 9-28:*** Any development around the nesting and roosting area shall be set back sufficiently far as to minimize impacts on the habitat area.

**Consistency analysis:** Because no roosts have been documented on-site, there would be no development within roosting areas. However, nesting was documented on-site in 2002 and 2013. The closest documented nest (utilized in 2013) is located within the proposed ocean estate development envelope. As mitigated, the development (including agricultural areas and driveways) would be reduced and/or reconfigured to avoid the nest tree and surrounding trees. In addition, as mitigated, all structures would be located a minimum of 100 feet away from the canopy of the nest tree and the driveway would be located a minimum of 75 feet from the nest tree. These setbacks are adequate given the following considerations: kites do not typically nest in the same tree from year to year (nor have they done so on the subject property); there are approximately 300 other trees on-site that could be utilized as potential nest sites existing on the lots; MM-BIO-10 (condition 18) would improve foraging habitat for kites (essential to reproductive success) and would establish new trees that could be used for future nesting in closer proximity to foraging habitat; and, kites have exhibited tolerance to regular human activity as seen at UCSB (100 feet to Harder Stadium facilities) and as close as 50-70 feet to residential structures and public trails (Isla Vista and More Mesa). As discussed under Appeal Issue 3, above, pursuant to consulting County biologist Mr. John Storrer, the intent of Coastal Plan Policy 9-28 is to ensure long term utilization of the site for nesting by white-tailed kites and the availability of foraging habitat is key to nesting success. The proposed project would include the preservation and management of a large contiguous track of land for this purpose and would preserve both previously used nest trees and approximately 300 potential future nest trees. Therefore, the proposed project would minimize impacts on the habitat area.

- b. ***Coastal Plan Policy 2-6:*** Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project . . .

**Consistency analysis:** Access to the Ocean and Inland Estates would be provided by a new shared access driveway. The driveway would enter the site via the existing site entrance off of US Highway 101 at the east side of the property and extend west through the property to the

Inland Estate. The driveway would then extend from the Inland Estate, over the UPRR (Union Pacific Railroad) tracks via a new bridge, to the Ocean Estate. Staff's response to Appeal Issue #11 provides further discussion on the adequacy of site access.

- c. ***Coastal Plan Policy 8-2:*** *If a parcel is designated for agricultural use and is located in a rural area not contiguous with the urban/rural boundary, conversion to non-agricultural use shall not be permitted unless such conversion of the entire parcel would allow for another priority use under the Coastal Act, e.g., coastal dependent industry, recreation and access, or protection of an environmentally sensitive habitat. Such conversion shall not be in conflict with contiguous agricultural operations in the area, and shall be consistent with Section 30241 and 30242 of the Coastal Act.*

**Consistency analysis:**

The project is not proposing the conversion of agriculture to another use, as development of single-family homes is an allowed use within the AG-II-100 zone under the Coastal Zoning Ordinance, the property would remain zoned for agricultural use, and both parcels would have areas specified for agriculture. Furthermore, agricultural uses have not occurred on the project site in more than 20 years and the site has never been farmed as a "stand alone" viable farming unit, but rather only as a part of the former, larger, Dos Pueblos Ranch. The parcels' lack of viability is due to the parcel size, lack of a developed water supply, only moderate agricultural suitability for crops, lack of existing agriculture and inability to qualify for the agricultural preserve program. While conversion of the parcel is not proposed, as development of single-family homes is an allowed use within the AG-II-100 zone, the proposed project does also provide for additional priority uses under the Coastal Act. Specifically, the project would provide for recreation and access through the proposed public access easements and would provide protection of environmentally sensitive habitat areas through the proposed 117-acre open space or conservation easement.

**APPEAL ISSUE 13: Appellant asserts that the project's Class I impact to the visual character is not mitigated to the maximum extent feasible (Chytilo appeal letter pages 18-19).**

**Staff Response:** The EIR concludes that the proposed project, together with the adjacent Naples Townsite development and other development in the surrounding area, would result in a significant and unavoidable cumulative aesthetic and visual impact (Class I). This impact would occur as a result of the transition of the Gaviota Coast from a predominantly rural area into one that is increasingly characterized by residential estates. Although project-specific aesthetic impacts would be reduced to Class II through mitigation, the proposed project's contribution to the cumulative aesthetic impact was determined to be significant and unavoidable. The project's contribution was determined to be significant and unavoidable as a result of the fact that the proposed estates will be visible in the otherwise rural coastal plain of the Eastern Gaviota Coast. The appellant suggests that a reduction in the size of the proposed homes would further reduce cumulative aesthetic impacts, however, project specific impacts have already been reduced to a less than significant level through feasible mitigation and no greater level of mitigation would result in complete elimination of residential development from public view on the rural coastal plain.

Furthermore, the proposed project would be consistent with applicable visual resource policies of the Coastal Land Use Plan, as follows:

***Coastal Plan Policy 4-3:*** *In areas designated as rural on the land use plan maps, the height, scale, and design of structures shall be compatible with the character of the surrounding natural environment, except where technical requirements dictate otherwise. Structures shall be subordinate in appearance to natural landforms; shall be designed to follow the natural contours of the landscape; and, shall be sited so as not to intrude into the skyline as seen from public viewing places.*

As discussed on pages 22-23 of the Planning Commission Staff Report (Attachment-8 to the January 21, 2014 Board Letter) and as supported by the analysis on pages 3.1-32 through 3.1-50 and 3.1-52 through 3.1-60 of the EIR, the proposed project would be consistent with this policy. In summary, proposed development, including the proposed access bridge, would not obstruct blue water views; would be clustered on the western edge of the property; would be one story in height; and, would be subordinate to the existing landscape. Specifically, the berms supporting the access bridge have been designed to tie into the natural topography of the surrounding terrain and would be revegetated with native vegetation in conformance with vegetation on-site. Furthermore, the proposed residences and accessory structures would be below the height of existing trees on-site and have been designed to be a minimum of 11 feet, 10 inches below the road grade of US Highway 101 to maintain public horizon and blue water views over the development. Therefore, the height, scale, and design of structures would be compatible with the character of the surrounding natural environment; structures would be subordinate in appearance to natural landforms; structures have been designed to follow the natural contours of the landscape; and, structures have been sited so as not to intrude into the skyline as seen from public viewing places.

***Coastal Plan Policy 4-9:*** *Structures shall be sited and designed to preserve unobstructed broad views of the ocean from Highway #101, and shall be clustered to the maximum extent feasible.*

As discussed above under the analysis for CLUP Policy 4-3, on pages 22-23 of the Planning Commission Staff Report (Attachment-8 to the January 21, 2014 Board Letter) and as supported by the analysis on pages 3.1-32 through 3.1-50 and 3.1-52 through 3.1-60 of the EIR, all structures, including the access bridge, would be clustered on the western edge of the property and have been be sited and designed to preserve unobstructed broad views of the ocean from Highway #101.

***Coastal Plan Policy 4-11:*** *Building height shall not exceed one story or 15 feet above average finished grade, unless an increase in height would facilitate clustering of development and result in greater view protection, or a height in excess of 15 feet would not impact public views to the ocean.*

This policy does not apply as the proposed development is not located within the view corridor overlay where the 15 foot height limit applies.

#### **SANTA BARBARA TRAILS COUNCIL**

**APPEAL ISSUE 14:** ***Appellant asserts that, “certification of EIR 09EIR-00000-00003 relies on inadequate and infeasible mitigation measures to mitigate impacts to recreation regarding closure of an existing coastal access trail” (S.B. Trails Council appeal page 1).***

**Staff Response:** As discussed in Section 3.13 (Recreation) of the EIR, the project would result in a Class III (less than significant) impact and therefore no mitigation measures were required. The proposed offers to dedicate (OTD's) for public access easements and 117 acres of open space are a part of the project as proposed by the applicant and are not mitigation measures. Please refer to the pages 3.13-19 through 3.13-27 of the EIR for an extensive discussion documenting the basis of a Class III (adverse but less than significant) impact.

**Appeal Issue 15:** Appellant asserts that, *“County acceptance of a coastal vertical access is physically infeasible to construct and has no identified source of funding and therefore will not mitigate closure of an existing trail”* (S.B. Trails Council appeal page 1).

**Staff Response:** As discussed under Appeal Issue #5 and Appeal Issue #14, above, the project would result in a Class III (less than significant) impact to recreation, and therefore mitigation is not required. A memorandum prepared by Penfield and Smith Engineers (included in Appendix 3.13 of the EIR and as Attachment-10 to this Board Letter ) evaluated both the feasibility and cost of the seven potential vertical access points offered by the project applicant and found multiple vertical access points to be feasible. This memo is also discussed in the EIR and was discussed at the December 4, 2013 Planning Commission hearing. Furthermore, the access point at Eagle Canyon, previously included as a part of the Arco Dos Pueblos Golf Links project, already has engineered plans for a beach access stairway. It is recognized that development of public lands does take time and that funds would be required to complete physical improvements on-site for legal public access. However, the acquisition and acceptance of public access offers-to-dedicate easements is the first critical step in providing legal public access on the subject property (as envisioned for the California Coastal Trail and as envisioned in the Gaviota Coast Plan). The question of funding is discussed under Section 3.13 (Recreation) of the EIR on page 3.13-26, as follows:

*“The implementing entity would be responsible for designing, constructing, and operating the trails and any associated facilities and as such would need to raise the funds to complete these improvements. Funding could potentially be provided through CREF funds, California Coastal Conservancy grants, etc. The public has shown strong support for establishing additional recreational facilities along the Gaviota Coast, as evidenced by comments received by Planning and Development during outreach meetings and hearings for Gaviota Coast projects such as Las Varas, Santa Barbara Ranch, and the Gaviota Coast Plan. In addition, the applicant has begun outreach efforts to a number of non-profit groups regarding acquisition of the proposed dedications. Completion of the public access improvements may or may not occur prior to, or concurrent with, construction of the proposed homes. However, as discussed above, a number of other on- and off-site access points would remain available while completion of the public access improvements took place.”*

**Appeal Issue 16:** Appellant asserts that the *“EIR is inadequate and does not meet the requirements of CEQA and does not comport with standard County practice for application of mitigation measures”* (S.B. Trails Council appeal page 1).

**Staff Response:** The EIR is adequate and does meet the requirements of CEQA, as evidenced by the extensive analysis contained within the EIR, the extensive response to comments, and the expert testimony provided at multiple public hearings. Mitigation measures have been applied to the project

per standard County practice and the requirements of CEQA. The responses to the Appeal Issues in the Board Letter provide additional evidence of the adequacy of the EIR.

**Additional Staff Recommendation:**

At the December 4, 2013 Planning Commission hearing, the following clarifying language was added to existing mitigation measure MM-BIO-10 (condition 18) pertaining to the Conceptual Upland and Riparian Mitigation and Monitoring Plan:

*“The Plan shall consider specific restoration treatments to improve habitat value for native rodents, including the California vole. A goal of the restoration and management plan shall be to enhance and maintain habitat characteristics favorable to such rodent populations. The Plan shall include qualitative performance measures.”*

In order to provide further clarification regarding the existing contents of the Conceptual Upland and Riparian Mitigation and Monitoring Plan and the requirements of mitigation measure MM-BIO-10, staff recommends that the language of MM-BIO-10 be updated as follows:

*“The Plan has been designed ~~shall~~ to consider specific restoration treatments to improve habitat value for native rodents, including the California vole. A The goal of the restoration and management plan shall be to enhance and maintain habitat characteristics favorable to ~~such~~ rodent populations which serve as prey to the white-tailed kite shall be emphasized in the final Upland and Riparian Mitigation and Monitoring Plan. The Plan shall include qualitative performance measures. The final Plan shall be consistent with the monitoring plan, 5 year maintenance plan, performance standards and adaptive management provisions as specified in the conceptual Plan. In addition, the final Plan and on-site restoration shall be subject to the review and approval of a County-qualified biologist.”*

**Conclusion**

In light of the whole of the record, staff recommends approval of the proposed project.

**Fiscal and Facilities Impacts:**

Budgeted: Yes. No appeal fees are required for appeals of projects that may be appealed to the Coastal Commission. The estimated staff cost to process the appeal is approximately \$13,213 (70 planner hours). This work is funded in the Planning and Development Permitting Budget Program on page D-168 of the adopted 2013-2015 fiscal year budget.

**Special Instructions:**

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on February 4, 2014. The notice shall appear in the Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

**Attachments:**

- Attachment 1: Findings for Approval
- Attachment 2: Conditions of Approval
- Attachment 3: Oil Well Exhibit
- Attachment 4: AECOM Memo dated August 23, 2013
- Attachment 5: Transcript for the November 12, 2013 Planning Commission Hearing
- Attachment 6: Transcript for the December 4, 2013 Planning Commission Hearing
- Attachment 7: Statement of Credentials, Biologist John Storrer
- Attachment 8: Seal Haulout Line-of Site Exhibit
- Attachment 9: Pages 3.13-19 through 3.13-27 of the EIR Recreation Section
- Attachment 10: Penfield and Smith Memorandum Regarding Public Access Improvements
- Attachment 11: Letter from Biologist John Storrer, dated December 23, 2013

**Authored by:**

Nicole Lieu, Planner II, Development Review Division, P&D, (805) 884-8068