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Jon Erik Storm

July 8, 2008

Clerk of the Board
County Administration Building
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

**Re: GCC Appeal of Planning Commission Approval of a Land Use
Permit for the Ballantyne Single-Family Residence Project**

Lynn Ballantyne, the owner of Assessor's Parcel Number 079-090-036 (hereinafter, "Applicant"), hereby submits this brief in connection with the July 15, 2008 hearing on the above mentioned matters.

The hearing in this matter is based upon the following information:
Assessor Parcel Number 079-090-036
Date of Action Taken By Planning Commission: November 8, 2006
Date Appeal Filed With Clerk of Board: November 20, 2006
Date of Action Taken By the Board of Supervisors: June 19, 2007

Pursuant to direction from the Clerk of the Board, the Applicant has submitted this document via e-mail to Lisa, the Clerk of the Board (at boardletters@co.santa-barbara.ca.us), and, pursuant to her direction, has also sent this document to the Clerk via facsimile at (805) 568-2249, for the Clerk's reproduction of twelve (12) copies for distribution to the Board.

Respectfully Submitted,

BRENNEMAN, JUAREZ & ADAM

Richard E. Adam, Jr., Attorneys for
Applicant

I. History

Almost two years ago (October 4, 2006), after three full years of improvement through Planning and Development studies, public hearings, and Board of Architectural Review, the Santa Barbara Planning Commission approved the Land Use Permit (“LUP”) for the Ballantyne Single Family Residence Project (the “Project”).

Shortly thereafter, the Gaviota Coast Conservancy (“GCC”) appealed the Planning Commission’s approval of the LUP and the Project to this Board of Supervisors (“BOS”). In their appeal, the GCC – a group known to use CEQA not as a shield to protect the environment, but rather, as a sword to thwart legal and orderly growth – made two claims; (a) that the Project was required to go through “environmental review” (i.e. CEQA) because the approval of the single family residence was not “ministerial” (GCC Appeal, p. 9), and (b) that the Project did not conform to the “General Plan and zoning ordinance view policies.” (GCC Appeal, p. 2).

Over a year ago (June 18, 2007), while conceptually approving the project, the BOS ordered that the Project undergo a preliminary environmental study to ensure that the approval process met CEQA standards. Although the Applicant objected to this requirement – and believes today that it was not required by law to undertake the process¹ – she nevertheless did so based upon the fact that the process was going to be “expedited” (as ordered by the Board), and based upon Staff estimates that the process would cost approximately \$5,000.

Thirteen months, approximately \$40,000, and one Mitigated Negative Declaration (“MND”) later, the same GCC appeal is back in front of the BOS. As it was then, so it is now: the GCC appeal is facially disingenuous and wholly meritless.

II. The Project Has Undergone “Environmental Review” As The GCC Requested And No Significant Impacts Were Discovered.

Even before the GCC Appeal of 2007, the Project was likely the single most studied residential structure in the history of Santa Barbara County. It had been studied for three years at the staff level. It went through the BAR on four (4) separate occasions. It went in front of the Planning Commission twice. At no time during this process was there ever an inkling of any “environmental” issue relative to the Project.

Nevertheless – and despite the fact that they were not required to do so – the Applicant proceeded with the BOS’s recommendation and paid for an independent “Initial Study” in an effort to ensure that they had done all that they could possibly do to satisfy all interested parties and meet any conceivable legal challenge.

The end result of this process is a document entitled “Final Mitigated Negative Declaration,” a document prepared by Rincon Consultants, Inc. (“Rincon”) and dated June 2008. The document is an exhaustive sixty-five (65) page study on every

¹ As pointed out in previous correspondence, none of the Applicant’s substantive responses pertaining to the GCC Appeal, including but not limited to this Brief, waive any Applicant argument pertaining to CEQA and associated exemptions, including, but not limited to, the ministerial exemption and the single family residence exemption. The Applicant specifically reserves all right to raise these arguments, and any other applicable argument, at any future proceeding.

conceivable environmental effect that the Project could possibly have on virtually any environmental value.

In short, the MND states what the Applicant has known all along: that the Project is not susceptible to any significant environmental impact. Among other areas, the MND conclusively negates any concern that the Project – *or its cumulative impacts* – will have any “significant environmental effect” on any category of environmental interest. Rincon’s meticulous review included all sixteen (16) categories of potentially significant environmental effects, a cumulative impact summary, and a review of project consistency with applicable zoning and comprehensive plan requirements (discussed in more detail, *infra*).

Although the text of the MND speaks for itself, it is illustrative to point out certain passages of the MND as they relate to Aesthetics and Visual Resources (the crux of the GCC Appeal). Among other resources, Rincon utilized site sections from nine (9) locations as well as numerous photo-simulations prepared by B-3 Architects, Inc., a separate line-of-site study from Flowers & Associates (Civil Engineering), and Rincon’s own visual and photographic analysis to determine the following:

- (a) “the proposed residence would not create any discernable change in the view from the south or southwest (Figures 10 and 11).” (MND, p. 6)
- (b) “the proposed berm would not block views of any identified scenic resource from Highway 101.” (MND, p. 6)
- (c) “the berm would completely shield the residence and other structures from Highway 101, while the visual effects of the berm itself would be minimal [as confirmed by] a line-of-sight analysis prepared by Flowers & Associates, Inc., Civil Engineers (Figures 13 and 14).” (MND, p 6-7).
- (d) “the new structures would alter views from various vantage points along Farren Road [i.e. on the mountainous elevation overlooking the Project site], but would not block views of an identified scenic resource as views of the Pacific Ocean would be retained.” (MND, p. 7)
- (e) “the proposed project would not interfere with recreational activities and Farren Road is not identified as a scenic corridor [and] travelers along Farren Road are primarily limited to recreational users and the handful of residents along the Farren Road corridor.” (MND, p. 7)
- (f) “the proposed project would not introduce a new use that is not already present and readily visible to viewers on Farren Road.” (MND, p. 7)
- (g) “the proposed residence is similar in size to hillside residences to the north and east that are visible from the project site vicinity [and] therefore, the project would not be out of scale as compared to nearby residential uses.” (MND, p. 7).
- (h) “the project represents less intensive development as a function of building area versus lot area (floor-to-area ratio) as compared to other residential uses in the immediate vicinity (such as the Embarcadero West subdivision).” (MND, p. 9)
- (i) “the currently proposed residence would not be visible from Highway 101 and the project’s contribution to cumulative aesthetic impacts would not be significant.” (MND, p. 10)

The depth of the Aesthetic/Visual Analysis portion of the MND is mirrored in *every* categorical analysis presented in the Rincon document. Particularly for a single family residence, such meticulousness is extraordinary. There is no other area of study – *no more comprehensive study* – that can be produced for the Project. In short, the Applicant, this Board, and the public now know exactly what impact the Project will have on all conceivable categories of “environmental review”: virtually none.²

Predictably, however, despite the fact that this MND is the exact study that was called for by the GCC over a year ago, it will likely not be enough for that very same group, a fact that exposes the GCC for what it is: a group bent on preventing legal growth and undermining Constitutional property rights. In their zeal to thwart the Project *regardless of its actual environmental impact*, they will likely make disingenuous calls for more time to conduct even further duplicative studies and/or more time to conduct bogus analysis. These calls are antithetical to the law. In *Bankers Hill v. City of San Diego* (2006) 139 Cal. App. 4th 249; 42 Cal. Rptr. 3d 537, for example, a case dealing with an agency's decision regarding whether or not to issue a negative declaration, the Court held that “an agency is merely supposed to look to see if the record shows *substantial evidence* of a fair argument that there may [a term that the court identified as a “reasonable probability”] be a significant effect.” (emphasis added).

Here, it is clear that there is no such possibility. All persons and/or entities that have conducted any semblance of study on the Project (including numerous independent architects, engineers and archeologists, the Planning Commission, and Rincon) have concurred: there is no reasonable possibility – no fair argument, *and indeed, no evidence whatsoever, let alone “substantial evidence”* – that the Project will have any significant effect on the environment.

Further, even if the GCC could produce of shred of evidence to the contrary (and it cannot), it is also clear that disagreement among experts does not constitute grounds for overturning an environmental document. See, among others, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 409. Finally, the instant appeal has no merit in any future proceeding. As the Court made clear in *Laurel Heights*, “in an action to set aside an agency’s decision under Code of Civil Procedure section 1094.5, the trial court’s inquiry extends only to whether a prejudicial abuse of discretion has occurred. Abuse of discretion occurs if the agency has not proceeded in a manner required by law, or if its decision is not supported by substantial evidence.” *Id.* at 392. As already described, independent architects, engineers, archeologists, and Rincon have produced extraordinary “substantial evidence” to support the approval of both the LUP and the Project. This fact simply cannot legitimately be challenged.

Because there can be no reasonable argument that any significant environmental effect would occur as a result of the Project and because the MND represents the exact study that the GCC demanded over a year ago, the GCC appeal must fail and the Applicant’s LUP must be approved.

² The MND identified only two categories of “potentially significant impact” unless mitigation measures are incorporated: to wit, “fire protection” and “construction noise.” The Applicant has consented to adhering to the suggested mitigation measures.

III. The Project Does Not Violate Any Santa Barbara County Code, Policy, Standard, Or Ordinance.

The second argument enumerated in the GCC Appeal consists of the wholly unsupported allegation that the Project violates certain of the County’s “visual resource” policies. The appeal states, for example, that the project does not comport with “Visual Resources Policy 2,” which itself states the following:

“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 ...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.” (Appeal, p. 2-3)

This Appeal, however, fails to point out that numerous experts – architectural, engineering, and otherwise – testified to the Planning Commission that the Project is invisible from all lower public viewing location and wholly consistent with the above policy. This fact was conclusively confirmed in the Rincon MND, as evidenced by the following independent determinations;

- (a) “The berm proposed along the south side of the residence would completely shield the structure from highway 101[the primary view corridor in the area]; therefore, the residence would not intrude into the skyline from Highway 101.” (MND, p. 49)
- (b) “Structures would cover about 2% of the project site and, at one story in height, have been designed to minimize its visual effect...with the berm proposed along the south side of the structures, [the project] would be completely shielded from view from Highway 101. Therefore, the project could be considered subordinate to natural landforms” (MND, p. 48)
- (c) “The proposed residence would not be out of scale with the project site.” (MND, p. 48)

Indeed, Rincon’s MND has confirmed the Project’s potential consistency with all portions of the Comprehensive Plan (as well as its consistency with AG-II Land Use Designations, Goleta Community Plan Land Use Policy LU-GV-5, Land Use Element Hillside and Watershed Protection Policy 1, Land Use Element Hillside and Watershed Protection Policy 2, and Goleta Community Plan Policy VIS-GV-6), Agricultural Resources, Cultural Resources, Public Service/Fire Protection, and the applicable Zoning Ordinance. (see “*Initial Review of Project Consistency With Selected Applicable Zoning And Comprehensive Plan Requirements,*” attached to the MND).

It should be pointed out that Rincon’s findings as to Project consistency *only confirm that which was already determined by County Staff*. In its “Findings of

Approval” for the Project, County Staff unambiguously stated that “the proposed development [the Project] conforms to the applicable policies of (1) the Comprehensive Plan and (2) the applicable provisions of this Article (Article III).” Specifically, County Staff has already made the following written findings related to the Project;

- (a) “The project conforms to applicable provisions in the Comprehensive Plan, Goleta Community Plan, and Article III, *including the visual resources* and hillside and watershed protection policies;”
- (b) “The height, scale and design of the proposed structures are compatible with the character of the surrounding natural environment;”
- (c) “[The residence] has been designed to follow the natural contours;”
- (d) “The residence will be subordinate in appearance to natural landforms;” and,
- (e) “The residence is sited so as not to intrude into the skyline as seen from public viewing places... [including] Highway 101, Farren Road, and other public viewing places.”

These findings were based, at least in part, upon expert testimony and innumerable pages of expert documentation provided to the Planning Commission and Staff, including those submitted by highly qualified architects, surveyors, and engineers.

Based upon the wealth of evidence presented to the Planning Commission, based upon the County’s own stated position on the matter, and based upon Rincon’s confirmation thereof, it is abundantly clear that the GCC’s “visual resource” allegations – which themselves have no basis in fact – are without merit.

IV. Conclusion

At this stage in the process, it is abundantly clear that the GCC’s appeal is no more than a tool to undermine property rights and willfully prevent lawful and orderly growth. As such, it is – and should be seen as – offensive.

The Applicant has undertaken *far more* than was required in order to obtain an LUP for the construction of a single family residence under California law. She has undertaken all processes, whether CEQA or otherwise, to make sure that everyone – whether interested or not, whether remotely affected or not – is satisfied. This Board, therefore, should approve the LUP and allow the Project move forward.

Respectfully Submitted,

BRENNEMAN, JUAREZ & ADAM

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