

**Recording requested by  
and when recorded mail to:**

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**DEED OF AGRICULTURAL CONSERVATION EASEMENT  
SANTA BARBARA RANCH**

This Deed of Agricultural Conservation Easement ("Conservation Easement" or "Easement") is granted on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by SANTA BARBARA RANCH ("LANDOWNER"), to the **CALIFORNIA RANGELAND TRUST**, a California nonprofit public benefit corporation ("LAND TRUST"), and all parties collectively hereinafter referred to as the "Parties", for the purpose of establishing in perpetuity the Agricultural Conservation Easement and associated rights described below.

Recitals

A. LANDOWNER is the sole owner in fee simple of certain real property identified as Assessor's Parcel(s) No. (to be determined after project processing), consisting of approximately 483 acres, located in the unincorporated portion of the County of Santa Barbara, State of California, described in "Exhibit A" attached hereto and incorporated herein by this reference ("Property"). LANDOWNER intends to grant a conservation easement over the property which is described and illustrated on the map attached as "Exhibit B" ("Easement Area"). The Easement Area consists of approximately 483 acres of land, together with any improvements located within the Easement Area.

B. THE LAND TRUST FOR SANTA BARBARA COUNTY is a publicly supported, tax-exempt "qualified conservation organization" as defined by Sections 501(c)(3) and 170(h) of the Internal Revenue Code and Section 23701(d) of the California Revenue & Taxation Code and is eligible to hold this Conservation Easement pursuant to Section 815.3 of the California Civil Code.

C. The CALIFORNIA RANGELAND TRUST is a publicly supported, tax-exempt "qualified conservation organization" as defined by Sections 501(c)(3) and 170(h) of the Internal Revenue Code and Section 23701d of the California Revenue & Taxation Code and is eligible to hold Conservation Easement pursuant to Section 815.3 of the California Civil Code.

D. The Easement Area possesses unique grazing, farming and ranching resources, wildlife and wildlife habitat, and open space, scenic, historic and habitat values such as oak woodlands, coastal sage scrub, grasslands, including native grasslands, and riparian areas (collectively "Conservation Values") of great importance to LANDOWNER, the people of Santa Barbara County and the people of the State of California. In addition, the Easement Area has a long history of agricultural operations and has been identified by the Natural Resource Conservation Service of the United States Department of Agriculture and by the California Department of Conservation Farmland Mapping and Monitoring Program as farmland of statewide and local importance in accordance with the classification standards of those agencies. The Easement Area located on both sides of the California State Highway 101 corridor, possesses approximately 20 acres of orchards in agricultural production, grazing lands, natural vegetation and riparian corridor, the preservation and protective management of which is consistent with the present and continued use of the Easement Area for agricultural production and open space purposes in accordance with this Easement.

E. LANDOWNER, consistent with Government Code Section 51256 (the Williamson Act Easement Exchange Program, WAEEP), intends to convey for valuable consideration the property interest conveyed by this Conservation Easement to LAND TRUST to assure that the agricultural productivity, open space provided by working landscapes, scenic, historic and natural plant, wildlife and potential for fish habitat provided by the Easement Area will be conserved and sustained forever as provided herein, and that uses of the land that are inconsistent with these Conservation Values will be prevented or corrected. The parties agree that the Baseline Inventory shall evaluate whether current agricultural use of, and improvements to, the Easement Area are consistent with the conservation purposes of this Conservation Easement and the Management Plan shall identify requirements and recommendations for restoration and other actions to protect and preserve the Conservation Values, and LANDOWNER intends that the Easement Area will be maintained in agricultural production and the Conservation Values will be preserved by the continuation of the agricultural uses that have proven historically compatible with such values, subject to recommendations and requirements of the Management Plan. NOTE: The compatibility of ag and habitat functions is hardly established, and this proposed language sanctions all existing activities, including diversions of water, as acceptable. This statement can only be sanctioned by a current biological and agricultural assessment that empirically establishes the compatibility of these activities and must include requirements and recommendations of a Management Plan that would ordinarily be required. Where there are areas of non-compatibility, identified through the baseline inventory step, the opportunities and obligations for any restoration or corrective actions should be identified. Additionally, the ACE sanctions the elimination of lands subject to current and historical agricultural production activities, hence the inference in the recitation is incorrect that past agricultural uses will continue under the ACE. The ACE's reference to historic compatibility ignores the subdivision going in next door - "locking in" past compatibility as the baseline, based on land uses that will change on both sides of the fence, is inappropriate.

F. LANDOWNER further intends, as owner of the Easement Area, to convey to LAND TRUST the right to preserve and protect the Conservation Values in perpetuity.

G. The grant of this Conservation Easement will further the policy purposes of the following clearly delineated governmental conservation policies:

Section 815 of the California Civil Code, in which the California Legislature has declared: (1) that “the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California”; and (2) that it is “in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations”; and

Section 51220 of the California Government Code, in which the California Legislature has declared that “in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands . . . constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments; and

The Santa Barbara County General Plan, as amended in 1992, which includes as one of its goals to protect all viable agricultural lands designated as prime, of statewide importance, unique, or of local importance from conversion to and encroachment of non-agricultural uses.

The County of Santa Barbara Agricultural Element, Right to Farm Ordinance, Agricultural Preserve Ordinance and other policies and zoning ordinances enacted to help preserve Santa Barbara County's productive agricultural lands.

H. All holders of liens or other encumbrances upon, and mineral rights on or beneath the Easement Area, have agreed to subordinate their interests in the Easement Area to this Conservation Easement and to refrain forever from any action that would be inconsistent with its conservation purposes, except any encumbrances specifically agreed to in advance and listed in the attached Title Report “Exhibit C”.

I. The current physical and biological conditions of the resources of the Easement Area, as well as its current uses and state of improvement, are described in a “Baseline Inventory Report,” prepared prior to easement recordation by the LAND TRUST with the cooperation of the LANDOWNER, consisting of maps, photographs, and other documents, and acknowledged by both to be complete and accurate as of the date of this Conservation Easement. Both LANDOWNER and LAND TRUST have copies of this report. It will be used by LAND TRUST to assist in its monitoring and enforcement of LANDOWNER’s compliance with the Easement. This report, however, is not intended to preclude the use of other evidence to establish the baseline condition of the Easement Area if there is a controversy over some aspect of that condition.

J. The Parties intend that the conservation purposes of this Easement will be achieved through continued ranching and grazing activities, using sound, generally accepted agricultural practices to sustain and protect the agricultural value of the Easement Area, the open space value created by the working landscape, and the natural plant, wildlife and potential for

fish habitat provided by the rangeland and natural environment of the Easement Area in accordance with the Conservation Values. The Parties recognize that additional agricultural uses, including cultivation of crops ~~within those limited agricultural farmstead envelopes shown on Exhibit B,~~ and compatible agricultural support ~~or home occupation~~ uses of the Easement Area may become reasonably necessary ~~to support the economic viability of commercial ranching use of the Easement Area and accordingly provide herein for such additional uses.~~ [Unclear why cultivation should be limited to farmstead envelope(s). The notion that intensification of non-agricultural activities may be necessary for economic viability identifies potential adverse significant impacts to ag viability from parcelization of DPR lands that has not been addressed in an environmental review document. Easement should allow for expansion of cultivated agricultural activities that conform to the Conservation Values and the General Plan.

K. LAND TRUST recognizes that the Conservation Values associated with the physical environment of the Easement Area exist because of the past stewardship of the LANDOWNER and depend on the future good stewardship decisions of the LANDOWNER and its successors. LANDOWNER is entrusted with those future management decisions. Maintaining the natural plant and wildlife habitat provided by the rangeland and natural environment shall not prevent changes in the agricultural uses of the land, including intensification and vegetation management, provided that such changes do not significantly impair the Conservation Values of this Conservation Easement. LAND TRUST is entrusted with determining that the Conservation Values have been protected. As certified by resolution of its governing body, LAND TRUST accepts the responsibility of monitoring and enforcing the terms of this Conservation Easement and upholding its conservation purposes, including the Conservation Values, forever.

L. California Gov. Code §51256 authorizes the County of Santa Barbara to enter into an agreement with a landowner to rescind an agricultural preserve contract in accordance with the contract cancellation provisions of Section 51282 in order to simultaneously place other land within the county under an agricultural conservation easement. This Easement and a similar restriction granted on a portion of the neighboring Santa Barbara Ranch, will result in the perpetual conservation of a total of 2,684 acres, which exceeds the 2,566 acres of land currently under agricultural preserve contract. The majority of the current contract property will remain in an agricultural preserve contract and will also ~~transition into~~ be subject to an Agricultural Conservation Easement.

M. On \_\_\_\_\_, 200\_, the County of Santa Barbara adopted a resolution to approve the rescission of Land Conservation Contract(s) \_\_\_\_\_ for certain real property owned by LANDOWNER, making the necessary findings required under Gov. Code §51256 to endorse the placement of this Conservation Easement on the Property.

#### Deed and Agreement

In consideration of the recitals set forth above, and in consideration of their mutual promises and covenants, LANDOWNER hereby grants and conveys to LAND TRUST, its successors and assigns, and LAND TRUST hereby accepts, a perpetual Conservation Easement as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code,

Section 815 et seq.), of the nature and character described in this Deed of Agricultural Conservation Easement.

1. **PURPOSE.** The purpose of this Conservation Easement is to identify, preserve and protect forever the Conservation Values of the Easement Area, including agricultural productivity and grazing, open space provided by working landscapes, soil and water quality, and natural plant, wildlife and potential for fish habitat provided by the rangeland and natural environment. The parties intend that this purpose be achieved through continued ranching and grazing uses, management of habitat and natural resources, as well as other agricultural uses of the Easement Area as herein provided, to assure that the Easement Area will forever remain in agricultural use for the production of food and fiber in conformity with the Conservation Values.

2. **AFFIRMATIVE RIGHTS CONVEYED TO LAND TRUST.** To accomplish the purpose of this Easement, the following rights and interests are conveyed to LAND TRUST by this Easement:

(a) **Identify Resources and Values.** To identify, preserve and protect in perpetuity the Easement Area's character, use, utility, soil and water rights and quality and the Conservation Values.

(b) **Monitor Uses and Practices.** To enter upon, inspect, observe, and study the Easement Area for the purposes of identifying the current uses and practices thereon and the baseline condition thereof, and to monitor the uses, ~~and~~ practices and changes regarding the Easement Area to determine whether they are consistent with this Easement. This Monitoring will typically be ~~requested~~ undertaken once per year. This right of entry extends to LAND TRUST's designated representatives, including consultants and technical advisors it deems necessary to participate in monitoring inspections. Such entry shall be permitted upon prior notice to LANDOWNER, and shall be made in a manner that will not unreasonably interfere with LANDOWNER's use and quiet enjoyment of the Property.

(c) **Prevent Inconsistent Uses.** To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement, including the Conservation Values, and to require the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use. However, it is the intention of this Easement not to limit LANDOWNER's discretion to employ various choices of agricultural, farming and ranching uses and management practices within the Easement Area, so long as those uses and practices are consistent with the purpose and terms of this Easement and the Conservation Values.

(d) **Provide Signage.** To erect and maintain a sign or signs or other appropriate markers in prominent locations on the Easement Area, visible from a public road, bearing information indicating that the Easement Area is protected by LANDOWNER, ~~any funders~~, and LAND TRUST. The wording of the information shall be determined by LANDOWNER and LAND TRUST, but may include logos and shall clearly indicate that the Property is privately owned and not open to the public. LAND TRUST shall be responsible for the costs of erecting and maintaining such signs or markers.

(e) **Implement Voluntary Conservation Improvements.** To work with the LANDOWNER, in the LANDOWNER's sole discretion, to develop joint projects for the purpose of identifying and promoting ecological improvements or enhanced management techniques which may restore or enhance the Easement Area, including but not limited to recommendations of the Management Plan. Such improvements and/or techniques shall not impose involuntary costs on any party hereto and will not unduly interfere with agricultural production, farming or ranching uses, including orchards, cattle ranching or horse breeding, or LANDOWNER's quiet enjoyment of the Property as described herein.

(f) **Implement Management Plan Requirements and Recommendations.** To implement all requirements and recommendations identified in the Management Plan, in coordination with the LANDOWNER wherever possible, to protect and preserve the Conservation Values.

**3. PERMITTED USES AND PRACTICES.** LANDOWNER and LAND TRUST intend that this Easement shall confine the uses of the Easement Area to agricultural, ranching, farming and residential uses associated with the permitted uses of the Easement Area, such habitat and natural resources management activities as are specified or otherwise required pursuant to this Easement, and such other related uses as are described herein. Uses and improvements within the Easement Area shall:

- (i) conform to the land use limitations specified in the County's Uniform Rules, including but not limited to Rule 1-4, Permitted Residential Land Uses, of the County's Uniform Rules (subject to the provisions below);
- (ii) be governed by the terms and conditions of zoning applicable to the property as set forth in Section 35-1 of the Santa Barbara County Land Use and Development Code; and
- (iii) embody specific use limitations within the recorded Easement Area document substantially in conformance with this Section 3.

These uses are to be located within a farmstead or farmstead envelope. Farmstead Envelopes define areas within the Easement Area that may be occupied, in whole or in part, by buildings and structures that are permitted by the underlying agricultural zone designation. The farmstead envelope is usually reserved for existing and future farm buildings, and also includes residential dwellings, worker dwellings, and agricultural structures.

Uses and improvements located outside of Farmstead Envelopes shall be restricted to allowable agricultural uses and improvements as:

- (i) defined in this Section 3, Paragraphs (a), (b), (c) and (d); and
- (ii) permitted by the underlying agricultural zone designation.

Within Farmstead Envelopes, allowable residential uses shall be:

- (i) restricted to those defined in this Section 3, Paragraph (e)(1); and
- (ii) confined to a maximum footprint of two acres ("Residential Building Site").

The balance of areas within each Farmstead Envelope shall be restricted to allowable agricultural and accessory uses and improvements as defined in this Section 3, Paragraphs (e)(2), (a), (b), (c), (d), and (f).

The following uses and practices, if in accordance with federal, state and county laws and ordinances, and to the extent not inconsistent with the Purpose of this Easement, are specifically permitted:

(a) **Engage in Agricultural Uses.** To engage in any and all agricultural uses of the Easement Area in accordance with sound, generally accepted agricultural management practices, except as specifically prohibited in Paragraph 4. The term "agricultural uses" shall be defined as breeding, raising, pasturing, and grazing livestock of every nature and description for the production of food and fiber; breeding, raising and boarding horses, bees, poultry and other fowl; planting, raising, harvesting and producing agricultural, aquacultural, horticultural and forestry crops and products of every nature and description; and the processing, storage, and sale, including direct retail sale to the public, of crops grown and agricultural products produced primarily on the Easement Area. Such agricultural uses shall not result in significant soil degradation, significant pollution or degradation of any surface or subsurface waters, significant impairment of existing habitat values or significant impairment of open space vistas, and shall be consistent with the Purpose of this Easement, including the Conservation Values.

All owners within the Easement Area shall be required to:

(i) provide financial support (through a cooperative or equivalent mechanism) essential infrastructure including storage facilities, farm equipment, water distribution systems and agricultural employee housing determined and demonstrated to be necessary and appropriate for the maintenance of agricultural practices on the Easement Area; and [needs a trigger like the DPR-CRT Easement - ag productivity - uniform management of orchards in coordination with DPR avos if production levels or acreage in production slips?]

(ii) employ best management practices with regard to all agricultural operations. As used herein, the term "best management practices" means and includes a practice or combination of practices that are determined to be of the most effective manner of developing, operating and sustaining agricultural uses while minimizing the amount of pollution generated by non-point source, consistent with advisory guidelines of the U.S. Department of Agriculture (Natural Resources Conservation Service), University of California at Davis (Agricultural Extension), and associated governmental agencies.

(b) **Additional Agricultural Structures and Improvements.** To construct additional non-residential structures accessory to the agricultural uses of the Easement Area, including the enlargement of existing structures that are reasonably necessary for the agricultural uses of the Easement Area, and new buildings or other structures and improvements that are reasonably necessary for the agricultural uses of the Easement Area, including water wells, pump houses, barns, animal shelters, service sheds, vehicle and equipment repair facilities and loading docks, to be used primarily for agricultural purposes, including the processing or sale of farm or aquaculture products predominantly grown or raised on the Property or on other land owned or

leased by LANDOWNER in the vicinity of the Property. [this sentence is convoluted and could be inadvertently open to interpretation - I suggest the following as a simpler substitute: **To construct additional non-residential structures that are reasonably necessary for and accessory to the agricultural uses of the Easement Area, including the enlargement of existing structures and new buildings and improvements such as water wells, pump houses, barns, animal shelters, service sheds, vehicle and equipment repair facilities and loading docks, to be used solely for on-site agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Property or on other land owned or leased by LANDOWNER in the vicinity of the Property.**] However, new structures over ten thousand (10,000) gross (external) square feet, or the increase in gross (external) square footage of any existing structure by greater than fifty percent (50%) from its original size based upon the size of the building, structure or facility on the Effective Date, may be built only with the advance written permission of the LAND TRUST, which permission shall be conditioned upon LANDOWNER's showing that the proposed structure shall be designed, located and constructed so as not substantially to interfere with or impair or otherwise burden the Conservation Values including consideration of public views from the Highway 101 corridor. Agricultural structures shall not be used for human habitation.

**(c) ~~Non-Residential Buildings, Structures, Additional Agricultural Structures, Grading and Improvements and Other Facilities for Authorized Uses or Activities.~~** To allow additional structures accessory to the agricultural uses of the Property, including the enlargement of existing structures that are reasonably necessary for the agricultural uses of the Property, and new buildings or other structures and improvements, including water wells, pump houses, barns, animal shelters, service sheds, vehicle and equipment repair facilities and loading docks, to be used solely for on-site agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Property or on other land owned or leased by in the vicinity of the Property. Agricultural structures shall not be used for human habitation. Agricultural grading to prepare land for planting of crops and to control erosion, in accordance with sound, generally accepted agricultural management practices, is permitted without prior approval, provided such grading does not alter the general topography or natural drainage of the Property, or create siltation to any creek or the ocean. However, structures visible from a public road, or over ten thousand (10,000) square feet may be built only with the advance written permission of the LANDTRUST(CRT to Discuss), which permission shall be conditioned upon Landowners' showing that the proposed structure shall be designed, located and constructed so as not substantially to ~~and does not~~ interfere with, impair or otherwise burden public views and the Conservation Values.

———(i)—— For any non-residential building, structure or facility existing on the Effective Date, Landowner may enlarge each (by not more than a cumulative fifty percent (50%)), repair and replace, with a like building, structure or facility at its existing location, without permission from LANDTRUST.

———(ii)—— For any new non-residential building, structure or facility, or for any enlargement greater than a cumulative fifty percent (50%), Landowner must first obtain the written consent of LANDTRUST, which consent shall be granted if Landowner demonstrates that the proposed construction or enlargement is in support of the permitted uses of the Easement

~~Area, provided that development shall be designed, located and constructed so as not substantially to interfere with, impair or otherwise burden the Conservation Values..~~

~~—————(iii)————— Enlargement shall be determined based upon the size of the building, structure or facility on the Effective Date. [ALL DUPLICATIVE]~~

**(d) Animal Boarding and Breeding Activities.**

~~All animal board and breeding facilities, including trails and corrals, shall maintain positive drainage to assure animal waste and sedimentation does not discharge directly into streams or waterways. Facilities shall be sited and uses undertaken in a manner to avoid increasing erosion on the site or sedimentation offsite.~~

(1) Incidental Use. Incidental animal boarding and/or breeding facilities, whether for non-commercial or personal use, may be permitted as compatible uses and improvements of the Property subject to the following limitations:

(i) Only one incidental livestock boarding and/or breeding facility (including horses) may be located on each legal lot comprising the Property.

(ii) Such use must be genuinely incidental to the principal permitted agricultural uses of the Property.

(iii) Any facilities required for personal or commercial boarding/breeding use shall be counted toward the maximum area of the designated Farmstead Envelope of the legal lot on which the facilities are located, provided, however, that the boarding/breeding facilities may be remotely sited from the Residential Building Site.

(iv) Any facilities required for incidental commercial boarding/breeding use shall be limited to 3% of the legal lot or 2 acres, whichever is less, provided at least 50% of the parcel is devoted to the principal agricultural operation.

(v) When required, a conditional use permit for the boarding and/or breeding facilities shall be obtained pursuant to the County zoning ordinance.

(2) Principal Use. Notwithstanding Paragraph (c)(1) above, livestock boarding and/or breeding facilities may occupy the Property as principal permitted uses subject to the following limitations:

(i) The legal lot on which the animal boarding and/or breeding facilities are located must be a minimum of 100 acres.

(ii) A minimum of 20 acres of irrigated pasture must be maintained for each legal lot on which the animal boarding and/or breeding facilities are located.

(iii) Such facilities shall not produce traffic volumes detrimental to the commercial agricultural productivity of the area.

(iv) The total area of land covered by all permanent improvements devoted to animal boarding and/or breeding facilities, excluding the Residential Building Site, shall not exceed 20% of the legal lot or 20 acres, whichever is less (**CRT to Discuss**). As used herein, the term "permanent improvements" include any object affixed to the ground, landscaping, buildings, and structures, such as stables and

exercise rings.

(v) Such facilities adhere to the following compatibility guidelines:

(a) The use will not significantly compromise the long-term productive agricultural capability of the Property or on other contracted lands in agricultural preserves.

(b) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the Property or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the Property may be deemed compatible if they relate directly to the production of commercial agricultural products on the Property or neighboring lands, including activities such as harvesting, processing, or shipping.

(c) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.

(vi) When required, a conditional use permit for the boarding and/or breeding facilities shall be obtained pursuant to the County zoning ordinance. All animal breeding and boarding facilities and uses shall be determined to not be incompatible with the adjacent Naples subdivision and coastal recreational facilities on current or former Santa Barbara Ranch lands.

**(e) Residential Use.** To allow Landowner and/or its caretaker and/or lessee/sublessee to reside on the Property in structures approved for residential use, as specified herein:

(1) Within the 2-Acre Residential Building Site:

(i) Accessory structures allowed for each single family residence permitted herein shall be located within the development envelope, and are limited to a single, separate guest house or artist studio (not to exceed 800 square feet per County zoning ordinance); and such incidental residential accessory structures as are permitted for a single agricultural parcel by the county zoning ordinance and County Uniform Rules.

(ii) Residential development envelopes may be modified or relocated, but not enlarged, with prior approval of the LANDTRUST, provided that development shall be designed, located and constructed so as not substantially to interfere with, impair or otherwise burden the Conservation Values and conforms to the County LUDC and does not cause or exacerbate agricultural -residential land use conflicts.

(iii) Landowners' bona fide employees or employees of tenant(s), sharecrop tenant(s) or other farm employees, which may include paid family members or owners, may reside on the Property in employee housing structures or as a part of improvements associated with the agricultural use of the Property, as provided for in the County zoning ordinance.

(iv) All uses specified in the Paragraphs of this Section 3.

(2) Within the Farmstead Envelope, Outside the 2-Acre Residential Building Site:

- (i) Incidental agricultural accessory structures as are permitted for a single agricultural parcel by the County zoning ordinance and the Uniform Rules.
- (ii) All uses specified in the Paragraphs of this Section 3.

In furtherance of defining allowable residential development within the Conservation Easement, the following restrictions shall also apply:

(3) One (1) new single-family residential dwelling(s) located on Lot 185 (as depicted on Exhibit B and detailed in attached Table 2), and appurtenant structures may be constructed in the residential building envelope designated on Exhibit B without further permission from LANDTRUST.

(4) The existing Reservoir Cabin depicted on Exhibit B, and detailed in Table 1, and appurtenant structures may be repaired, enlarged (each by not more than a cumulative fifty percent (50%)) and replaced at their current locations without further permission from LANDTRUST. Enlargement shall be determined based upon the size of the building, structure or facility on the Effective Date.

(5) For any dwelling structure existing on the Effective Date and used to house persons hired for work on the Property, Landowner may remove, repair, enlarge (by not more than a cumulative fifty percent (50%)), and replace at its existing location with a like housing unit without permission from LANDTRUST. Enlargement shall be determined based upon the size of the structure on the Effective Date.

(6) New dwelling structures, to be used solely to house persons hired for work on the Property may be built only with advance written permission from LANDTRUST, which permission shall be conditioned upon Landowners' showing that the proposed structure is needed for existing or imminent agricultural operations on the Property and shall be designed, located, and constructed and its use managed so as not to impair Conservation Values.

(7) LANDTRUST must first approve changing the use of a dwelling structure originally built to house persons hired for work on the Property.

~~(8) Permitted residential structures may be used for home occupation and agritourism uses with prior approval by Land Trust. [Not consistent with the agricultural purpose of these lands. Placing a B&B as "agritourism" for example extends well beyond what is allowable under the Uniform Rules and what should be allowed on these lands.]~~

**(f) Existing Structures.** To maintain, repair, and replace existing structures identified in the Baseline Conditions Report, and all roads, ditches, water lines, and other improvements on the Easement Area without further permission of the LAND TRUST, provided that such repair, enlargement, or replacement does not substantially interfere with, impair or otherwise burden the Conservation Values. LANDOWNER shall notify and obtain approval of

LAND TRUST before enlarging any building by more than fifty percent (50%) from its original size.

The LANDOWNER shall: (i) obtain, if required, the appropriate permits necessary ~~to~~; ~~and then 2ii)~~ remedy the non-conforming condition, use and improvement of all existing dwellings located on lands contained within the Easement Area in compliance with applicable provisions of Section 35-1 of the Santa Barbara County Land Use and Development Code and any permit(s) issued thereunder;

**(g) Fences.** To repair and replace at their existing locations in the Easement Area, existing fences, scales and corrals for purposes of reasonable and customary management of livestock and wildlife, without further permission from LAND TRUST. New fences, scales and corrals at new locations may be constructed for such purposes without further permission from LAND TRUST, provided that any new fence shall be sited and designed to protect the Conservation Values, including but not limited to wildlife movement.

**(h) Water Resources.** To develop and maintain such water resources and improvements on the Easement Area as are necessary or convenient for agricultural, conservation and residential uses in a manner consistent with the purpose of this Easement, including reservoirs, ponds, waterlines, and irrigation ditches, provided such activities will ensure preservation and protection of the Conservation Values. [CF DFG water diversion dispute. Locking in existing conditions as adequate for habitat and wildlife may not be supported. It is not clear how this parcel will receive water, and thus any vulnerability that the severance of this agricultural area from DPR might have.]

**(i) Use of Agrichemicals.** To use agrichemicals, including, but not limited to, fertilizers, pesticides, herbicides and fungicides in those amounts and with such frequency of application necessary to accomplish reasonable agricultural purposes; provided that such use shall be in accordance with county, state and federal laws and regulations, and such use shall be carefully circumscribed near surface water and seasonal water courses and ensure preservation and protection of the Conservation Values.

**(j) Control of Animals.** To control predatory and problem rodents [this non-sensically allows control of predatory rodents - no species of rodentia is a predator (except of insects) - thus the language potentially sanctions control of all predators, for example bobcat, mountain lion, hawks/falcon, etc. the language and intent should be more clearly specified] and other animals, including boar and coyotes, by the use of selective control techniques.

**(k) Range and Brush Management.** To perform range improvement through brush clearing and related activities; and to control insects, disease and invasive plant species that are detrimental to rangeland utility or habitat value of the Easement Area; and to clear native vegetation when and where it is reasonably necessary for access to and fire safety clearance around permitted improvements [while the drafting creates ambiguity, this language could sanction destruction of native vegetation for access to new permitted improvements w/o considering Conservation Values, as may be accomplished by avoiding, to the extent feasible, clearing of native vegetation except when no other access route involving less native vegetation]

is reasonably practical]; for fire prevention and protection, flood control and emergency purposes. Range and brush management shall use generally accepted management practices (including use of mosaic removal patterns) and shall minimize the removal of live native trees and avoid to the extent feasible disturbance to riparian or wetland areas.

**(l) Utility Easements.** To provide for utility easements to private, public and quasi-public utilities in furtherance of the purposes and uses allowed by this Easement, and for existing agricultural and residential uses of the Property, with siting to avoid impairment of the Conservation Values to the extent feasible.

**(m) Hunting, Equine and Fishing Uses.** To engage in and permit others resident on Santa Barbara Ranch to engage in non-commercial hunting, horse riding, and/or fishing on the Easement Area; provided that such activities require no surface alteration or other development of the land (outside of the identified farmstead envelopes or as agreed to by the LANDOWNER AND LANDTRUST) and do not significantly impair the Conservation Values.

**(n) Farm Worker Housing.** Occupants of employee and farm labor housing shall be limited to persons retained or employed full-time by the underlying property owner(s) of the Easement Area, to perform agricultural services for property within the Easement Area;

**4. PROHIBITED AND LIMITED USES.** Unless otherwise permitted, any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement or which impairs the Conservation Values is prohibited. LANDOWNER promises that it will not perform, or knowingly allow others to perform, any act or use on or affecting the Easement Area described above in conflict with the covenants set out in this Conservation Easement, including the Conservation Values. LANDOWNER authorizes LAND TRUST to enforce these covenants, including restoration where reasonably appropriate. Without limiting the generality of the foregoing, the following activities and uses are inconsistent with the Conservation Values of this Easement and are expressly prohibited:

**(a) Subdivision.** The subdivision of the Easement Area, whether by physical, legal or any other process, is prohibited except as specifically permitted herein.

**(b) Development Rights.** LANDOWNER hereby grants to LAND TRUST all development rights, except as specifically reserved to LANDOWNER herein, that are now or hereafter allocated to, implied, reserved or inherent in the Easement Area, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Easement Area as it now or hereafter may be bounded and described, or to any other property adjacent or otherwise. The Easement Area may not be used for the purpose of calculating permissible development or lot yield of any other property, provided, however, that a lease of a portion or all of the Easement Area for agricultural use shall not be prohibited by this paragraph. The LANDOWNER and LAND TRUST agree that the Easement Area consists of ~~two (2)~~ one (1) parcels on the north side of Highway 101, and one (1) parcel on the south side of Highway 101, and further once the Easement is officially recorded no additional separate legal parcels currently existing within the Easement Area may be recognized by a certificate of

compliance pursuant to Government Code Section 66499.35, based upon previous patent or deed conveyances, subdivisions or surveys. Subsequent to the Easement being officially recorded the LANDOWNER will not apply for or otherwise seek recognition of additional legal parcels within the Easement Area based on certificates of compliance or any other authority.

(c) **Construction of Buildings, Facilities and Other Structures.** The construction or reconstruction of any building, facility or structure of any type, except those existing on the date of this Conservation Easement or those vested or identified on the attached map as "Exhibit B" as part of the Santa Barbara Ranch/Dos Pueblos Ranch project approvals, is prohibited, except as specified herein.

(d) **Signs.** No billboards shall be erected on the Easement Area. Signs denoting the names and addresses of residents on the Property, denoting allowable business uses, or describing other permitted activities on the Property, or to post the Property to control unauthorized entry or use, are permitted, insofar as such signs do not significantly impair the Conservation Values.

(e) **Paving and Road Construction.** Existing paved roads may be maintained, repaved, and rebuilt on the original alignment at LANDOWNER's discretion without further permission from LAND TRUST. Roads providing access to residential and agricultural buildings including unpaved roads existing at the effective date of this Easement and new roads approved by Land Trust may be paved at LANDOWNER's discretion without further permission of LAND TRUST. No other portion of the Easement Area presently unpaved shall be paved, nor shall any new road be constructed without permission of LAND TRUST, except for roads to access buildings allowed by this Easement or required by a preexisting easement [disclose such easements]. LAND TRUST shall not give such permission unless LANDOWNER demonstrates to LAND TRUST that the proposed paving, grading, or covering of soil, and the location and width of any such road, is necessary to meet governmental -permit requirements, and otherwise will not substantially diminish or impair the Conservation Values. Existing unpaved roads may be relocated and extended as unpaved roads as required by agricultural operations or for safety purposes, provided that abandoned roads will be returned to agriculture or to a natural condition. For purposes of this paragraph, "pave", "paved", or "paving" shall include covering of the soil surface with concrete, asphalt, or other material other than soil; provided, that in order to make roads passable, the LANDOWNER may apply to existing or future roads on the Easement Area a reasonable amount of gravel.

(f) **Motorized Vehicles.** The use of motorized vehicles off of roads, except by LANDOWNER or others under LANDOWNER's control for agricultural, residential or related uses of the Easement Area; provided that other uses of motorized and/or off-road vehicles may be permitted within the Easement Area when necessary for maintenance of utilities, retrieval of large game, or for emergency purposes. Motorized vehicle races and the construction of motorized off-road vehicle courses are specifically prohibited.

(g) **Erosion.** Any use or activity which causes significant degradation of topsoil quality, significant pollution, active erosion of steep slopes or areas subject to erosion, or a significant increase in the risk of erosion in the Easement Area is prohibited.

**(h) Mining.**

(1) Surface Mining. The mining, extraction, or removal of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method, is prohibited. Notwithstanding the foregoing, soil, sand, gravel or rock may be extracted without further permission from LAND TRUST provided that such extraction is of material solely for use on the Property, is in conjunction with and in furtherance of activities permitted herein, is accomplished in a manner which does not interfere with, impair or otherwise burden the Conservation Values, and does not disturb more than two percent of the Easement Area, and does not disturb more than one acre at any one time. Upon completion of the extraction, the surface shall be restored to substantially the same condition as existed prior to the extraction. Notwithstanding any other provision herein, this section shall be interpreted in a manner consistent with section 170(h) of the Internal Revenue Code, the Treasury regulations adopted pursuant thereto, and any other successor provisions addressing the same subject.

(2) Mineral Rights. **LANDOWNER'S** existing right, title, and interest in subsurface oil, gas, and minerals shall not be sold separately from the surface property, and the manner of exploration for; and extraction of any oil, gas or minerals shall be only by a subsurface method, shall not damage, impair or endanger the protected Conservation Values, and shall be limited to such activities as are permitted under Internal Revenue Code Section 170(h)(5) and applicable Treasury Regulations.

**(i) Watercourses.** The alteration or manipulation of watercourses located on the Easement Area is prohibited, except that the creation of new water impoundments or watercourses for purposes related to permitted agricultural uses of the Property or for the enhancement of natural resource values is allowed with the prior consent of LAND TRUST and where such new impoundments or watercourses will not significantly impair the Conservation Values.

**(j) Tree Removal.** Living native trees on the Easement Area may be removed only to control insects and disease or promote the ecological health of the trees or woodland under the direction of a qualified biologist, or to prevent personal injury and property damage, or when necessary and unavoidable to complete improvements permitted under the Easement. This paragraph shall not apply to the removal of orchards and/or tree farming on the property for agricultural purposes.

**(l) Trash.** The dumping or accumulation of any kind of trash, refuse or derelict equipment on the Easement Area is prohibited. However, this shall not be interpreted to prevent (a) the storage or accumulation of agricultural products and byproducts on the Easement Area, provided that such storage or accumulation is done in accordance with all applicable laws and regulations and in a manner so as to avoid any impairment of the Conservation Values, or (b) the application of organic material, other than biosolids, which is generated by permitted

agricultural uses on the Property; provided that stockpiling or composting of organic materials shall be limited to agricultural support areas designated on the map attached hereto as "Exhibit B" and incorporated herein by reference and in accordance with applicable federal, state and local laws and generally accepted agricultural management practices

(m) **Other Incompatible Uses.** The use of the Easement Area for construction or operation of a golf course, commercial recreational facility, commercial poultry or hog facility, or similar high intensity activity is prohibited.

(n) **Industrial, Recreational and Non Agricultural Commercial Uses.** All industrial and non-agricultural commercial uses, structures and improvements of the Easement Area not expressly authorized herein are prohibited. Passive recreational uses by residents and guests on the Easement Area (such as wildlife viewing, photography, hiking, equestrian trail riding), and temporary commercial uses (such as hunting, fishing, film location rentals, research and educational programs), are permitted without further permission from LAND TRUST provided, that no such use or associated facility shall be allowed to interfere with, impair or otherwise burden the Conservation Values. All other recreational and non-agricultural commercial uses, including construction of structures or improvements not otherwise permitted by this Easement, are prohibited.

(o) **Animal Feedlots, Greenhouses ~~or Aquaculture~~.** The construction, maintenance or use of any commercial animal feedlot or greenhouse ~~or aquaculture~~ operation on the Easement Area; provided, however, that locations which total not more than ten (10) acres *[evaluate appropriate size limit case-by-case]* may be used for animal feedlots that are restricted to animals raised on the Property or on land owned or leased by LANDOWNER in the vicinity of the Property; and greenhouses may be allowed only for the growing seedlings or plants which will be transplanted to areas within the Property, but such greenhouses shall not total more than two (2) acres and shall not significantly impact views from the Highway 101 corridor. Future expansion of the existing aquaculture facility shall be limited to the approximately 15 acres delineated on Exhibit B. The design of any aquaculture facility shall be compatible with the existing rural character and not significantly impact views from the Highway 101 corridor. [aquaculture has an expansion area not included in this easement, and is controlled by another entity. Doesn't belong in this easement]

(p) **County Regulations.** The provisions of this Conservation Easement as to use and occupancy of the Property and the construction or reconstruction of buildings, facilities and all other structures located thereon is expressly subject to the General Plan, Local Coastal Plan, and the construction and zoning regulations of the County, and no approval granted by the LANDTRUST hereunder, or any other understanding as to permitted uses and improvements, shall relieve the LANDOWNER from obtaining all necessary land use and building approvals from the County in accordance with regulations in effect at the time application is made for such approval.

**5. RESERVED RIGHTS.** LANDOWNER reserves to itself, and to its personal representatives, heirs, successors and assigns, all rights accruing from the ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the

Easement Area that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) **Water Rights.** LANDOWNER shall retain, maintain and preserve the right to use all water rights associated with the Easement Area, which LANDOWNER represents are sufficient to sustain present and future agricultural productivity and other Conservation Values on the Easement Area. LANDOWNER shall not transfer, sell, encumber or otherwise separate such water rights from the Easement Area. LANDOWNER may lease water rights from the Easement Area for a term that, including renewal periods, does not exceed ten (10) years, provided, that LANDOWNER shall demonstrate to LAND TRUST's satisfaction that any water rights proposed to be leased are not necessary to sustain present or future agricultural productivity or other Conservation Values on the Easement Area. LANDOWNER shall reimburse LAND TRUST for its costs and expenses of reviewing each lease proposal for compliance with the foregoing provisions.

(b) **Mineral Rights.** All right, title, and interest in subsurface oil, gas, and minerals; provided, however, that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, shall not damage, impair or endanger the protected Conservation Values, and shall be limited to such activities as are permitted under Internal Revenue Code Section 170(h)(5) and applicable Treasury Regulations.

(c) **Responsibilities of LANDOWNER and LAND TRUST Not Affected.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the LAND TRUST, or in any way to affect any existing obligation of the LANDOWNER as owner of the Property. Among other things, this shall apply to:

(1) Taxes. LANDOWNER shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or the property underlying the Easement Area by competent authority. If the LAND TRUST is ever required to pay any taxes or assessments on the Property or Easement Area, LANDOWNER will promptly reimburse LAND TRUST for the same.

(2) Upkeep and Maintenance. LANDOWNER shall continue to be solely responsible for the upkeep and maintenance of the Easement Area. LAND TRUST shall have no obligation for the upkeep or maintenance of the Easement Area.

(3) Liability and Indemnification. In view of LAND TRUST's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Easement Area, LANDOWNER shall and hereby agrees to indemnify, protect, defend and hold LAND TRUST, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns (collectively "LAND TRUST") harmless from and against all liabilities, costs, losses, orders, liens, penalties, damages, expenses, or causes

of action, claims, demands, or judgments, including without limitation reasonable attorney's fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, unless solely due to the gross negligence or willful misconduct of the LAND TRUST. If LAND TRUST is required to indemnify a funding entity in order to secure funds to acquire this Conservation Easement, LANDOWNER shall indemnify LAND TRUST for that indemnification to the same extent as stated immediately above. LAND TRUST shall be named as an additional insured on all of LANDOWNER's insurance policies related to the Easement Area.

**6. NOTICE AND APPROVAL.** The purpose of requiring LANDOWNER to notify LAND TRUST prior to undertaking certain permitted activities is to afford LAND TRUST an adequate opportunity to review and monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required as set forth in Paragraphs *[INSERT APPROPRIATE CROSS-REFERENCES]*, or otherwise, LANDOWNER shall notify LAND TRUST in writing not less than thirty (30) days prior to the date LANDOWNER intends to undertake the activity in question. The notice shall describe the nature, scope, design, location and any other material aspect of the proposed activity in sufficient detail to permit LAND TRUST to make an informed judgment as to its consistency with the purpose of this Easement. LAND TRUST shall respond in writing within twenty (20) days of receipt of LANDOWNER's written request. LAND TRUST's approval may be withheld only upon a reasonable determination by LAND TRUST that the action as proposed would be inconsistent with the purpose of this Easement, including impairment of the Conservation Values.

**7. PROPERTY MANAGEMENT AND ISSUE RESOLUTION.**

**(a) Management Practices.** In order to protect the Conservation Values, LANDOWNER is encouraged to conduct all ranching and farming operations in accordance with generally accepted, sustainable agricultural practices that address soil and water conservation, erosion control, pest management, nutrient management, and habitat protection. LAND TRUST believes that, in most cases, the existing stewardship on the ranches it selects for conservation easement projects has supported and enhanced the conservation values these ranches provide, and, consistent with that premise, LAND TRUST and LANDOWNER agree to take wherever possible a cooperative approach to monitoring and management of the Conservation Values. The parties will conduct joint qualitative monitoring to ensure that the Conservation Values are being protected. This monitoring will be supported through the Baseline Inventory Report and subsequent reviews, using photographs and narrative descriptions, among other evaluation tools. Monitoring will also consider issues such as site potential, weather conditions, unusual economic circumstances, vegetative variety and quality and trends in resource conditions. Land Trust may employ at its own expense such consultants as it deems necessary to perform or assist with monitoring the Easement.

**(b) Management Plan.** [The absence of a management plan step creates substantial

questions about the landowner's commitment to the goals and function of the Conservation Easement. A Management Plan accompanies most conservation easements and should be required as part of the baseline inventory step here to identify any conditions needing immediate action to prevent imminent waste or harm to Conservation Values, and to recommend future desirable restoration or enhancement actions. ] As a general matter, LAND TRUST believes that a written management plan is a useful tool for guiding resource stewardship; however, LAND TRUST will not require a written management plan except under the circumstances in the following Stage 1 and Stage 2 processes:

Stage 1: If the Baseline Inventory Report, or subsequent monitoring, has identified circumstances requiring improvement, remediation, restoration or other actions to protect or to prevent waste or harm to the Conservation Values, LANDOWNER, upon written notice from LAND TRUST, shall develop a written management plan that addresses the particular resource management concern(s) identified by LAND TRUST. LANDOWNER shall be encouraged but not required to engage the services of a Certified Rangeland Manager, District Conservationist, wildlife biologist, botanist, ecologist or other qualified professional to assist LANDOWNER in the development of such a management plan. The required scope of the plan and the time allowed for its development shall depend on the nature and severity of the identified problems. The management plan shall be subject to LAND TRUST approval. LANDOWNER shall implement an approved plan for so long as is necessary to resolve the particular resource management problem(s) addressed by the plan. LAND TRUST shall monitor implementation of the plan, and results thereof, during its periodic monitoring, and may require modifications of the plan as the resource conditions warrant.

Stage 2: If LANDOWNER does not diligently act to develop a management plan required under the preceding Stage 1 circumstances, or if an identified problem persists, or if LANDOWNER and LAND TRUST disagree regarding the resource management concern(s) identified by LAND TRUST, then LAND TRUST, at LANDOWNER's expense, shall engage a Certified Rangeland Manager, District Conservationist, wildlife biologist, botanist, ecologist or other qualified professional to develop the management plan and, as warranted, to recommend interim remedial measures for implementation pending the development of the management plan. The management plan, and any interim remedial measures, proposed by such qualified professional shall be subject to LAND TRUST approval. LANDOWNER shall implement an approved plan for so long as is necessary to resolve the particular resource management problem(s) addressed by the plan. LAND TRUST shall monitor implementation of the plan, and results thereof, during its periodic monitoring, and may require modifications of the plan as the resource conditions warrant. In the event that the LANDOWNER refuses to implement the plan, the LAND TRUST is authorized to implement such plan and LANDOWNER shall reimburse such expenses.

(c) **Mediation and Arbitration.** If a dispute arises between the parties

concerning the consistency of any existing or proposed use, structure or activity with the language and purpose of this Easement, and if the Parties agree, the dispute may be mediated by one to three persons long familiar with agricultural and conservation practices and conservation easements in Santa Barbara County. If the Parties agree, they may next request arbitration, supervised by the Santa Barbara County Superior Court, unless extraordinary relief or injunction is necessary when ongoing or imminent violation could substantially diminish or impair the Conservation Values as provided herein.

**(d) Judicial Enforcement.** If, in LAND TRUST's judgment, substantial resource damage is threatened or is occurring, or if LAND TRUST finds what it considers to be a violation of any provision of the Conservation Easement that, in LAND TRUST's judgment, cannot be satisfactorily addressed through the processes set forth in the preceding subsection, LAND TRUST has the right to bypass those processes and to instead pursue appropriate legal action; provided, that except when an ongoing or imminent violation could substantially diminish or impair the Conservation Values, or the parties have already met and discussed the violation, LAND TRUST shall give LANDOWNER written notice of the violation and, not later than fourteen (14) days after the delivery of such written notice, the parties shall meet to discuss the circumstances of the violation and to attempt to agree on appropriate corrective action. If the parties are unable to agree to corrective action, LAND TRUST may demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose of this Easement, to restore that portion of the Easement Area so injured.

**(e) Injunctive Relief.** If LANDOWNER fails to cure the violation within a thirty (30) day period after receipt of notice thereof from LAND TRUST, or fails to continue diligently to cure such violation until finally cured, LAND TRUST may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values, including damages for any loss thereof, and to require the restoration of the Easement Area to the condition that existed prior to any such injury.

**(f) Damages.** LAND TRUST shall be entitled to recover damages for violation of the terms of this Easement or injury to any of the Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting LANDOWNER's liability therefor, LAND TRUST, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Easement Area.

**(g) Emergency Enforcement.** If LAND TRUST, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, LAND TRUST may pursue its remedies under this Paragraph without waiting for the period provided for correction to expire.

**(h) Scope of Relief.** LAND TRUST's rights under this Paragraph shall apply equally to threatened as well as actual violations of the terms of this Easement, and

LANDOWNER agrees that LAND TRUST's remedies at law for any violation of the terms of this Easement are inadequate and that LAND TRUST shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which LAND TRUST may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. LAND TRUST's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815, et seq., are incorporated herein by this reference and this Conservation Easement is made subject to all of the rights and remedies set forth therein. LAND TRUST retains the discretion to choose the appropriate method to enforce the provisions of this Easement, and shall not be required to exhaust the provisions of one subsection hereof in order to be entitled to the benefits of another.

(i) **Expert Assistance.** The opinions of any Certified Rangeland Manager, District Conservationist, wildlife biologist, botanist, ecologist or other appropriate consultant or expert engaged to assist the parties in the resolution of any claim of injury to any Conservation Value shall be admissible in any judicial proceedings conducted with respect to that asserted violation.

(j) **Costs of Enforcement.** Any reasonable costs incurred by LAND TRUST in enforcing the terms of this Easement against LANDOWNER, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by LANDOWNER's violation of the terms of this Easement shall be borne by LANDOWNER; provided however that LANDOWNER shall not be responsible for the costs of restoration necessary to remedy damage to the Easement Area caused by the conduct of third parties acting without permission or knowledge of LANDOWNER. The prevailing party in any action brought pursuant to the provisions of this Easement shall be entitled to recovery of its reasonable costs of suit, including, without limitation, attorneys' and experts' fees, from the other party.

(k) **Enforcement Discretion.** Enforcement of the terms of this Easement shall be at the discretion of LAND TRUST, and any forbearance by LAND TRUST to exercise its rights under this Easement shall not be deemed or construed to be a waiver by LAND TRUST of such rights or of any subsequent breach of the same or any other terms of this Easement, or of its rights under the Easement. No delay or omission by LAND TRUST in the exercise of any right or remedy upon any breach by LANDOWNER shall impair such right or remedy or be construed as a waiver, and LANDOWNER hereby waives any defense of laches, estoppel or prescription.

(l) **Acts Beyond Landowner's Control.** Nothing contained in this Easement shall be construed to entitle LAND TRUST to bring any action against LANDOWNER for any injury to or change in the Easement Area resulting from causes beyond LANDOWNER's control, including, without limitation, fire, flood, storm and earth movement, or actions by persons outside the control and knowledge of LANDOWNER, or from any prudent action by LANDOWNER under emergency conditions, to prevent, abate or mitigate significant injury to the Easement Area resulting from such causes.

(m) **Enforcement Rights of California Department of Conservation.** In the event LAND TRUST fails to enforce any term, condition, covenant or restriction of this Easement, the Director of the Department and his or her successors and assigns shall have the right to enforce this Easement and shall be entitled to exercise the right to enter the Property granted to LAND TRUST. Except when the Director of the Department determines that immediate entry or enforcement action is required to prevent, terminate or mitigate a violation of this Easement, the Department shall notify LAND TRUST 30 days prior to exercising its enforcement rights and provide LAND TRUST reasonable opportunity to cure the failure to enforce.

8. **NO PUBLIC DEDICATION OR PUBLIC ACCESS.** Nothing contained in this Conservation Easement shall be deemed to be a gift or dedication of any portion of the Easement Area for use by the general public. This instrument does not convey a general right of access to the public.

9. **LANDOWNER'S TITLE WARRANTY.** LANDOWNER represents and warrants that LANDOWNER has good fee simple title to the Easement Area, free from any and all liens or encumbrances including without limitation, any deeds of trust or mortgage, or that any lender has subordinated to this agreement and hereby promises to defend the same against all claims that may be made against it. LANDOWNER represents and warrants that the Easement Area is not subject to any other conservation easement. LANDOWNER may grant any subsequent conservation easements on the Easement Area provided that such easements do not interfere with or reduce the Conservation Values of this easement. LAND TRUST shall be notified at least ninety days in advance, in writing, of any proposed conservation or other easement for the Easement Area, which notice shall include the proposed easement.

10. **ENVIRONMENTAL PROVISIONS**

(a) **LANDOWNER's Environmental Warranty.** LANDOWNER warrants that LANDOWNER has no knowledge of a release or threatened release of hazardous substances or wastes on or that could affect the Property and, as more generally set out in paragraph 15(c) above, agrees to indemnify, defend, protect and hold LAND TRUST, its directors, officers, employees, agents, and contractors, and their heirs, successors, and assigns, harmless from and against all litigation costs, demands, penalties, damages, liabilities, claims or expenses (including reasonable attorney fees) arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws as a result of or arising out of the activities of LANDOWNER on the Property or any breach of this Conservation Easement.

(b) **LAND TRUST Not An Owner, Operator, Or Responsible Party.** Notwithstanding any other provision herein to the contrary, the parties do not intend this Conservation Easement to be construed such that it creates in or gives the LAND TRUST:

(1) the obligations or liability of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and

Liability Act of 1980, as amended (42 USC § 9601 et seq. and hereinafter cited as "CERCLA");

(2) the obligations or liability of a person described in 42 USC § 9607(a)(3) or (4); or the obligations of a responsible person under any applicable Environmental Laws, as defined below;

(3) the right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property; or

(4) any control over LANDOWNER's ability to investigate, remove, remediate, or otherwise clean up any Hazardous Materials associated with the Property.

(c) **Assumption of Environmental Liabilities and Indemnification.** From and after acquisition of the Easement by LAND TRUST or any of LAND TRUST's successors or assigns (whether by operation of law or otherwise), LANDOWNER and LANDOWNER's successors in interest shall be solely responsible for and agree, jointly and severally: (A) to assume all past, present and future liabilities, whether known and unknown and whether now existing or hereafter discovered, arising out of and related to environmental conditions of whatsoever kind or nature on, under or affecting the Property, including, without limitation, with respect to the presence or release of Hazardous Substances; and (B) to indemnify, protect and defend with counsel acceptable to LAND TRUST, and hold LAND TRUST and its directors, officers, employees, agents, attorneys, representatives, successors and assigns (the "Indemnified Parties") harmless from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with: (i) the presence, suspected presence or Release of any Hazardous Substance whether into the air, soil, surface water or groundwater of or at the Property; (ii) any violation or alleged violation of any applicable Environmental Laws affecting the Property, whether occurring prior to or during LANDOWNER's ownership of the Property and whether caused or permitted by LANDOWNER or any person other than LANDOWNER; (iii) any claim or defense by LANDOWNER or any third party that any Indemnified Party is liable as an "owner" or "operator" of the Property under any applicable Environmental Laws; or (iv) any breach of the representations and warranties set forth in this Easement.

**11. LAND TRUST TRANSFER OF EASEMENT.** LAND TRUST may transfer this Easement to (1) any public agency authorized to hold interests in real property as provided in Section 815.3 of the Civil Code of California; or (2) any private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code and under Section 815.3(a) of the Civil Code of California. In selecting an appropriate transferee entity, preference will be given to the *California Rangeland Trust*, which

is a qualified conservation organization; then secondary preference to a qualified agency or organization with an agricultural conservation purpose, which has board, staff, or consultants with practical agricultural management experience, and which agency or organization expressly agrees to assume the responsibility imposed on the LAND TRUST by this Conservation Easement. If such agency or organization cannot be found, or is not suitable for any reason, then another qualified agency or organization which expressly agrees to assume the responsibility imposed on the LAND TRUST by this Conservation Easement may be selected.

LANDOWNER shall be provided notice of any proposed transfer, information about proposed transferee(s), and opportunity for input. For any voluntary transfer, Land Trust must obtain written approval of the Director of the Department of Conservation, which permission shall not unreasonably be withheld.

If LAND TRUST ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, a court of competent jurisdiction shall transfer this Conservation Easement to another qualified organization having substantially similar purposes that agrees to assume the responsibilities imposed on LAND TRUST by this Conservation Easement, provided that LANDOWNER shall be provided notice of and an opportunity to participate in the court proceedings. As a condition of such transfer, LAND TRUST shall require that the conservation purpose set forth in this Easement continue to be carried out and enforced.

**12. LANDOWNER TRANSFER OF PROPERTY.** Any time Property subject to the Easement or any interest in it is transferred by the LANDOWNER to any third party, the LANDOWNER shall notify the LAND TRUST in writing prior to the transfer of the Easement Area interest, and the deed of conveyance shall expressly refer to this Conservation Easement. Failure to notify LAND TRUST or include the required reference to this Conservation Easement in the deed shall not affect the continuing validity and enforceability of this Conservation Easement. A transfer of the Easement Area or any portion thereof may result in an additional burden on the monitoring and enforcement responsibilities of LAND TRUST. Therefore, each transfer, except for (a) transfers solely to change the method of holding title by the same party or parties, and (b) inter-generational transfers between members of the same family, shall require the payment of a transfer fee to the LAND TRUST's monitoring fund in the amount of four tenths of one percent (0.4%) of the fair market value of that portion of the Easement Area transferred. LAND TRUST may reduce or waive this fee at its sole discretion.

**13. AMENDMENT.** This Conservation Easement may be amended only with the written consent of LAND TRUST and LANDOWNER, and with the written consent of the Director of the Department of Conservation. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Section 170(h) of the U.S. Internal Revenue Code, California Civil Code Section 815, et seq., or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with California law governing conservation easements. No amendment shall diminish or affect the perpetual duration or the Purpose of this Easement. LANDOWNER shall reimburse LAND TRUST for its reasonable expenses associated with review and approval of any amendment initiated by LANDOWNER.

**14. EXTINGUISHMENT.** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. LAND TRUST and LANDOWNER shall notify one another, publish notice in a newspaper of general circulation, notify the Santa Barbara County Planning and Development Department Director, the County supervisor(s) in which the Easement Area land is located and the Director of the Department of Conservation at least thirty (30) days prior to the initiation of any proceedings to extinguish this Easement. The proceeds, if any, from such extinguishment to which LAND TRUST shall be entitled, as determined by the court, shall be the stipulated fair market value of the Easement, or proportionate part thereof, and shall be used by LAND TRUST in a manner consistent with its conservation purposes, which are exemplified by this Conservation Easement.

**15. CONDEMNATION.** If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, LANDOWNER and LAND TRUST shall act jointly to recover the full value of the interests in the Easement Area subject to the taking or in lieu purchase and all direct or incidental damages resulting from such taking. All expenses reasonably incurred by LANDOWNER and LAND TRUST in connection with the taking or in lieu purchase shall be paid out of the amount recovered. The LAND TRUST share of the balance shall be determined by the ratio of the value of the Easement to the value of the Easement Area unencumbered by the Easement. If only a portion of the Easement Area is subject to such exercise of eminent domain, this Conservation Easement shall remain in full force and effect as to all other portions of the Easement Area.

**16. VALUATION.** This easement constitutes a real property interest immediately vested in LAND TRUST. For the purpose of Paragraph 14 dealing with Extinguishment, the parties stipulate that this Easement has a fair market value determined by multiplying (a) the fair market value of the Easement Area unencumbered by the Easement (minus any increase in value attributable to improvements made after the date of this Conservation Easement) by (b) the ratio of the value of the Conservation Easement to the value of the Easement Area unencumbered by the easement; *provided*, that LANDOWNER and LAND TRUST agree that such ratio shall not be less than [     percent (    %) *Insert appropriate number from appraisal*], which is the ratio determined by an appraisal approved by the parties as of the time of the granting of this Conservation Easement.

**17. SUBORDINATION.** If at the time of conveyance of this Easement, the Easement Area is subject to any mortgage or deed or trust encumbering the Easement Area, LANDOWNER shall obtain from the holder of any such mortgage or deed of trust an agreement to subordinate its rights in the Easement Area to this Easement to the extent necessary for the LAND TRUST to enforce the purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgage or deed of trust holder.

**18. GENERAL PROVISIONS.**

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of California.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement.

(c) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**19. PERPETUAL DURATION.** The easement created by this instrument shall be a servitude running with the land in perpetuity. Notwithstanding the early withdrawal provisions of California, Public Resources Code Section 10270, the Conservation Easement and associated covenants shall be recorded against the property and run in perpetuity regardless of changes in ownership. Every provision of this Conservation Easement that applies to LANDOWNER and LAND TRUST shall also apply to and be binding upon their respective agents, heirs, beneficiaries, executors, administrators, successors and assigns.

**20. SANTA BARBARA COUNTY AS THIRD PARTY BENEFICIARY.** The County is hereby named as a non-signatory third party beneficiary with the right, but not the obligation, to enforce the this Conservation Easement with regard to the land use covenants specified in Paragraphs 3 and 4 herein, provided, further, that these covenants may not be amended nor the Easement terminated without the County's prior written approval, which approval shall not be unreasonably withheld.

**21. NOTICES.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by United States certified mail, return receipt requested, or by another common method or service where receipt is confirmed, addressed as follows or such other address as either party from time to time shall designate by written notice to the other.

To LANDOWNER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To LAND TRUST:

Attn: Executive Director

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22. **LAWS CURRENTLY IN EFFECT.** All references in this Conservation Easement to statutes, regulations and other laws shall be deemed to refer to those statutes, regulations and laws currently in effect, or as amended (or any successor provision then applicable).

23. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement Area, all of which are herein merged.

24. **COUNTERPARTS.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

25. **EXHIBITS.** The exhibits attached hereto are incorporated herein by this reference:

- Exhibit A: Property Legal Description (To Be Created)
- Exhibit B: Conservation Easement Exhibit Map
- Exhibit C: Permitted Encumbrances (Title Report To Be Attached)
- Table 1: Existing Building Inventory
- Table 2: County Approved New Building Inventory
- Table 3: Easement Parcel Matrix
- Additional maps and exhibits as deemed necessary

26. **EFFECTIVE DATE.** This Conservation Easement is effective upon recordation in the Official Records of the County of Santa Barbara, State of California.

Agreed to and executed by:

**LANDOWNER:**

Title	Date
<u>Santa Barbara Ranch, LLC</u> <u>Attn: Matt Osgood</u> <u>18401 Von Karman Avenue</u> <u>Suite 205</u> <u>Irvine, CA 92612</u>	

**CALIFORNIA RANGELAND TRUST**

<i>[Insert name]</i> , President	Date

Click on "Bookmarks" for a Table of Contents of all Documents included.

**D R A F T D O C A C E ; O S G O O D C R T E A S E M E N T 4**

**J U L Y 2 8 , 2 0 0 8**

**F O R R E V I E W P U R P O S E S**

By: \_\_\_\_\_ Date \_\_\_\_\_  
[Insert name], Secretary

[Add notary acknowledgments.]

<b>Table 1</b>			
<b>Existing Building Inventory</b>			
<b>Existing Conditions</b>			
<b>Lot #</b>	<b>Structure Description</b>	<b>Bldg. Sq. Ft.</b>	<b>Construction Date</b>
DP-10C	Lake Reservoir Cabin	Approx. 600	Unknown

<b>Table 2</b>			
<b>New Building Inventory</b>			
<b>New Residential Development</b>			
<b>Lot #</b>	<b>Structure Description</b>	<b>Lot Area (Acres)</b>	<b>Development Envelop (Acres)</b>
185	Single Family Home, Garage, Guest House, and associated house, driveway and utility improvements.	181.54	3.75

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**D R A F T DOC ACE; OSGOOD CRT EASEMENT 4**

**JULY 28, 2008**

**FOR REVIEW PURPOSES**

<b>Table 3 Easement Parcels Matrix</b>	
<b>Lot Number</b>	<b>Acres</b>
<b>185 (North side of Highway 101)</b>	DOC ACE 181.54
<b>DP-10C (North side of Highway 101)</b>	289.25 DOC ACE
<b>57 (South side of Highway 101)</b>	12.41 DOC ACE
<b>Total Acres For This Easement =</b>	<b>483.2</b>

October 9, 2008

Office of the Clerk  
Santa Barbara County Board of Supervisors  
105 East Anapamu Street  
Santa Barbara, CA 93101

Dear Supervisors,

Thank you for this opportunity to comment on the Santa Barbara Ranch Project (SBRP). I am Sandy Lejeune, a Santa Barbara resident with family roots here dating to the 1920's, a farmer, and vice chair of the Santa Barbara chapter of the Surfrider Foundation. For the record, my comments reflect my personal evaluation of the SBRP.

From 1995 – 2004 I farmed at Fairview Gardens, a 12-acre organic farm in suburban Goleta. During my tenure there I worked in every aspect of the farm's day-to-day operations, from field work to irrigation to the farm's nursery to marketing its crops. From 1997 – 2004 I served as the farm's manager of marketing, and from 2002 – 2005 as both marketing and farm manager.

My comments relate to sections 4.13 and 10.13 of the Final Environmental Impact Report as they pertain to agriculture. I strongly disagree with the FEIR's conclusions that both the MOU Project and the Alternative 1 Project are consistent with the Coastal Act § 30242 and CLUP Policy 8-2.

The Comprehensive Plan Land Use Element Regional Goal – Agriculture states:

**In the rural areas, cultivated agriculture shall be preserved and, where conditions allow, expansion and intensification should be supported. Lands with both prime and non-prime soils shall be reserved for agricultural uses.**

Further, the Comprehensive Plan Agricultural Element Policy II.D clearly states:

**Conversion of highly productive agricultural lands, whether urban or rural, shall be discouraged. The County shall support programs which encourage the retention of highly productive agricultural lands.**

Yet in opposition to these policies, the FEIR allows for the conversion of both prime and sub-prime agricultural land to development. My attached comments on the agricultural sections of both the MOU and Alternative 1 Projects will demonstrate that conversion of agricultural lands to development will result in significant Class I (non-mitigable) impacts.

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For example, a significant section of the coastal bluff, south of Highway 101 on the Santa Barbara Ranch property, is comprised of Milpitas-Positas fine sandy loam soils. Milpitas-Positas fine sandy loam soils are rated by the Soil Conservation Service to be Class IIIe capability soils – not prime, but certainly deserving of the same protection as prime soils according to the Comprehensive Plan Land Use Element Regional Goal cited above. The section of the coastal bluff that I refer to has historically produced vegetables, strawberries, and has been used as grazing land.

Compare these soils with Fairview Gardens', roughly half of which are comprised of Milpitas-Positas fine sandy loams, eroded. These soils are given a Class IVe rating; yet for over thirty years, Fairview Gardens has been growing many varieties of fruit and vegetables on them, employing seasonally up to twenty-five people and making significant contributions to the local economy in the process. If Fairview Gardens' can be productive on soils inferior to the Class III soils on the coastal bluff of the SBR, it would be a grave mistake to allow any of the SBR coastal bluff to be converted to development.

I respectfully submit that the FEIR is flawed in finding these two projects consistent with the Coastal Land Use Policy and the Coastal Act regarding agriculture, and urge you to reconsider your conclusions before allowing this EIR to go any further forward.

Attached please find additional comments on the FEIR for your consideration.

Respectfully,

Sandy Lejeune

809 Park Lane  
Santa Barbara, CA 93108

encl

## MOU Project – Comment and Critique

### Section 3.7.3.2 Project Impacts

#### Impact Ag-1: Agricultural Suitability and Land Use Conflicts

The MOU Project area south of Highway 101 allows for conversion of land currently zoned for agriculture use to non-agricultural use (Figure 2.3-2). This is inconsistent with the Coastal Act Section 30242, since the MOU does not demonstrate that the areas to be converted are “not feasible for continued or renewed agricultural use.” This should be considered a Class I (non-mitigable) impact.

#### Impact Ag-2: Physical Conversion of Prime Agricultural Land to Development

The MOU Project, in order to circumvent Coastal Act Section 30242, relies on its proposal to preserve 163 acres of existing agricultural land in a private agricultural conservation easement. Yet the Santa Barbara Ranch totals 485 acres, all of which are currently zoned for agriculture; preserving only 163 acres results in a net loss of 322 acres of agricultural land. This loss of agricultural lands is inconsistent with the Comprehensive Land Use Policy:

1. Land Use Element Goal: Agriculture
2. Agricultural Element Goal I;
3. Comprehensive Plan Area/Community Goals for the Goleta Valley – Land Use

Further, the County of Santa Barbara’s “Environmental Thresholds and Guidelines Manual” questions any proposal that would cause impairment of agricultural land productivity (whether prime or non-prime). Obviously, agricultural lands that are converted to development are no longer productive. This should also be considered a Class I (non-mitigable) impact.

By focusing only on the conversion of prime agricultural land to development, the MOU fails to acknowledge that even sub-prime soils can be productive if they are farmed carefully (p. 2, paragraph 2 of the attached letter above). Hence, a net loss of 322 acres of agricultural land, even sub-prime land, must be considered a Class I (non-mitigable) impact.

### Section 3.7.3.3 Cumulative Impacts

#### Impact Ag-3: Cumulative Conversion of Agriculturally Designated Lands to Non-Agricultural Uses

The MOU Project proposes an agricultural conservation easement of 163 acres from a total project area of 485 acres, resulting in a net loss of 322 acres of agricultural land.

As stated above, not only is this conversion of agricultural land inconsistent with the Coastal Act Section 30242 and the Comprehensive Land Use Policy Section 8-2, but this conversion of agricultural land to development is unprecedented on the Gaviota Coast.

The MOU Project cannot demonstrate any evidence that it will not encourage future development by other landowners on the Gaviota Coast. In fact, by proposing conversion of agricultural land to development, the MOU Project demonstrates the opposite. Currently there are only two large private properties on the Gaviota Coast protected by conservation easements:

- The Freeman Ranch, a 660-acre working cattle ranch and farm owned and operated by the Freeman family, preserved in its entirety under an agricultural conservation easement; and
- La Paloma Ranch, a 765-acre property.

By comparison, the MOU Project would result in a net loss of 322 acres of agricultural land in exchange for protecting 163 acres. If the MOU Project is approved as written, the message to other Gaviota Coast landowners is clear: conversion of agricultural land is permissible, even when such conversion is inconsistent with Comprehensive Land Use Policy Section 8-2 or the Coastal Act Section 30242.

The loss of 322 acres of agricultural land under the MOU Project should be considered a Class I (non-mitigable) impact, and its potential for future Class I impacts on other Gaviota Coast properties should not be minimized.

#### Impact Ag-5: County Agricultural Suitability and Land Use Conflicts

The MOU Project proposes to place residential lots in close proximity to lands that would be preserved under private agricultural conservation easements and intended for active agricultural use. Using my nearly nine years of farming experience at Fairview Gardens as a baseline, I am convinced that the potential for Class I (non-mitigable) impacts caused by conflicting land use – residential versus agricultural – is greatly underestimated by the FEIR:

- Residential homeowners typically aren't farmers, and have little understanding of and/or practical experience with farming;
- In spite of both Santa Barbara County's Right-to-Farm Ordinance and the explicit knowledge that Fairview Gardens has been a working farm for over thirty years, neighbors make regular complaints regarding noise (mechanical, animal, and human), odors, and dust to farm personnel and municipal officials;
- The exorbitantly high monetary value of the proposed SBR residential lots, when compared to the diminished monetary value of lands in a conservation easement and/or the relatively modest return on investment that agriculture provides,

creates the potential for agricultural operations to be minimized or even abandoned altogether.

The proposed mitigation measures in 3.7.3.4 – the installation of agricultural fencing and buyer notification – are not likely to prevent the probability of land use conflicts in the future. Therefore, the County should recognize that, as currently written, the MOU Project’s potential for such conflicts represents a Class I (non-mitigable) impact.

## Alternative 1 Project – Comment and Critique

### 9.7.1 Existing Conditions

Page 9.7-5, paragraph 2 states that approximately 44 acres of prime agricultural lands on the existing DP property north of Highway 101 and approximately 8 acres (the actual amount is 10 acres) of prime land south of Highway 101 would be developed for non-agricultural uses. Both of these conversions are inconsistent with the Coastal Act Section 30242 and the Comprehensive Land Use Policy Section 8-2. Further, the conversion of prime and sub-prime agricultural lands to development is inconsistent with the Comprehensive Plan Land Use Element Regional Goal, the Comprehensive Plan Agricultural Element Goal I, and the Comprehensive Plan Area/Community Goals for the Goleta Valley – Land Use.

From a farming standpoint, Alternative 1’s proposal to “replace” these prime agricultural lands with an agricultural conservation easement (ACE) on other project lands, when carefully considered, does not necessarily constitute a net gain. Figure 9.7-2 shows that most of the total proposed ACE acreage is significantly steeper than the approximately 65 acres of prime agricultural lands proposed for development and likely too steep even for workable orchard operations. And since “grazing operations are not considered commercially viable in both DPR and SBR properties” (page 9.7-2), it is hard – if not impossible – to imagine any viable agriculture on these steep lands. Alternative 1’s claim of a “net gain” smooths over the reality that the best soils and most level acreage will be lost to development. And while prime agricultural lands are proposed to be preserved, no new prime lands are proposed to be set aside for agriculture use. In fact, there is a net loss of prime agricultural lands overall. This loss should be considered a Class I (non-mitigable) impact.

### 9.7.4.2 Project Impacts

#### Impact Ag-1: Cancellation of a Williamson Act contract and creation of an Agricultural Conservation Easement

The Alternative 1 Project areas north and south of Highway 101 allows for conversion of land currently zoned for agriculture use to non-agricultural use

(Figures ES-4, 8.2-1). Claims that an “offsetting increase” in protected land through combined new replacement Williamson Act Contract and a new ACE are not valid if the land protected cannot reasonably support agriculture (see discussion of section 9.7.1 above). Additionally, the proposed creation of lots DP-01, DP-04, DP-05, 204-207, 212-214, as well as DP-12-20, is inconsistent with the Coastal Act Section 30242, since the Alternative 1 Project does not demonstrate that the areas to be converted are “not feasible for continued or renewed agricultural use.” The FEIR also fails to account for the loss of DP acreage south of Highway 101, claiming that the development envelopes of lots 12-20 needn’t be subtracted because the “entire lot is within (the) agricultural conservation easement.” (Figure 9.7-2 excludes the development envelopes from the ACE acreage, which appears to be inconsistent). In fact, DP-12, 13, 14, 15, 16, and 20 as proposed comprise approximately 10 acres of prime agricultural land and/or Farmland of Statewide Importance that would be lost to development. Considered as a whole, these conversions of agricultural land to development would result in Class I (non-mitigable) impacts.

#### Impact Ag-2: Loss of Prime Agricultural Land within Williamson Act Protection.

There are two flaws in the FEIR’s judgment that the loss of prime agricultural land currently under Williamson Act protection is “less than significant”:

1. The presence of phytophthora cinnamomi in the soils of proposed lots DP-01, DP-04, DP-05, 204-207, 212-214 is not sufficient reason to “condemn” the acreage to development. Soils with *P. cinnamomi* have been shown to be plantable to citrus, cherimoya, and other types of fruiting trees which, when well-managed, do not suffer as do avocados in such affected soils.

2. Page 9.7-5 states: “...currently 2,566 of the 3,237 acres of land within the project for Alternative 1 are under Williamson Act contract, which applies to the DPR property north of Highway 101.” In other words, all but 68 acres of the ACE proposed in Alternative 1 is already protected from development under the Williamson Act. Alternative 1 gives the misleading impression that by protecting land from development (land that is currently protected), the loss of 75 acres of prime agricultural land to development is not significant.

Any loss of prime agricultural land directly contradicts the Coastal Act Section 30242 and the Comprehensive Land Use Policy Section 8-2, and should be considered a Class I (non-mitigable) impact.

#### Impact Ag-3: Physical Conversion of Prime Agricultural Land to Development

The FEIR relies on a simple notion: as long as more agricultural land is preserved under Williamson Act contract or in ACEs than is lost to development, no significant impacts will result. But the loss of 67 acres of prime agricultural land is still a loss, one that contradicts the Coastal Act, the Comprehensive Land Use

Policy, and the Comprehensive Plan Area/Community Goals for the Goleta Valley regarding the preservation of agricultural lands, all of which state a clear preference for the preservation of existing prime farmland over development. The FEIR's conclusion that this loss of prime agricultural land is less than significant is dangerously shortsighted.

#### Impact Ag-5: Agricultural Suitability and Land Use Conflicts

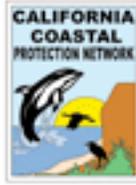
(Please refer to Section 3.7.3.3 "Impact Ag-5: County Agricultural Suitability and Land Use Conflicts" for the MOU Project above.)

The proposed mitigation measures in 9.7.4.4 – the implementation of an agricultural conservation easement, the installation of agricultural fencing and buyer notification – are not likely to prevent the probability of land use conflicts in the future. Additionally, a setback of at least 200 feet – twice the 100 feet proposed by the project – between the development envelopes and agricultural areas is far more appropriate. Therefore, the County should recognize that, as currently written, Alternative 1's potential for such conflicts represents a Class I (non-mitigable) impact.

Finally, the FEIR appears to be inconsistent in its conclusions regarding the total acreage of agricultural lands to be converted to development:

- Page 3.7-3 of the MOU reports that two acres of existing orchard land on SBR will be converted to an access road. But page 3.7-11 states "The MOU Project would result in conversion of existing agriculturally-designated land to residential uses, approximately 2 acres of prime agricultural land will be lost to development..."
- Under Alternative 1, Page 9.7-5 states that 44 acres of prime agricultural land on DPR north of Highway 101 and 8 acres of prime agricultural land on DPR south of Highway 101 will be converted to development. Thus, the total acreage to be converted to development (including the two acres on SBR) appears to be 54 acres. But page 9.7-17 states "...new residential development on a portion of the DPR property north of US Highway 101...would remove approximately 75 acres...of prime agricultural land from the existing Williamson Act contract area." This represents a difference of 21 acres – a significant amount of prime agricultural land. Yet the FEIR states that "approximately 53 acres of prime agricultural land will be lost to development..." (page 9.17-7). And Table 9.7-2 indicates a net loss of 80 acres currently under Williamson Act protection.

These inconsistencies force the question: will the net loss of prime agricultural land be 54 acres? 75 acres? 80 acres?



**CALIFORNIA COASTAL PROTECTION NETWORK**  
906 Garden Street, Santa Barbara, CA 93101 • 805-637-3037  
[WWW.COASTALADVOCATES.COM](http://WWW.COASTALADVOCATES.COM)

Supervisor Salud Carbajal  
Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, CA 93101

**RE: Santa Barbara Ranch Project (Naples)**  
**File Reference No. 08-00867**

Dear Chair Carbajal and Supervisors,

The California Coastal Protection Network, a non-profit 501C 3 dedicated to statewide protection of the California Coast, is writing to express its opposition both to the potential approval of the Naples Development proposed by Orange County developer Matt Osgood as well as the October 8<sup>th</sup> decision by this board to bifurcate the inland portion of the project from the ocean front portion of the project in conflict with the MOU signed by the County with the developer in 2002.

The MOU that the Board conveniently tossed aside at the behest of the developer is just one more action in a string of faulty decisions that this Board has engaged in within the last year. The Naples MOU which was crafted by one of the County's most experienced land use attorneys and agreed to by all the parties involved outlined a sound approach to the potential development of the Naples site. To neuter it behind closed doors is

yet another example of this Board's refusal to honor and respect the public's right to participate. Holding a hearing on the Naples project as a whole after that closed door vote is no substitute for transparency in local government and practically guarantees that this decision will wind up in litigation.

Ironically, the Board's misguided decision to piecemeal approval of the Naples project may limit the ability of the CCC to approve the portion of the project that falls within the coastal zone. The CCC has been very clear with this Board that approval of the inland portion which will depend, in part, on the coastal zone portion for mitigation and infrastructure should not move forward alone and that any approval would need to be preceded by LCP amendments and coastal development permits. The Board has now left the future of that portion of the development entirely in the hands of the Coastal Commission which, ironically, in this case may be the best possible outcome.

Supervisor Firestone's call for both sides to work together might have had more potential if the Board had not capitulated on the TDR program and the MOU in advance of its consideration of the inland portion of the Naples project. When you unfairly tie the hands of the public at the negotiating table, you cannot expect the end result to be a fair compromise for all parties.

The Naples development will set the precedent for development of the Gaviota coastline – Santa Barbara County's equivalent of Big Sur. If Monterey County had the political will to establish and enforce the most protective viewshed policy in the State – one that ensures that development

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will not alter the extraordinary beauty of that coastline, the Santa Barbara County Board of Supervisors should be able to ensure the same for the Gaviota coast. This is the project that will set the example and determine the bar that future developers must reach. Instead of bowing down to this developer, the Board should understand the legacy they place at risk in approving this project as proposed. A deficient EIR, a weakened MOU, and a toothless TDR program should not serve as the foundation of approval of one of the most significant land use development projects in the County's history.

CCPN urges you to reconsider and reject the inland portion of the proposed Naples development.

Sincerely,

A handwritten signature in black ink that reads "Susan Jordan" followed by a long, horizontal flourish.

Susan Jordan, Director



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>  
4949 Viewridge Avenue  
San Diego, CA 92123  
(858) 467-4201



January 22, 2008

Tom Figg  
Santa Barbara County Planning and Development Department  
123 East Anapamu Street  
Santa Barbara, CA 93101  
Fax No.: (805) 568-2030

**Revised Draft Environmental Impact Report for  
the Santa Barbara Ranch Project  
SCH # 2005011049, Santa Barbara County**

Dear Mr. Figg:

The California Department of Fish and Game (Department), has reviewed the Revised Draft Environmental Impact Report (RDEIR) for impacts to biological resources. The project applicant proposes the construction of 54 detached single family residences, an equestrian center, agricultural support facilities, public recreation amenities, access roads, a span bridge across Tomate Canada Creek, water tank, water lines and water treatment plant, landscaping, and a wastewater treatment plant, on the 485 acre-Santa Barbara Ranch (SBR) property. The remaining acreage would be dedicated to Agricultural (163 acres) and Open Space (176 acres) Conservation Easements.

The SBR is located on the Gaviota Coast along U.S. Highway 101 in Santa Barbara County approximately two miles west of the City of Goleta. Proposed project impacts include the removal or modification of 139.79 acres of habitat, including coastal scrub (1.11 acres), native grassland (0.22 acres), and annual grassland (138 acres). The habitat loss would result in the fragmentation of the remaining project site acreage. Wildlife with the potential to be impacted by the project include the Federal and State Endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the State Fully Protected white-tailed kite (*Elanus caeruleus*), the Federally Endangered and State Special Concern Species southern steelhead (*Oncorhynchus mykiss*), the Federally Threatened and State Special Concern Species California red-legged frog (*Rana aurora draytonii*), the Federally Threatened vernal pool fairy shrimp (*Branchinecta lynchi*), twenty State Special Concern Species, monarch butterfly (*Danaus plexippus*), and the California Native Plant Society List 1B black-flowered figwort (*Scrophularia atrata*), southern tarplant (*Centromadia parryi australis*), and Nuttall's scrub oak (*Quercus dumosa*). Measures proposed to mitigate impacts include implementation of an Open Space and Habitat Management Plan (OSHMP), a Fuel Management Program, a vegetation restoration plan, a prohibition on planting of invasive non-natives, placement of 100 ft. buffers around wetlands, a Native Bird Protection program, a Resident and Public Use Management and Resource Education Program, and a Monarch Butterfly Roost Protection Program.

The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (CEQA Guidelines §15386(a)) and pursuant to our authority as a Responsible Agency (CEQA Guidelines §15381) over those aspects of the proposed project that come under the purview of the Fish and Game Code Section 1600 et seq.

Mr. Tom Figg  
January 22, 2008  
Page 2 of 5

### **Native Grassland Assessments**

As stated on page 3.4-9 of the RDEIR, the Santa Barbara County (County) Environmental Thresholds of Significance Report (2002) defines native grasslands as areas where "native grassland species" comprise 10 percent or more of the total relative cover. The County Environmental Thresholds and Guidelines Manual (1995) contains the same definition for native grasslands. The RDEIR states there where "...no areas where native grasses exceeded 10% of the total plant cover or otherwise met the County standards for native grassland." However, the Department does not agree the County guidelines have been correctly applied. The RDEIR apparently fails to include all native grassland species in its calculation of total relative cover, and we are concerned the extent of County-defined native grasslands has been under-estimated.

Seven native grassland species found on the project site are listed on page 3.4-9 of the RDEIR. The list fails to include six additional native forb species found on the project site and listed on page 3.4-10. We consider these six forb species qualify as native grassland species under the County definition. It therefore is unclear whether native grasslands were defined based on the presence of native grasses and other native grassland species, or solely on the presence of native grasses. We therefore request a clearer explanation for the apparent discrepancy, or the project site should be re-evaluated for native grasslands to include all native grassland species.

### **Impacts to Sensitive Aquatic Resources**

The RDEIR does not contain a discussion of the potential impacts that may result from increased water usage and associated waters diversion and storage capacity increases, as described in Chapter 2, on the riparian and aquatic resources found in the project area. Associated with this lack of analysis, the RDEIR fails to acknowledge several California Fish and Game Code, Division 6, Chapter 3 sections that address water diversions, the requirement to provide flows sufficient to maintenance of downstream resources, the need to provide passage for the state's aquatic species, and the need to screen diversion intake structures. For example:

"The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway." (Fish and Game Code § 5937).

Neither the RDEIR nor the OSHMP contain information about the project area as critical habitat for Southern steelhead (*Oncorhynchus mykiss*), a federally endangered species. The only references in the RDEIR to the population of trout (*O. mykiss*) that exist in the watershed are found Appendix B and on Tables 3.4-4 and 9.4-4 and Figures 3.4-3 and 9.4-4. The RDEIR does not provide substantive evidence in the biological resource sections that these fish are not of native origin. While the Department of Fish and Game had stocked hatchery trout in Dos Pueblos Creek in the past, recent investigations into the genetics of Southern steelhead has shown that little to no introgression has occurred between native and hatchery fish (Girman and

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Garza, 2006). Unless more compelling information is presented to the contrary, the reproducing population of trout in Dos Pueblos Creek must be treated as native *O. mykiss* and the potential impacts must be adequately addressed.

### **Mitigation Measures**

Neither the RDEIR nor the OSHMP contain detailed discussions of impacts and measures to lessen impacts to many of the sensitive wildlife species listed above. Without adequate detail, the Department cannot determine if proposed mitigation meets the standard required by CEQA to minimize significant adverse impacts (CEQA Guidelines §15126.4(a)(1)).

Pre-construction Surveys – The RDEIR does not discuss the potential for direct impacts to 8 sensitive species affected by construction activities relating to the removal of 139.79 acres of habitat. These species include California red-legged frog (CRLF) and the State Special Concern Species burrowing owl (*Athene cunicularia*), coast horned lizard (*Phrynosoma coronatum frontale*), Coast Range newt (*Taricha torosa torosa*), coast patch-nosed snake (*Salvadora hexalepis virgulata*), silvery legless lizard (*Anniella pulchra pulchra*), San Diego black-tailed jackrabbit (*Lepus californicus bennettii*), and San Diego desert woodrat (*Neotoma lepida intermedia*). The Department therefore recommends the following:

1. Construction work areas and access roads shall be surveyed for sensitive species no more than 3 days before the prescribed work is to be carried out. Sensitive species found shall be relocated to nearby suitable habitat areas. The relocation of such species shall be conducted by a qualified biologist with the appropriate collection and handling permits.
2. To prevent access of adult CRLF to the work site(s), and to prevent re-entry of relocated animals, silt fencing shall be placed along the perimeter of the work site(s). The fencing should be keyed into the ground approximately six inches.
3. Surveys for burrowing owl shall be conducted according to the attached protocol.

Impacts to Nesting Birds - All migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of birds and their active nests. Several species of migratory birds, including 3 State Special Concern Species, were observed on the project site which nest in grassland (ground-nesters) or coastal scrub habitat. Proposed project activities should therefore take place outside of the breeding bird season (February 1- August 15) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). If project activities cannot avoid the breeding bird season, pre-project nest surveys for should be conducted and active nests should be avoided and provided with a minimum buffer as determined by a biological monitor.

Impacts to Native Grassland - The RDEIR discusses the cumulative loss of coastal terrace grassland habitat as Class I, significant and immitigable. However, the Department does not agree there are no additional feasible mitigation measures for impacts to grassland habitats.

Extensive annual grasslands exist in private ownership along the Gaviota coast. One such area is the nearby Dos Pueblos Ranch. Dos Pueblos Ranch has been identified as containing 1,327 acres of high conservation value habitat in the Department's Gaviota Coast

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Conceptual Area Protection Plan. It also has been identified as having high priority for conservation in the Conception Coast Project's Regional Conservation Guide. An accepted mitigation measure for impacts to on-site habitats is the permanent protection of off-site habitats through land acquisition, in fee title or a habitat conservation easement, at ratios which would reduce impacts to less than significant. We believe such opportunities for acquisition exist along the Gaviota coast, and therefore an evaluation of mitigating impacts in this way should be presented in the RDEIR.

### **Fuel Modification Zones**

The Fire Management section, on page 2-12 of the RDEIR, describes a fire management plan which recommends setbacks between structures and native vegetative fuels. Neither the RDEIR nor the OSHMP provide detail on how fuel modification zones would impact other resources. We are concerned that County required fuel modification zones will negatively impact native and annual grasslands surrounding structures, and we believe the RDEIR must contain a more detailed evaluation of potential impacts resulting from implementation of the fire management plan, along with mitigation measures proposed to minimize impacts.

### **Alternatives**

Section 15126.6(a) of CEQA Guidelines states that "an EIR (Environmental Impact Report) shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." Section 11 of the RDEIR evaluates 6 alternatives, including the no-project alternative, and concludes "...the environmentally superior alternative is Alternative 1." The Department does not agree with this determination.

Alternative 1 would increase the number of proposed residences from 54 to 72. In comparing impacts from Alternatives to the proposed project, in Table 11.1-1 of the RDEIR, impacts to biological resources from the Alternative 1 project are presented as being equal to the proposed project. No discussion is presented to support this conclusion, and we strongly disagree with this determination. The Department considers the Alternative 1 project as having potential to result in significantly greater impacts to biological resources compared to the proposed project. These impacts include, but may not be limited to:

- an increase in acreage of habitat removed, including annual grasslands (56 acres) and coast live oak woodland (0.49 acres);
- an increase in impacts to sensitive species resulting from the increased habitat loss;
- an increase in negative impacts to wildlife movement, particularly along Tomate Canada Creek;
- increased fragmentation of remaining habitats.

Alternative 1 would also have more effects than the proposed project for Geology and Soils, Hydrology and Water Quality, Traffic, Air Quality, and Public Services. For these reasons, the Department does not agree Alternative 1 meets the CEQA definition of an Alternative, because it would increase, rather than lessen, several significant biological effects in addition to many other non-biological effects.

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### Impacts to Jurisdictional Drainages

The Department requires a Lake or Streambed Alteration Agreement (LSAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant prior to any direct or indirect impact to a lake or stream bed, bank or channel or associated riparian resources. The law requires any person, state or local governmental agency, or public utility to notify the Department before beginning an activity that could substantially modify a river, stream, or lake. The project as proposed includes impacts from construction to streambeds within Department jurisdiction (e.g., the construction of a span bridge over Tomate Canada Creek).

The Department's issuance of an SAA is considered a project that is subject to CEQA. To minimize additional requirements by the Department pursuant to Section 1600 et seq., the RDEIR should fully identify the potential impacts to any drainage or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments. Details of the potential for impacts to biological resources contained in Tomate Canada Creek and associated mitigation are lacking in the RDEIR, and so would not facilitate issuance of a streambed alteration agreement at this time. The Department emphasizes that in order to protect sensitive resources, substantial revisions to the proposed project may be required in the SAA.

In conclusion the Department believes, in several instances, the RDEIR does not provide sufficient detail for an adequate review of the potential project impacts or the effectiveness of mitigation measures to minimize significant adverse impacts. This lack of information indicates the RDEIR is inadequate and should be revised and re-circulated prior to adoption.

Thank you for this opportunity to provide comment. Questions regarding this letter and further coordination on these issues should be directed to Ms. Mary Larson, Senior Biologist Specialist, at (562) 342-7186 or Mr. Martin Potter, Environmental Scientist, at (805) 640-3677.

Sincerely,



Edmund J. Pert  
Regional Manager  
South Coast Region

#### Attachment

cc: Ms. Betty Courtney  
Department of Fish and Game, Santa Clarita, California

Ms. Mary Larson  
Department of Fish and Game, Los Alamitos

✓ Mr. Martin Potter  
Department of Fish and Game, Ojai, California

Ms. Natasha Lohmus  
Department of Fish and Game, Santa Barbara, California

Mr. Scott Morgan  
State Clearinghouse, Sacramento, California

EP:mp

# California Native Plant Society

2707 K Street, Ste. 1 • Sacramento, CA 95816-5113 • (916)447-2677 • Fax (916)447-2727

25 August 2008

Santa Barbara County  
Board of Supervisors  
123 E. Anapamu Street  
Santa Barbara, CA 93101

**Subject: Review of Grassland Sampling/Vegetation in the Santa Barbara Ranch  
Revised DEIR (04EIR-00000-00014)**

Dear Supervisors:

The California Native Plant Society (CNPS) recently became aware of a proposed plan for the Santa Barbara Ranch Revised DEIR by the local Channel Islands Chapter of CNPS. In particular, we are concerned with the evaluation of grasslands onsite; it appears that consultants did not perform adequate quantitative measures and qualitative descriptions of grasslands. Also, the vegetation classification system (Holland 1986<sup>1</sup>) used in the report is outdated and inadequate; this classification system has been replaced by CNPS and California Department of Fish and Game (CDFG) state classification system, as described in the CNPS' *Manual of California Vegetation* (Sawyer and Keeler-Wolf 1995<sup>2</sup>) and CDFG (2003<sup>3</sup>), and by the National Vegetation Classification System (NVCS 2008<sup>4</sup>).

The Coastal Commission considers native grassland habitats ESHA, and all developments are prohibited when they result in direct and indirect impacts to ESHA and when they are not associated with improving or enhancing ESHA. In addition, Santa Barbara County's Thresholds Manual finds that grasslands are rare in Santa Barbara County, and that native grasslands (grasslands with at least 10 percent cover by native grassland species) is a sensitive and important habitat type, ESHA.

The grasslands onsite have not been identified properly because the timing of the surveys was not adequate to capture completely native forb and grass species. In addition, the method/evaluation of field surveys did not adequately identify native forb species. Grassland surveys in particular need to be conducted in to different seasons (spring and summer) to identify which grass and forb species are present and when

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<sup>1</sup> Holland, R.F. 1986. Preliminary Description of the Terrestrial Natural Communities of California. California Department of Fish and Game, Sacramento, CA.

<sup>2</sup> Sawyer, J.O., and T. Keeler-Wolf. 1995. A Manual of California Vegetation. California Native Plant Society, Sacramento, CA.

<sup>3</sup> California Department of Fish and Game (CDFG). 2003. List of Terrestrial Natural Communities Recognized by the California Natural Diversity Database. California Department of Fish and Game, Sacramento, CA. Available: <http://www.dfg.ca.gov/whdab/pdfs/natcomlist.pdf>.

<sup>4</sup> U.S. Geological Survey National Vegetation Standard (NVCS). 2008. The vegetation classification and mapping standard used by all federal agencies (and CDFG). Available: <http://biology.usgs.gov/npsveg/nvcs.html>.



they are abundant. Thus, surveys at any given location need to be conducted more than once per year, and possibly across more than one year since the grassland species varies as climate varies each year. Also, surveys need to be conducted at multiple locations with multiple samples per type because micro-site variation exists regularly in grassland habitats.

In areas identified as annual grasslands, non-native Mediterranean grasses dominate and are favored at certain times of the year and certain years, while native wildflower species (such as *Deinandra fasciculata* and *Eremocarpus setigerus*) and grass species (such as *Nassella pulchra* and *Vulpia microstachys*) are favored at other times of the year and certain years. If sampling was conducted later in the spring or summer (which was not done), and if all the forb species were accounted for in the sampling, a greater area of grassland would have been identified at more than 10 percent cover by native grassland species. Sampling procedures were not adequate onsite because they sampled each grassland area in a single sampling effort (or at a single time), instead of sampling across the spring and summer seasons.

Vegetation sampling methods need to identify all plants (including forbs/wildflowers) that are identifiable from the current year's growth (even if they flowered earlier in the season or will flower later in the season). Since annual and perennial grassland species are present/active at different times of the year, sampling methods for evaluating grassland features on a proposed project site need to include sampling across the spring and summer seasons and usually across more than one year, so to record accurate information on the different species that occur at a site and to estimate (relative) accurate cover. The summer dominance of annuals known to the site, such as *Deinandra fasciculata*, definitely exemplifies the need to sample in summer as well as spring.

With the project site using transect (or even plot-based) sampling as their primary method, they need to capture all the species that may hit/occur along a line or along set intervals along a transect. This was not apparent and was not recorded adequately onsite. The sheer number (abundance or frequency) of native species was lower than what is actually present onsite, and therefore, the consultants did not adequately identify and evaluate for native grasslands.

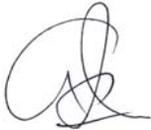
Also, survey efforts need to be rigorous enough to include an adequate number of samples across the grassland landscape to capture the variation or patchiness of grassland types. Since micro-site patterning of soils, natural disturbance, and topography typically occurs in grasslands, the sheer presence (as well as cover of annual and perennial vegetation cover) needs to be addressed. Some sites provide a diversity of native species, and they may display low to high cover estimates depending on the micro-site. Thus, a more rigorous sampling at multiple locations is necessary to capture this detail.

Click on "Bookmarks" for a Table of Contents of all Documents included.

In addition, the EIR and the County should identify and evaluate any sensitive grassland resources without relying solely on a 10% cover threshold for native plants. Grasslands are important biological habitats, regardless of which species are dominant. Reports by Davis et al. (1995<sup>5</sup>) and by Jones & Stokes Associates (1989<sup>6</sup>) support the fact grasslands [referring to non-native grasslands] can be rich in native plant species and are important habitat to many animal species, including birds, invertebrates, reptiles and small mammals, and grasslands of any nature can have the highest biodiversity of any plant community (next to riparian) in California.

The term "Non-native Grassland" used for grasslands dominated by non-native grasses is inaccurate and imparts a bias against this complex of herbaceous plant communities dominated by Mediterranean grasses as not worthy of consideration as biologically important. Consequently, CNPS and CDFG do not use the terms "Non-native Grassland" and "Native Grassland" to denote different grassland types. We think it is more appropriate to use the terms such as "California Annual Grassland" (Sawyer and Keeler-Wolf 1995).

Sincerely,

A handwritten signature in black ink, appearing to read 'Amanda Jorgenson', with a stylized, cursive script.

Amanda Jorgenson  
Executive Director

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<sup>5</sup> Davis, F.W., P.A. Stine, D.M. Stoms, M.I. Borchert, and A.D. Hollander. 1995. Gap Analysis of the Actual Vegetation of California: 1. The Southwestern Region. *Madroño* 42: 40-78.

<sup>6</sup> Jones & Stokes Associates, Inc. 1989. Sliding Towards Extinction: Reassembling the Pieces. A report to The Nature Conservancy. Jones & Stokes Associates, Sacramento, CA.

# David Magney Environmental Consulting

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8 October 2008

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

**Subject: Biological Resources Review of the Santa Barbara Ranch Final EIR (04EIR-00000-00014)**

Dear Supervisors:

This letter provides information related to the Santa Barbara Ranch Final Environmental Impact Report (FEIR) related specifically to biological resources. The EIR is seriously flawed in how it characterizes and analyzes project-related impacts to the flora and fauna of the project site. The flaws stem primarily from the lack of appropriate scientifically acceptable baseline studies of the project site, in a uniform and consistent manner. This has resulted in the EIR consultants not being able to credibly or accurately assess the true project impacts to the biological resources. This must be rectified. Below I will demonstrate how the analysis is flawed, and how it can be remedied.

For any credible assessment, we must start with an accurate and complete description of the baseline (existing) conditions. While the EIR states that it had adequate baseline information, I will demonstrate how this is in error. Some background information in the rules that must be applied, and the minimum professional standards and protocols that must be applied, is necessary to put this into context.

1. General Plan and Local Coastal Plan policies must be followed.
2. State and federal assessment guidelines should be followed.
3. Minimum professional standards should be followed.

The old adage, "Garbage in, garbage out" applies here. As I have pointed out in my detailed letter critiquing the DEIR and Revised DEIR, lots of garbage (flawed data, data gathered in a biased manner, data used in a scientifically and statistically unsound manner) was collected and then used to conduct the impact assessment. The EIR consultants used flawed data as the basis for their assessment, so it is no wonder that their conclusions are flawed. Even though the EIR consultants justify all their work and conclusions as accurate and appropriate, they miss the fact that the underlying data they used were flawed.

I will demonstrate why the botanical surveys were inadequate. I will demonstrate why the plant communities were inadequately described and sampled. I will demonstrate why some of the annual grassland onsite meet definitions as ESHA.

First, I will provide you with a summary of what the federal and state resource agencies, and the botanical profession, expects from field surveys and reports to be used for CEQA and NEPA review purposes. Second, I will delineate why the "baseline" survey reports are flawed, report-by-report. Third, I will provide evidence that grasslands onsite, some of them, qualify as ESHA.

## Minimum Botanical Survey Requirements

The United States Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), and the California Native Plant Society (CNPS) each have adopted very similar protocols and guidelines for botanists to follow when conducting fields surveys and documenting habitat conditions of a project site proposed for development. Copies of these survey guidelines/protocols are attached for reference, and are incorporated herein. Specific pertinent requirements are discussed below:

USFWS Guidelines (published in 2000<sup>1</sup>), item “3. List **every** [emphasis added] species observed and compile a comprehensive list of vascular plants for the entire project site. Vascular plants need to be identified to a taxonomic level which allows rarity to be determined” and 4e., “a comprehensive list of all vascular plants occurring on the project site for each habitat type”.

CDFG Guidelines (published in 1983 and revised in 2000<sup>2</sup>), item 4b. “Floristic in nature. A floristic survey requires that every plant observed be identified to the extent necessary to determine its rarity and listing status. In addition, a sufficient number of visits spaced throughout the growing season are necessary to accurately determine what plants exist on the site. In order to properly characterize the site and document the completeness of the survey, a complete list of plants observed on the site should be included in every botanical survey report”.

CNPS Guidelines (published in 1983 and revised in 2001<sup>3</sup>), item 4b, “Floristic in nature. A floristic survey requires that every plant observed be identified to species, subspecies, or variety as applicable. In order to properly characterize the site, a complete list of plants observed on the site shall be included in every botanical survey report. In addition, a sufficient number of visits spaced throughout the growing season is necessary to prepare an accurate inventory of all plants that exist on the site. The number of visits and the timing between visits must be determined by geographic location, the plant communities present, and the weather patterns of the year(s) in which the surveys are conducted.”

These guidelines developed and published by the federal and state biological resource agencies, and the botanical profession, through CNPS, establish the minimum standards by which botanical resource inventories are to be conducted. These are the standards expected of the botanical consulting profession.

Section 3.4.2.1 of the FEIR states that the entire project site was visited by a biologist at least once. Focusing only on the botanical resource, knowing that SAIC botanists spent nearly all of their time either sampling grassland vegetation or delineating wetlands, and not visiting any of the Dos Pueblos Ranch, it is clear that SAIC botanists did not follow the survey guidelines of either the USFWS, CDFG, or CNPS. These guidelines specifically state that the project site should be surveyed multiple times to be considered adequate in conducting a floristic survey, and be able to detect special-status species. V.L. Holland did not provide specific dates of field surveys, but his team likely also only visited all areas of the Santa Barbara Ranch only once. URS did not survey all of the project site and never even bothered to prepare a checklist

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<sup>1</sup> U.S. Fish and Wildlife Service. 2000. Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants.

<sup>2</sup> California Department of Fish and Game (CDFG). 2000. Guidelines for Conducting and Reporting Botanical Inventories for Rare, Threatened, and Endangered Plants and Natural Communities. 9 December 1983, Revised 8 May 2000. State of California, The Resources Agency, Sacramento, California.

<sup>3</sup> California Native Plant Society (CNPS). 2001. Botanical Survey Guidelines. Board of Directors, Sacramento, California. See [www.cnps.org](http://www.cnps.org) for complete text of guidelines. First published in 9 December 1983, revised 2 June 2001.



of plants their botanists observed for the Alternative 1 Project site (or anywhere else they surveyed), one of the specific protocols identified by USFWS, CDFG, and CNPS.

Section 35-97.5 of the Local Coastal Plan requires, “A description of the flora and fauna which occupy the site or are occasionally found thereon, setting forth with detail those areas where unique plant and animal species or their habitats may be found on the site.” For a description to be complete, lists of all the flora and fauna present onsite is required. This is very basic, and a foundation to any resource description. Just including short lists of dominant species of plant communities is not sufficient.

Reviewing the Holland and SAIC reports, and the biological resources section of the DEIR, RDEIR, and FEIR, it is clear that these minimum standards were not followed. V.L. Holland did not follow them. SAIC did not follow them entirely. URS did not follow them. The result is that the baseline conditions of the project site has never been adequately surveyed, according to formal guidelines, and the results have never been written according them either. To use such documents as the basis for an impact assessment destroys the validity of the arguments made in the EIR since the baseline conditions really are not known.

### **V.L. Holland Report Flaws:**

Holland did not follow USFWS, CDFG, or CNPS standard botanical survey and documentation protocols, which had been published as long ago as 1983, and revised in 2000 and 2001, respectively. Holland failed to provide quantitative data about species dominance or percent cover of any species in his plant community descriptions of Santa Barbara Ranch (SBR). He did not survey Dos Pueblos Ranch (DPR); of course, he was not hired to, so while we fault the EIR we really can't fault him for that. Holland did not support suppositions about percent cover with any field measurements, as is standard protocol by vegetation ecologists.

Holland did not fully identify 20 species, representing 13 percent of the 154 species (taxa) he observed, which are listed in his Appendix 1. The fact that he apparently visited the Santa Barbara Ranch more than two times gave him an opportunity to collect specimens to secure a complete identification. Such a high percentage of unidentified taxa is not considered acceptable as meeting minimum professional standards; however, Holland considered his botanical study “preliminary” (1<sup>st</sup> sentence on page 26). He also included a caveat about the preliminary nature of his study in the second paragraph on page 5. I would agree with him that his study is only preliminary. Since Holland characterized his study as preliminary, the EIR consultant and County should have also treated it as such, which they did not do.

A floristic analysis of Holland's findings tell us that on average he found 0.31 plant taxa per acre (154 taxa/485 acres). A flora of only 154 taxa, a good number of which where planted, is a depauperate flora for a 485-acre site (SBR) dominated by natural vegetation in California, or even just Santa Barbara County. Besides the fact that SAIC came in later and found an additional 19 taxa without conducting a floristic survey, the thoroughness of Holland's botanical survey is seriously questioned. Remember, Holland called his study “preliminary”. The problem is not so much with Holland's preliminary assessment report, but with URS basing so much of their impact assessment on it.

A comparison with other project sites nearby is in order to provide context to this evaluation. A floristic survey of Exxon's Santa Ynez Unit project in the late 1980s, a project site in Corral and Las Flores Canyons a few miles west of SBR measuring about 650 acres, had a flora of 246 vascular plant taxa, representing 0.51 taxa/acre. The 377-acre Bridle Ridge project (later called the Preserve @ San Marcos)

several miles to the east of SBR has a flora of 176 vascular plant taxa, representing 0.47 taxa/acre. The 94-acre UCSB Lagoon management area had 124 taxa, representing 1.32 taxa/acre. Based on just these few examples, more plant species would be expected on the SBR portion of the project site, and certainly many more species would be present on the larger DPR portion, which has never been surveyed according to agency and professional survey protocols.

I am confident that if I were allowed on the project site, and allowed to do a survey, I would easily find over 200 vascular plant taxa. However, such access has been denied to me and other biologists.

Holland did not provide any quantifiable information about the botanical resources, except for a simple vegetation map with only five plant communities mapped, some with subcategories. He did not map the vegetation according to methods adopted and used by the state and federal resource agencies.

While the Holland report provides a basic description of the SBR portion of the project, it cannot be considered, and he did not consider it, a complete botanical survey.

### SAIC Report Flaws:

The SAIC report was focused on specific tasks, including evaluating the Holland report, analyzing the grasslands, delineating wetlands, and performing focused rare species surveys, but of only the SBR. SAIC only mapped 7 plant communities, two of which are not natural (planted orchard and trees), and did not follow the classification adopted by the CDFG, federal government, or CNPS, ignoring currently accepted standards.

Even though SAIC attempted to followed County methods<sup>4</sup> in evaluating grasslands, the sampling SAIC performed would not pass any statistical tests for validity, nor where their survey forms filled out completely, or do the numbers (% cover) always add up<sup>5</sup>. Different methods of sampling were conducted, and standard sampling protocols (currently accepted scientific standards) were not followed, nor where they conducted in all seasons when native grassland taxa would be detectable. For example, SAIC did not perform any quantitative measurements of the grasslands when it is dominated by the native wildflower, *Deinandra [Hemizonia] fasciculata*, a common grassland species, typically found on clay rich soils (Abrams 1917<sup>6</sup>, Abrams & Ferris 1960<sup>7</sup>, Beauchamp 1986<sup>8</sup>, Flora of North America Committee 1993+<sup>9</sup>, Hickman 1993<sup>10</sup>, Hoover 1970<sup>11</sup>, Munz 1974<sup>12</sup>, Munz and Keck 1973<sup>13</sup>, Roberts et al. 2004<sup>14</sup>, Smith

<sup>4</sup> For clarification, the Santa Barbara County Thresholds Manual does not have any methods to be followed to sample grasslands to determine whether they would be considered native grassland. The only threshold the Manual has is that the grassland habitat must have at least 10% relative cover by grassland plant species. There are a number of scientific methods that could be used to measure this threshold.

<sup>5</sup> Based on review of SAIC's report by Julie Evens, CNPS Vegetation Ecologist, as provided in an email communication to David Magney dated 8 January 2008.

<sup>6</sup> Abrams, L. 1917. *Flora of Los Angeles and Region*. 10 April 1917. Stanford University Bookstore, Stanford, California.

<sup>7</sup> Abrams, L., and R.S. Ferris. 1960. *Illustrated Flora of the Pacific States*. Volumes I-IV. Stanford University Press, Stanford, California.

<sup>8</sup> Beauchamp, R.M. 1986. *A Flora of San Diego County, California*. Sweetwater River Press. National City, California.

<sup>9</sup> Flora of North America Editorial Committee, eds. 1993+. *Flora of North America North of Mexico*. 14+ vols. New York and Oxford. Vol. 1, 1993; vol. 2, 1993; vol. 3, 1997; vol. 4, 2003; vol. 5, 2005; vol. 19, 2006; vol. 20, 2006; vol. 21, 2006; vol. 22, 2000; vol. 23, 2002; vol. 25, 2003; vol. 26, 2002; vol. 27, 2007.

<sup>10</sup> Hickman, J., ed. 1993. *The Jepson Manual: Higher Plants of California*. University of California Press, Berkeley, California.

<sup>11</sup> Hoover, R.F. 1970. *The Vascular Plants of San Luis Obispo County, California*. University of California Press, Berkeley, California.

1998<sup>15</sup>) in the Sunflower family (Asteraceae). SAIC's Table 3 doesn't even mention this plant, indicating that it was not identifiable (based on the "Hemizonia sp. (?)" notation on the field data sheet<sup>16</sup>) in the early spring when they sampled their grassland transects. (Botanists knowledgeable about the Santa Barbara County flora would be reasonably confident that it would be *Deinandra fasciculata*.) If SAIC had done sampling during the early summer instead of early spring (14 April 2004), much more of the annual grasslands within the Coastal Zone would have been classified as Native Grassland according to County definitions.

Standard scientifically acceptable (statistically valid) sampling design generally requires at least 20 samples (Dytham 2003<sup>17</sup>), in this case transects or plots. SAIC only sampled along 11 transects. Dytham (2003<sup>18</sup>) states (on page 3) that when sampling two groups, an equal number of samples should be taken from both groups. This applies to SAIC's work since they were attempted to distinguish "non-native grasslands" from native perennial grasslands. However, SAIC violated scientifically and statistically sound sampling methods by not collecting data from each basic group, by not sampling the areas randomly (a basic tenant in statistical sampling), not having enough samples to truly be statistically representative, and not sampling in other seasons when a significant component of herbaceous grassland species are present.

Sampling should capture the entire range of conditions or variables. Sampling should capture each variable, in this case, a plant species, at least once. SAIC's sampling detected only 10 species (see SAIC's Table 3), missing most native grassland species. SAIC lists approximately 90 herbaceous plants that are often found, and associated with, grasslands. Yet, SAIC reported a maximum of 14 species on the relevé plots and didn't bother to keep track of what species were detected along the 100-foot-long transects. Had these data been submitted to any peer-reviewed journal as supporting data they would have been rejected due to total lack of reliability and failure to follow scientific sampling methods. Since only 14 of the grassland species were documented as sampled, at least 76 grassland species were not detected in any of the transects. Sampling design should include enough transects to sample each taxon present at least once to ensure statistical validity.

Sampling plots/transects should be established randomly (Dytham 2003<sup>19</sup>). Or if they need to be stratified, randomness must be implemented at some point to avoid or minimize bias by the sampler. SAIC sampled the grasslands in an entirely biased manner, reducing the data they gathered to nearly useless, and certainly biased. Below is language from a Texas A & M University Galveston description of vegetation sampling methods.

"The most common quantitative sampling methods are the quadrat method and the transect method. The quadrat method allows the user to define a fixed area, called a plot, within which plant characters

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<sup>12</sup> Munz, P.A. 1974. *A Flora of Southern California*. University of California Press, Berkeley, California.

<sup>13</sup> Munz, P.A., and D.D. Keck. 1973. *A California Flora and Supplement*. University of California Press, Berkeley, California.

<sup>14</sup> Roberts, F.M., Jr., S.D. White, A.C. Sanders, D.E. Bramlet, and S. Boyd. 2004. *The Vascular Plants of Western Riverside County, California, An Annotated Checklist*. F.M. Roberts Publications, San Luis Rey, California.

<sup>15</sup> Smith, C.F. 1998. *A Flora of the Santa Barbara Region, California*. Second Edition. Santa Barbara Botanic Garden & Capra Press, Santa Barbara, California.

<sup>16</sup> Page 3 of SAIC's Relevé sheet R1 in Appendix A of SAIC's 2005 report.

<sup>17</sup> Dytham, Calvin. 2003. *Choosing and Using Statistics: A Biologist's Guide*. Second Edition. Blackwell Science, Malden, Massachusetts.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

can be measured. Usually, a rectangular quadrat frame, such as the one shown in Figure 1 (not included here), is used to define the sampling area, although a quadrat can also be a permanently established area within a site. Although the exact experimental design will determine where and how many samples are taken, the procedure always involves measuring plant characters of only those plants inside the quadrat. Quadrat sampling usually attempts to define plant community characteristics for an area much larger than the actual area sampled. For this reason, care must be taken to obtain samples that represent the entire habitat and that eliminate the human factor. Usually this means employing an experimental design that ensures random placement of the frame or permanent quadrat.”<sup>20</sup>

“Data collected in the field are usually subjected to some type of statistical analysis. Statistical methods range from simple to complex, with the exact method chosen depending on the objective of the study and the original experimental design.”<sup>21</sup>

SAIC did not bother, apparently, to use any statistical tests to determine the validity of their sampling methods or hypotheses, as is standard in such studies, or at least it should be standard practice. DMEC presumes that SAIC hypothesized that native and nonnative grasslands could be distinguished/mapped onsite. They set about to find the native grasslands onsite by establishing sampling transects and plots in areas they believed contained native grassland species. This was their first bias. They further biased their sampling by not using any randomness in establishing plots or how they actually sampled, all of which are basic sampling protocols, that is, random sampling is vital to removing bias by the data gatherer (Dytham 2003<sup>22</sup>).

SAIC failed to use sample design protocols when determining the size of the relevé plots. First, SAIC should have assessed the plant community by walking/surveying it and making a list of all plants found. When they reached the plateau of the species-area curve, then they could determine the bounds (size) of the relevé plot(s). The species-area curve is a chart/graph that indicates the number of species found per unit area. A normal species-area curve will be very steep in the beginning, leveling off at a point when the survey area is so large that the area includes a majority of species occurring in that area, in this case, an area of grassland vegetation. Below is an example of a species-area curve taken from a Society for Ecological Restoration Management Notes website (Fibelibus and MacAller 1993<sup>23</sup>).

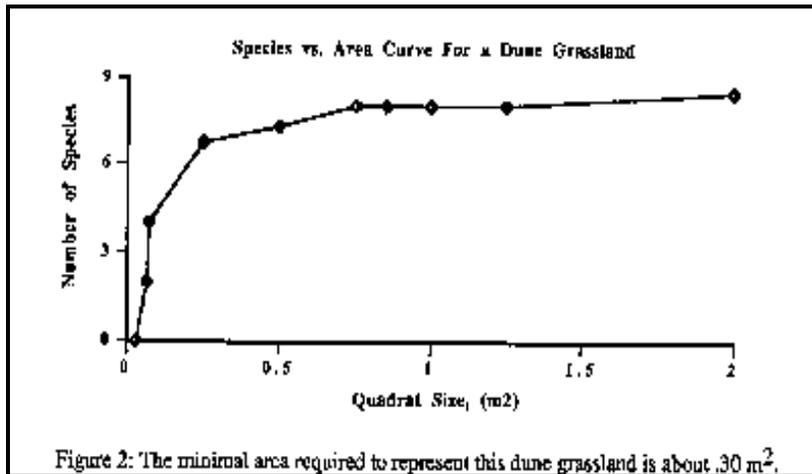
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<sup>20</sup> Texas A&M University at Galveston webpage titled, “Scientific Methods for Studying Vegetation”,  
<http://www.tamug.edu/seacamp/virtual/methods.htm>

<sup>21</sup> Ibid.

<sup>22</sup> Dytham, Calvin. 2003. *Choosing and Using Statistics: A Biologist’s Guide*. Second Edition. Blackwell Science, Malden, Massachusetts.

<sup>23</sup> Fibelibus, M.W., and R.T.F. MacAller. 1993. *Methods for Plant Sampling*. Prepared for California Department of Transportation, District 11, San Diego, California. San Diego State University, Biology Department, San Diego, California. Published in Restoration in the Colorado Desert: Management Notes. Available at  
<http://www.sci.sdsu.edu/SERG/techniques/mfps.html>.



This curve is used as a guide to determine the minimum size of the sampling plot to ensure that the sampling minimizes sampling bias, to make sure that the vast majority of species that make up the plant community actually get sampled. Had SAIC followed sampling design and methods as described by the Bureau of Land Management (1999<sup>24</sup>), the results would almost certainly have been accepted and show different results than has been presented.

Back to the issue regarding the seasonality of the sampling, as can be seen in the photographs below, taken on June 17<sup>th</sup>, the “non-native” grasslands of SBR south of the RR tracks are clearly dominated by *Deinandra fasciculata*, with well over 10 percent cover over a large portion of the site. All the yellow visible in these photographs is *Deinandra fasciculata*, a common native grassland species.

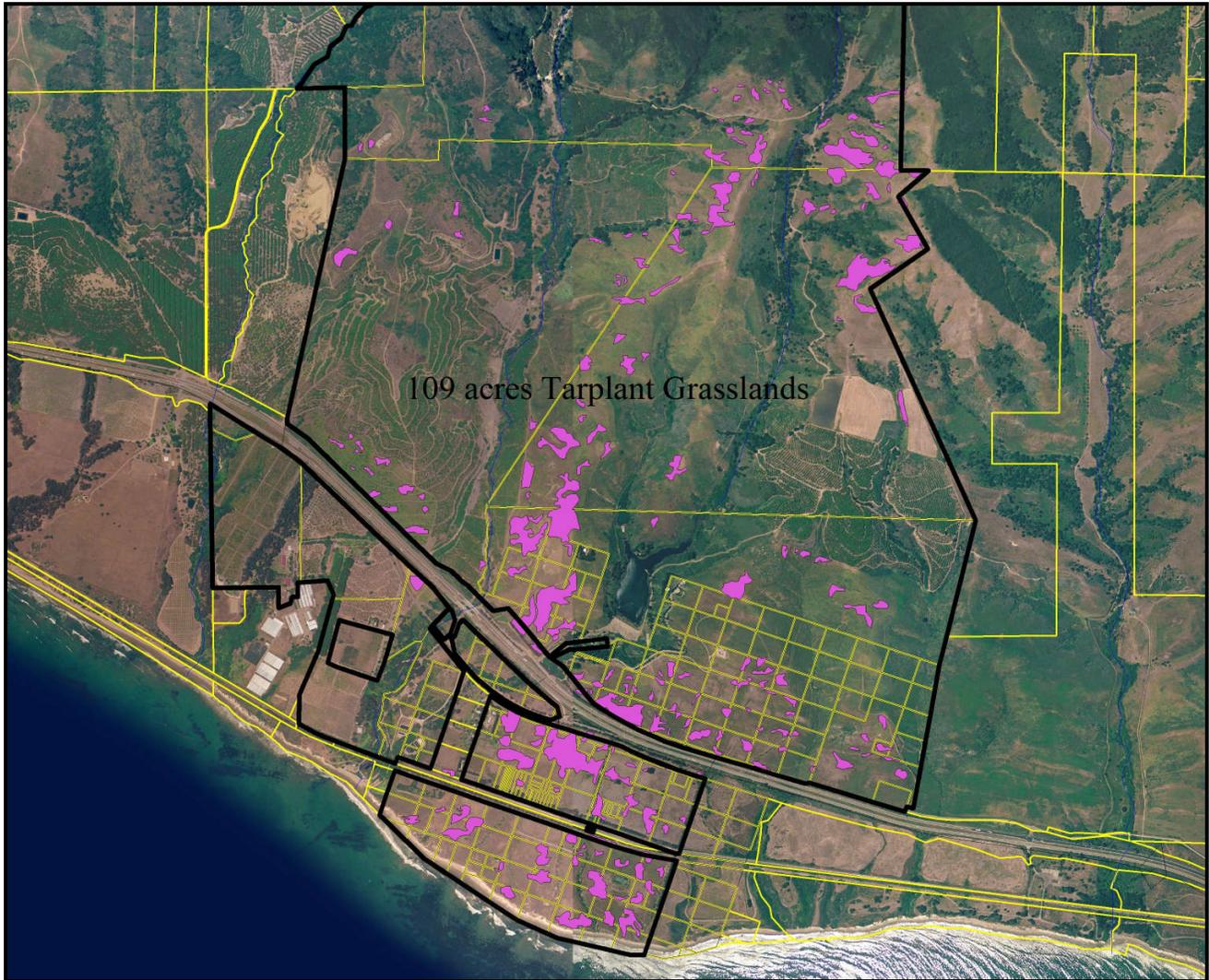


Photo 7 in Holland’s report shows *Deinandra fasciculata* [*Hemizonia fasciculata* in his report] dominating grassland, but incorrectly labels it as weedy. His Photo 3, taken in July, shows *Deinandra fasciculata* as a dominant plant in the grassland south of the RR tracks.

<sup>24</sup> Bureau of Land Management. 1999. Sampling Vegetation Attributes. (Interagency Technical Reference 1734-4.) Denver, Colorado. Available at <http://www.blm.gov/nstc/library/techref.htm>

Since the County's threshold for Native Grassland is at least 10 percent cover by native grassland species, of which *D. fasciculata* is, much of this habitat must be classified as Native Grassland, and since Native Grassland is considered ESHA in the LCP, it must be identified as such and protected from development.

Assertions by the County and URS that *Hemizonia fasciculata* is an invasive or weedy species including the September 11, 2008 memo from URS to Tom Figg are inaccurate and without any scientific support.



Since the County has been unwilling to require the EIR consultant to follow proper survey and mapping protocols to determine the extent of native grasslands within the project site, I used standard aerial photo interpretation methods to identify and map the native grassland detectable using aerial imagery<sup>25</sup>. Since the grassland species *Deinandra fasciculata* has such a clear and recognizable signature on, due to its extent,

<sup>25</sup> David Magney was trained in aerial photo interpretation through coursework at UCSB, Department of Geography, Remote Sensing Series, under Dr. Jack Estes, Dr. David Simmonett, and Dr. Earl Hajek, as part of Mr. Magney's B.A. degree work in Geography. Mr. Magney has been using remote sensing methods routinely since the 1980s. He also served as the U.S. Department of Justice's Expert Witness in a major wetlands violation case using aerial photo interpretation as part of his work on that case (U.S. EPA vs. Adam Bros et al.).



texture, and color, I was able to map areas where it is dominant. I used September 2000 aerial imagery obtained from AirPhotoUSA to map areas that were dominated by *Deinandra fasciculata*, based on its spectral signature, which is shown by the magenta-colored polygons (the yellow lines represent parcel boundaries obtained from the County). The mapping was performed using ESRI ArcView 3.3 GIS software, with the results shown on the aerial photograph/map below.

The results are illustrated above, which found approximately 109 acres of grassland habitat that is almost certainly dominated by the grassland species, with *Deinandra fasciculata* as the primary dominant native annual grassland species. This should NOT be construed as a map of all grasslands, or even native grasslands onsite. It is only a map showing the extent of herbaceous vegetation dominated by a common grassland forb, *Deinandra fasciculata*. If I had physical access to the entire project site, many additional acres would be mapped as dominated by *Deinandra fasciculata*; however, this assessment is based on what I was able to observe from the periphery so dominated in June 2008, and extrapolated onto the rest of the property using standard photo interpretation methods.

Though not needed to qualify the Coastal Terrace grassland as ESHA because much of this grassland area satisfies the County's definition of Native Grassland and ESHA (as well as the Coastal Commission's definition of ESHA), the value of this habitat to wildlife, in particular special-status species, is high. Sensitive species such the San Diego Black-tailed Jackrabbit, White-tailed Kite, Cooper's Hawk, Northern Harrier, the list goes on, all use these grassland habitats, which are surrounded by trees that are used for perching and roosting while foraging, see EIR Appendix C page C.2-23, which states, "the project area contains high quality foraging, roosting and nesting habitat for kites."

SAIC failed to properly characterize the true nature of the annual grasslands onsite by timing their field surveys when non-native Mediterranean grasses dominate, and when native wildflower species such as *Deinandra fasciculata* and *Eremocarpus setigerus* (another common summer-flowering native annual grassland species) have only barely germinated (CNPS 2008<sup>26</sup>). Had they performed their sampling in late May through July, more areas of grassland would have had more than 10 percent cover by native grassland species.

Bartolome et al. (2007<sup>27</sup>) compared grassland-sampling methods and determined that foliar cover sampling "results vary with season and weather, which can be misleading". This finding supports DMEC's contention that SAIC's sampling was flawed for the purposes of determining native grassland species dominance.

**EIR Biology Section by URS flaws:**

URS biologists failed to compile a list of plants they observed, relying entirely on the lists published by Holland and SAIC. They did not follow the above-mentioned survey and documentation protocols.

The County's Environmental Thresholds Manual, guidelines C.2.2 require the following questions be answered:

- a. Is the habitat pristine or disturbed? How much or to what degree?

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<sup>26</sup> California Native Plant Society letter to Santa Barbara County Board of Supervisors dated 25 August 2008 titled, "Review of Grassland Sampling/Vegetation in the Santa Barbara Ranch Revised DEIR (04EIR-00000-00014)".

<sup>27</sup> Bartolome, J.W., G.F. Hayes, and L.D. Ford. 2007. Monitoring California Grasslands for Native Perennial Grasses Workshop Handbook. 10 July 2007. ESNEER Coastal Training Program, Berkeley, California.

- b. How biologically productive is it? Does it support an especially rich and diverse plant and/or wildlife population?
- c. Is the habitat resource (including the surrounding area if it is related) large enough to be viable?

While URS attempted to answer these questions based on the information they had on hand, and from their preliminary survey of the DPR portion, they could not accurately answer them since they:

- lacked any quantitative, accurate data on the condition of the habitats,
- didn't have or didn't take any biological productivity measurements;
- did not perform any species diversity or richness studies or analysis; and
- did not attempt to determine, in any quantitative manner, the viability of existing habitats, before or after development.

URS concluded that special-status species were not present, other than the *Lonicera subspicata*, onsite; however, no floristic surveys were performed of the entire project site, and certainly not to standard survey protocols. It is for this reason that the conclusions in the EIR about special-status species are flawed.

To "cover" themselves for not performing the minimum level of floristic field surveys, URS is recommending as mitigation that further studies be performed just prior to grading activities. Besides being too late, it is illegal in CEQA to defer assessment to after certification of the EIR.

Focusing again on grasslands, John Larson of URS told Planning Commissioners at the 30 June 2008 public hearing that *Deinandra fasciculata* is a weed, stating that URS botanists, without providing names, would not include it in any grassland transect. He also referred to "David Magney's list" (included in my letter to the Planning Commission dated 23 January 2008), in an attempt to minimize the list I had previously compiled based on the work of vegetation ecologists, not just my own opinion. The list was compiled from published studies and lists and unpublished data from the Santa Barbara region. Colleagues with more experience and expertise in grassland ecology, such as Dr. Elizabeth Painter, have also provided a list of herbaceous species from Santa Barbara County that are typically found in grasslands. Larson's statement to the Planning Commission is a severe twisting of the facts, and a misrepresentation of what I stated and what was written in V.L. Holland's 2003 report, which states on page 9,

"The hillsides of the northern half of the ranch are also covered by a form of disturbed grassland. However, this area has been so highly disturbed by various human activities, such as plowing and cultivation, that it is now dominated mostly by various weedy forbs typical of highly disturbed sites along the central coast".

Holland, in his list of common plants in the grassland and ruderal communities on page 11, labeled *Deinandra fasciculata* [*Hemizonia f.*] as a ruderal species. Mr. Larson, and maybe some unnamed URS botanist, took this to mean that *Deinandra fasciculata* is classified as a weed and not worthy of consideration as a native grassland species. Ruderal does NOT equal weed.

The definition of ruderal (Webster's New Collegiate Dictionary 1973) is, "where the natural vegetation cover has been disturbed by man". Because disturbed sites are often colonized by weeds, the term has sometimes misunderstood to mean that such "ruderal" sites contain only weeds. The definition of weed (Webster's again) is "a plant of no value and usually of rank growth; one that tends to overgrow or choke out more desirable plants". This is the same type of flawed logic that would label me as Hawaiian because I happen to be wearing a Hawaiian shirt. I am Caucasian and have only vacationed in Hawaii; neither fact

makes me Hawaiian, nor does the fact that *Deinandra fasciculata*, a native annual grassland species, a weed because it can grow in ruderal (human-disturbed) habitats.

Based on an Internet and literature search about the tarplant's weediness, almost nobody called this plant a weed. It is on the list of weeds only for the British Isles, where it is not native. It is a typical grassland species of coastal central and southern California usually growing in clayey soils<sup>28</sup>, and can tolerate moderate to heavy grazing, or at least it occurs in grasslands that are moderately to heavily grazed, as well as grasslands that are not grazed. There remains no evidence – only unsupported statements – that would indicate tarplant is a weedy species and thus not a native grassland species. URS assertion that tarplant is “quite invasive” in its 9-11-08 memo to Tom Figg is not supported by any hard evidence. Fasciculed Tarplant is not on any list of invasive species for this region, including the Invasive Pest Plant Council’s widely accepted list

### **Alternative 1B**

The Planning Commission Staff Report, “Confirming Analysis Alternative 1B, Preliminary Draft Santa Barbara County, Santa Barbara Ranch Project, Final Environmental Impact Report, Analysis of Alternative 1B”, undated (but apparently issued on 5 August 2008), basically states that all the information in the Draft and Final EIRs for the project provide sufficient information to preclude formal public circulation of this new project alternative.

Since the baseline information on the biological resources of the SBR, and even worse for the DPR, are entirely inadequate as shown in detail above and in previous comment letters on this project, it is impossible for the County Planning Commission staff to find that sufficient information about impacts associated with Alternative 1B is adequate. No vegetation sampling was performed anywhere on Dos Pueblos Ranch. No floristic or faunal surveys were performed on either ranch according to minimum professional standards or resource agency or CNPS guidelines/protocols. Nor was the vegetation mapped according to federally and state adopted protocols/classification. Therefore, it is not reasonable to assume or claim that sufficient data exist to adequately assess project-related impacts for this alternative.

Alternative 1B, as stated in Table 1 of the Staff Report, would result in the loss of 1.15 acres of Coast Live Oak Riparian Woodland, 0.89 acre of Coast Live Oak Woodland, 9.24 acres of Coastal Sage Scrub, 0.10 acre of Native Grassland, 229.32 acres of other grasslands, and 0.54 acre of Willow Riparian Scrub and Woodland. The Staff Report states that there is 593.25 acres of grasslands of various types onsite. Alternative 1B would result in impacts to around 39% of the grassland habitat onsite, assuming URS mapping everything correctly, which is doubtful since they failed to follow standard methodology regarding gathering baseline biological resources data. For grassland habitats alone, the Alt. 1B alternative would impact 35 acres more than the MOU project, which would impact 194 acres of grasslands.

Since grassland/herbaceous habitats have been shown by others in a variety of studies, some of which were cited (e.g. Cushman 2006<sup>29</sup>, Davis et al. 1995<sup>30</sup>, Jones & Stokes Associates 1989<sup>31</sup>, Goleta 2006<sup>32</sup>, Sutter

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<sup>28</sup> See Abrams 1917, Abrams & Ferris 1960, Beauchamp 1986, Flora of North America Committee 1993+, Hickman 1993, Hoover 1970, Munz 1974, Munz and Keck 1973, Roberts et al. 2004, Smith 1998 listed above.

<sup>29</sup> Cushman, Samuel A. 2006. Effects of Habitat Loss and Fragmentation on Amphibians: A Review and Prospectus. *Biological Conservation* 128:231-240.

<sup>30</sup> Davis, F.W., P.A. Stine, D.M. Stoms, M.I. Borchert, and A.D. Hollander. 1995. Gap Analysis of the Actual Vegetation of California: 1. The Southwestern Region. *Madroño* 42(1):40-78.

County General Plan<sup>33</sup>, Chadden et al. 2004<sup>34</sup>) in previous comment letters. Stromberg et al. 2007<sup>35</sup>, states, “Grasslands are one of California’s most important ecosystems in terms of both biodiversity and economic value”, that grasslands, collectively, have high importance and value to many wildlife species, in particular foraging raptors, the loss of so many acres of grassland/herbaceous vegetation habitat would significantly impact wildlife onsite and in the region. However, this impact is not recognized as direct Significant and Unavoidable by the EIR preparers or County Staff<sup>36</sup>, primarily because no adequate baseline condition studies were performed.

Furthermore, as stated in Section 9.4.4.1 of the FEIR, significant impact to biological resources are those that, “Substantially diminishes habitat for fish, wildlife, or plants”. A reasonable person would conclude that the loss of 39% of a habitat type would represent a significant loss of that habitat.

One of the factors that the EIR fails ever to consider when evaluating the “value” of grasslands onsite are that, with proper management, habitats that are currently degraded for one reason or another can be restored, and that many habitats naturally restore themselves over time. The fact that the vast majority of the grassland habitats onsite, including those proposed to be impacted, were never adequately sampled, mapped, and/or evaluated for dominance by native grassland species or use by wildlife species. For example, no small mammal or reptile trapping was conducted onsite to determine species presence or to determine at any level the population sizes of the species present. This information is considered a basic requirement in some jurisdictions, such as Los Angeles County, for biological assessments in Sensitive Ecological Areas.

Those impacts that Alternative 1B are stated to be significant in the Staff Report rely on Mitigation Measures Bio 2a and 2b. Furthermore, this alternative would result in the loss of 35 more acres of grassland than the MOU project, so, when comparing the two project alternatives from the perspective of impacts to grasslands, the Alt 1B project has greater impacts.

### **Offsite Grasslands Not Addressed**

Much attention has been paid to addressing grasslands on the project site; however, nothing has been said in the EIR about grasslands and other habitats adjacent to the site. The County Thresholds Manual requires assessing and mapping of grasslands onsite and on property adjacent to the project site. Native grassland habitat exists immediately west of Santa Barbara Ranch on the Makar property, but the FEIR omits analysis of indirect impacts to sensitive habitats occurring immediately adjacent to the project site. Assessment of offsite, adjacent habitats, was not done by URS or anyone else; this failure must be rectified.

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<sup>31</sup> Jones & Stokes Associates, Inc. 1989. Sliding Towards Extinction: Reassembling the Pieces. Sacramento, California. Commissioned by The Nature Conservancy, San Francisco, California.

<sup>32</sup> Goleta, City of. 2006. Goleta General Plan/Coastal Land Use Plan FEIR. September. Goleta, California. Prepared by Jones & Stokes Associates. Section 3.4.1.3, Page 3.4-8.

<sup>33</sup> Sutter County. General Plan Habitat Descriptions. Published at <http://ceres.ca.gov/planning/genplan/sutter/natural8.html>.

<sup>34</sup> Chadden, A., E. Dowsza, and L. Turner. 2004. Adaptive Management for Southern California Grasslands. May. Donald Bren School of Environmental Science and Management, University of California, Santa Barbara.

<sup>35</sup> Stromberg, M.R., J.D. Corbin, and C.M. D’Antonio. 2007. *California Grasslands, Ecology and Management*. December 2007. University of California Press, Berkeley, California.

<sup>36</sup> The FEIR does state that the loss of grasslands contributes to a cumulative loss of grasslands as a significant impact.



Even though the FEIR states this project will have a cumulative significant adverse impact on grasslands, there has been no quantitative assessment of the cumulative losses of grassland habitats in Santa Barbara County even though several projects have been approved in the recent past with grassland impacts quantified.

### **Lack of Adequate Mitigation Measures on Grassland**

Impact Bio-1 on page 9.4-59 of the FEIR presents a bias against the value of grasslands by mischaracterizing habitat conditions by saying, “Approximately 559 acres of **disturbed** (emphasis added) “non-native grassland” occur within the Alternative 1 development area...”. Not all 559 acres of grassland are disturbed, and the stated disturbance on most of the areas dominated by grassland vegetation is not supported by any substantial evidence, such as through vegetation sampling or careful/accurate habitat mapping. The functions and values of the herbaceous (grassland) habitats to wildlife have not been assessed. The loss of 229.32 acres - 39% percent of the grassland habitats onsite, particularly because of the quantity, must be considered significant for the direct project-specific losses as well as for the cumulative losses. The FEIR does recognize this impact as cumulatively significant; however, the FEIR does not provide measures that are available to minimize the loss of grassland habitats onsite.

Mitigation Bio-1a provides a nice list of grassland protection and revegetation objectives; however, this mitigation measure only requires a revegetation plan to be prepared with unstated success criteria. It also seriously underestimates the area needed for grassland restoration because the EIR fails to properly delineate native grasslands or identify the functions and values, and quantities of the grassland types onsite, as stated above. While DMEC generally agrees that restoration of disturbed habitats to better conditions has a relatively high probability of success, this mitigation measure is lacking in substance and specific success criteria, such as percent cover by native species, utilization by specific wildlife species, percent cover by species, species richness goals, to name a few.

Mitigation Bio-1b requires future field surveys, which should have been performed prior to issuance of the DEIR. If special-status species are found at one or more of the development envelopes, the feasibility of avoiding the species will be lost since the property owner will be able to successfully argue that they have spent thousands of dollars on building plans, all which will have already been approved by the County, and that it is not feasible to spend thousands more dollars on redesigning their home. It is extremely unlikely that the County would then require impact avoidance and thus likely the special-status species will be destroyed. Mitigating for the loss of many special-status species usually fails for a wide variety of reasons, one of which is the lack of adequate planning and mitigation design. This is what is proposed in the EIR mitigation measures and conditions of approval, and is doomed to failure. Studies commissioned by the CDFG (Fiedler 1991<sup>37</sup>), among others, have found that the vast majority of rare plant translocations required as mitigation have failed, from failures in any one of the numerous steps required for such an endeavor, including improper site selection, improper site preparation, improper handling of propagules, improper maintenance, etc. Any such mitigation must be very carefully designed, with each species specifically in mind, and very careful and detailed implementation, monitoring, maintenance, and contingency plans developed up front, not after the project has been approved. Lack of adequate funding has also been a common problem for this type of mitigation.

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<sup>37</sup> Fiedler, P. 1991. Mitigation Related Transplantation, Translocation and Reintroduction Projects Involving Endangered and Threatened and Rare Plant Species in California. California Department of Fish and Game, Sacramento, California.



To be adequate as a mitigation measure, proper protocol field surveys should be conducted during the appropriate seasons, all occurrences of special-status species carefully mapped, and the project designed to avoid these species. If avoidance of all or some is not feasible, then specific mitigation for each taxon should be developed, identifying exactly where and how the species will be mitigated, not postponed to some future date without performance standards to ensure successful mitigation, and without a reasonable or feasible mitigation site or sites identified and secured prior to project approval.

### **Adequacy of Bio Conditions of Approval**

Section III.B of the Planning Commission staff report, “Findings that Certain Unavoidable (Class I) Impacts of Alternative 1B are Mitigated to the Maximum Extent Feasible” is baseless and inaccurate. While DMEC agrees that Alternative 1B’s impacts to biological resources are significant and unavoidable, much more can be done to avoid or minimize significant impacts and still meet project objectives. Not all feasible alternatives in the EIR or mitigation measures proposed were considered or evaluated to make such a finding.

Section III.C.3. Biological Resources, subsection a. Mitigation Measure Bio-1a, of the Planning Commission staff report states that an open space management plan must be prepared, and

“Building footprints will be placed such that neither development envelopes, nor a 30-foot vegetation clearance distance around all structures affects native grassland habitat. Such placement of these footprints, along with the implementation of an OSHMP and development of a native grassland and vegetation restoration plan, will reduce impacts to native grassland to a less than significant level...”

It is not feasible or accurate for the Planning Commission to believe that native grasslands can be avoided with this condition if the actual extent and distribution of native grasslands are not known. DMEC has clearly demonstrated that the entire mapping and classification of grasslands for this project was fatally flawed and inaccurate, so the finding that impacts to native grasslands are mitigated to less than significant cannot be made without first mapping the grasslands properly. It will be too late in the permitting process to require significant relocation of houses, driveways, and utilities after all the plans have been finalized, and a biologist conducting construction monitoring determines that native grasslands are present in the development footprint. This impact can be avoided in advance, but only after the County requires a proper assessment, as described above and previously, of the grasslands onsite.

Section III.C.3. Biological Resources, subsection b. Mitigation Measure Bio-1b, states:

“Within one year of the commencement of construction, a qualified biologist approved by Planning and Development (P&D) will survey development envelopes and other areas which may be disturbed by the construction of roadways or other improvements for special-status plant grassland species. Surveys must conform to guidelines published by, at the very least, the California Department of Fish and Game (CDFG), the United States Fish and Wildlife Service (USFWS), and the California Native Plant Society (CNPS), and survey methods must be approved by the County...”

This is what should have been done during the EIR process, not after the project has been approved. As previously stated, this is too late to be of any real value. It is basically saying that the mitigation requires further study, which is specifically prohibited by CEQA case law.

Section III.C.3. Biological Resources, subsection d. Mitigation Measure Bio-2b, states,



“A qualified biologist approved by P&D will survey development envelopes and vegetation thinning areas for special-status plants species located within coastal scrub areas. Surveys must conform to guidelines published by, at the very least, the CDFG, USFWS, and CNPS, and survey methods must be approved by the County.”

Again, this is too late. These surveys should have been performed during the CEQA review process. Why were these surveys not required?

Section III.C.3. Biological Resources, subsection I. Mitigation Measure Bio-9b, states:

“The Applicant will identify measures that can be taken by residents and public recreational users to avoid wildlife mortality.”

The Applicant will identify measures? This is the responsibility of the County, not the applicant. This is also deferring mitigation measures to some future date without performance standards to ensure impacts are mitigated. Deferring identification of measures without performance standards and does not provide the County decision-makers or the public any opportunity to consider the appropriateness or feasibility of the measures developed by the Applicant.

The findings and mitigation measures for this project are not adequate nor are they legal. They defer measures or studies to another time, do not fully mitigate the impact, or are infeasible. Some of the findings actually require as mitigation assessments that should have been done as part of the EIR review process; however, doing assessments does not mitigate impacts. The public and decision-makers need to know exactly what is being impacted by the project. Furthermore, it is not fair to the builders/property owners to have so much uncertainty imposed upon them after they have gone through a lengthy and costly environmental review process only to defer the assessments for bio resources to during construction.

### **Finding that Alt 1/1B is Environmentally Superior**

The finding that Alternative 1/1B is environmentally superior is inaccurate at best. First, the basis for determining significance is flawed because the baseline assessment data were inadequate in incorrect. Second, the houses proposed could be/should be clustered to a much greater degree to avoid substantially more grassland habitat. Regardless of the number of houses to be built (within certain bounds), the environmentally superior alternative is the one that has the least quantitative adverse impacts on the environment. The location of the houses is of highest importance because it is the easiest factor to control to avoid sensitive resources. If the area of sensitive resources, say the amount of grassland habitat impacted, is used as a measure, then the alternative that minimized the loss of grassland habitat would be the superior alternative, at least for that issue. Clustering would be one means to reduce the area of impact, primarily by combining, potentially, the total area disturbed by infrastructure and fuel modification since more of those “impact areas” can be shared. A house built all by itself would have its own access road and its own fuel modification zone. Two houses of equal size build adjacent to each other would reduce the total impact for these two factors by up to 50 percent.

Alternative 5 clusters development and results in less than half of Alt. 1B’s grassland impact. As stated in Section 11.6.2.3 of the FEIR, the Alternative 5 (Clustered Development Alternative) would have significantly lower impacts to biological resources, as well as most other issue areas. Alternative 5 is clearly superior, environmentally, than Alternative 1/1B.



No real analysis of how the Alt. 1 Project increases grassland impacts has been undertaken. As stated previously, the basic problem with the finding that Alt. 1B is environmentally superior to the MOU Project and other alternatives is that the baseline data on which all the alternatives are compared is seriously flawed. It is impossible to make a factual and reasonable finding about environmental superiority when the basis is fatally flawed.

The finding is flawed because we don't know really what:

- vegetation is present on the development lots,
- rare plants, much less non-rare plants are present,
- special-status wildlife species are present.

The finding is further flawed because Alt. 1 and 1B increase rather than decrease (a) the total acreage impacted, (b) the loss of grasslands, (c) the loss of habitat for special-status species, and (d) indirect impacts such as impacts from pets, non-native plants, pesticides, wildlife mortalities, lights, noise, runoff/water pollution, water consumption and wastewater generation.

### **Coastal Terrace of ESHA Regardless of Native Grassland Mapping**

The herbaceous (grassland) plant communities/habitats on the coastal terrace have been demonstrated to support a wide range of wildlife and plants, including numerous special-status species. The White-tailed Kite is one such species that can be considered a keystone species. This fact provides strong evidence that grassland plant communities supporting kites should be considered as ESHA.

First, the grassland habitats, as habitat, are rare and declining in the coastal zone, particularly in southern California. Second, the grassland habitats on the coastal terrace support special-status wildlife species. Third, the grasslands occur as a mosaic of habitats with wetlands and scrub habitats that significantly increase the diversity and species richness of the coastal terrace. Development on the coastal terrace as proposed will significantly degrade these environmentally sensitive habitats. Regardless, since DMEC has clearly demonstrated, with evidence from Holland and DMEC mapping, much of the grasslands in the Coastal Zone are dominated by native grassland species and should be treated as such, including consideration of them as ESHA.

Coastal Act Section 30231 provides:

“The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.”

Furthermore, the Coastal Act Section 30240 states:

“**Section 30240(a).** Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.”



“**Section 30240(b).** Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.”

Based on these criteria, any natural habitat that satisfies the above-listed subsections of the Coastal Act should be considered ESHA. Most of the grasslands onsite meet these criteria and should be considered ESHA.

Coastal Act Section 30107.5 (SB Co. LCP Section 3.9.2) "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

This definition clearly includes grassland habitat (dominated by native grassland plant species or not) to include habitat that is used by special-status wildlife species such as the White-tailed Kite and others. This raptor (and several others) is known to forage onsite, and the loss or development of a large portion of its foraging habitat onsite would significantly disturb this sensitive and rare species. Other special-status species that use grassland habitats onsite would almost certainly be adversely affected by developing approximately 39% of the grasslands onsite, as proposed.

The County's Thresholds Manual finds that grasslands are rare in Santa Barbara County, and that native grasslands (grasslands with at least 10 percent cover by native grassland species) is a sensitive and important habitat type, ESHA.

Section C.3(2)(a) on page 37 of the County's Thresholds Manual states that impacts to habitats, including grasslands, that have high wildlife values, cannot be considered to be less than significant.

The grasslands onsite, particularly those south of US 101 represent important foraging habitat for White-tailed Kite and other bird and wildlife species, and much of it (specifically the area south of the RR tracks) are currently dominated, by more than 10 percent cover, by native grassland species. These facts qualify these grasslands as ESHA and the proposed development should be redesigned to avoid direct and indirect impacts to it.

The CDFG's CNDDDB finds that Coastal Terrace Prairies such as the Naples Coastal Terrace grassland have a high global and state ranking for rarity. The Naples bluff grassland is a rare vegetation type, further qualifying the grassland as ESHA.

The FEIR makes a claim that grasslands are common (The EIR on page 9.4-72 says the Coastal Terrace grassland "including the project area, is the broadest and most contiguous section of coastal terrace remaining as open space south of Highway 101 along the Goleta-Gaviota coastline.") in Santa Barbara County and along the south coast. This is not supported by any facts or evidence. On the contrary, the vast majority of recent publications state that grassland habitat in California has been greatly reduced in area statewide, primarily as the result of conversion to agricultural crops and urban development. Statewide and regional habitat mapping, such as for the GAP Analysis, conducted by UCSB, considers grasslands a plant community at risk. Since grasslands typically occur on the flatter lands, they are the first to be built upon or farmed.

The proposed project (Alt 1B) would eliminate approximately 229 acres of grassland habitat, and more will be affected as the result of state-required fuel modification, which was not accurately calculated by



URS in the EIR. The EIR only evaluated the impact of a 30-foot wide fuel modification zone, which only represents the irrigated landscaped portion surrounding the houses. State law requires clearing flammable vegetation for 100 feet around houses and habitable structures<sup>38</sup>. Insurance companies often require a 300-foot clearance zone. Measuring impacts to habitat for only 30 feet is unsupported and seriously underestimates the area of impact that would result. In the case of grassland habitat surrounding a home, if the land owner does not mow the vegetation to less than 4 inches high, the Santa Barbara County Fire Department WILL require removal of the vegetation to ground level, and cause it to be done, out to 100 feet. This understatement of impact from fuel modification is a serious and flagrant flaw in the impact assessment.

The direct impacts and indirect impacts of introducing pets, noise, roads, non-natives each can and do easily disturb or degrade grassland habitats, which are not adequately recognized or assessed in the EIR. The EIR should not underestimate the extent and level of impacts to plant communities and wildlife habitat by using flawed, unrealistic assumptions about how the fuel modification zone could be managed with minimal impact. Experience by fire departments throughout California have shown that subtleties of vegetation management are impractical to implement by fire department personnel, who are not trained in plant ecology. Fire Department inspectors do not, and will not take the time to determine compliance to the law with sensitive fuel modification management. Rather, they will simply measure 100 feet from structures to determine if the grassland vegetation is mowed to less than 4 inches high or disced before June 1<sup>st</sup>, or the Fire Department will order it be done by a contractor. Such contractors do not bother with worrying about any sensitive biological resources, they will just mow or disc out to 100 feet from all structures, destroying or seriously diminishing much of the habitat functions remaining. Grassland habitats are seriously compromised by mowing and discing.

The California Coastal Commission, in its memo to Ventura Office staff from staff ecologist Dr. John Dixon, dated 25 March 2003, states, "...“California annual grassland” has been proposed to recognize the fact that non-native annual grasses should now be considered naturalized and a permanent feature of the California landscape and should be acknowledged as providing important ecological functions. These habitats support large populations of small mammals and provide essential foraging habitat for many species of birds of prey. California annual grassland generally consists of dominant invasive annual grasses that are primarily of Mediterranean origin.”

This statement in the Coastal Commission memo is intended to provide specific and general guidance to Commission staff on how to evaluate whether a vegetation type satisfies ESHA criteria. The same arguments made by Dixon as to the importance and value of annual grassland habitats in the Santa Monica Mountains of coastal California apply to the Santa Barbara Ranch project. Due to the large expanse of grasslands onsite, in association with other adjacent habitats, and the use of the site by a large number of wildlife species, including special-status birds and wildlife, including raptors, it is actually difficult to prove that the majority of grasslands onsite south of US 101 do not meet ESHA criteria.

At a minimum, the grasslands dominated by native species, and this includes all areas containing 10 percent cover by *Deinandra fasciculata* and other native herbaceous plants, and easily-disturbed areas supporting rare wildlife species within the Coastal Zone should be considered ESHA, as they meet all the criteria for such in the Coastal Act and in the County’s LCP.

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<sup>38</sup> California Government Code Section 51182

## ID Incorrect, Mislabeled, Omitted, or Unsupported Responses to Comments

The FEIR's responses G-3-6 & 7 to my comments of 23 January 2008 states on page 15-321 & 322 that, "Comprehensive lists of vascular plants observed were included in the Holland and SAIC biological survey reports. The URS Corporation botanical field work on Dos Pueblos Ranch was focused on rare plant species which [sic] are identified in Tables 3.4-3 and 9.4-3 of the RDEIR. A list of non-sensitive species occurring was **not** [emphasis added] compiled." and "...such as list is not necessary...".

The fact that no floristic survey was ever conducted of the project site, and no list of species observed by URS is evidence that none of the botanists followed state and federal guidelines/protocols for conducting botanical surveys. These guidelines specifically state that complete checklists of all species observed should be included in supporting reports, such as the project EIR.

In a non-scientific poll survey, I asked approximately 70 botanists (including a few wildlife biologists) from California, mostly southern California, about the importance of including flora checklists in CEQA documents. The overwhelming majority opinion was clearly that surveys should be floristic in nature and that checklists of all taxa observed are a vital part of the results of field surveys and must be included in CEQA documents to ensure reliable impact analyses and results<sup>39</sup>.

Response G-3-14 on page 15-324 of the FEIR states that the lack of any survey for special-status nonvascular plants was not required because no federal or state agency have designated as any likely to occur in Santa Barbara County or the project site. This is absurd. It is the EIR preparer's responsibility to determine which species are present onsite, and then determine whether project impacts to them would be significant. To ignore these valid taxa during the assessment surveys and in the EIR, and then defer surveys as mitigation does not meet the requirements of CEQA. In response to the response in the FEIR to my comment on this topic, I asked bryologist Carl B. Wishner<sup>40</sup> to provide an assessment of which nonvascular plants, in particular bryophytes, have potential to occur on the project site. His response is provided as an attachment to this letter. He concludes that at least one liverwort and two mosses have potential to occur onsite, as well as a few species of lichens (Wishner 2008<sup>41</sup>).

New discoveries of nonvascular plants are occurring annually (Pursell 1976<sup>42</sup>, Shaw 2000<sup>43</sup>, Zander 2001<sup>44</sup>). A recent floristic survey conducted by DMEC on a property in Hidden Valley, Ventura County, in early 2008 found 1 hornwort species, 4 liverwort species, and 27 moss species. Six rare mosses (*Ephemerum serratum*, *Phascum cuspidatum*, *Henediella stanfordensis*, *Bryum torquescens*, *B.*

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<sup>39</sup> Email questionnaire by David Magney and responses dated between 27 June and 4 August 2008, available for review on the CNPS Discussion Forum, <http://cnps.org/forums/showthread.php?t=1247>.

<sup>40</sup> Carl B. Wishner, Bryologist, is an approved biologist by the County of Santa Barbara, County of Los Angeles, and County of Ventura, and is one of only five botanists in California considered qualified to conduct bryophyte surveys for the U.S. Forest Service.

<sup>41</sup> Wishner, C. 2008. Potential Occurrence of Special Bryophytes and Lichens in Santa Barbara. Memo letter dated 7 October 2008 to David Magney. Chicago Park, California.

<sup>42</sup> Pursell, R.A. 1976. *Fissidens aphelotaxifolius* (Bryopsida; Fissidentaceae), a New Species from the Pacific Northwest of North America. *Bulletin of the Torrey Botanical Club* 103(1): 35-38.

<sup>43</sup> Shaw, A.J. 2000. *Schizymenium shevockii* (Bryaceae), a New Species of Moss From California, Based on Morphological and Molecular Evidence. *Systematic Botany* 25(2):188-196.

<sup>44</sup> Zander, R.H. 2001. A New Species of *Didymodon* (Musci) from California. *Madroño* 48(4):298-300.

*subapiculatum*, and *Bestia longipes*<sup>45</sup>) and one rare, undescribed lichen (*Placopyrenium* sp. nov.<sup>46</sup>) were found on one project site. These species were not “expected” to occur at the project site and if URS’ approach were to be taken, their presence would never have been discovered and impacts to them would have gone unmitigated, possibly resulting in extinctions or at least extirpations from California. Wishner states that the *Ephemerum serratum* occurrence on the Hidden Valley site is the only known occurrence in the Southwest Floristic Bioregion in California<sup>47</sup>.

None of the nonvascular plants found at the Hidden Valley site in Ventura County are on any state lists; however, they meet criteria for listing and would almost certainly be accepted when and if a petition/nomination was submitted. The fact that none of these nonvascular plants are on lists by the CNDDDB, CNPS, and/or California Lichen Society is irrelevant. If they meet the criteria as special-status species, qualify for listing, or are considered to be rare by the experts, then they should be treated as such under CEQA. The Hidden Valley project is an excellent example of why URS should have surveyed the nonvascular plant flora of the project site. It is probable that at least one nonvascular plant species present onsite would be considered a special-status species. Of the bryophytes found on the Hidden Valley site, 19 percent are at least locally rare. This is good evidence that the probability that one or more rare bryophytes occur on the 3,200+-acre Santa Barbara Ranch/Dos Pueblos Ranch site is high.

Thank you for considering these comments on the project EIR. Do the entirely inadequate baseline data on biological resources of the project site, and the resulting seriously flawed impact assessment, DMEC strongly recommends that the inadequacies be remedied and the assessment redone, and a revised EIR be prepared before a decision on this project can be made.

Respectfully,



David L. Magney  
President

cc: Brian Trautwein, Environmental Defense Center

Attachments: Letter from Carl Wishner to David Magney regarding potential for nonvascular plants occurring on the SBR/DPR.

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<sup>45</sup> Wishner, Carl. 2008. Bryophyte Inventory – Ash Hidden Valley. Chicago Park, CA. Report submitted to David Magney Environmental Consulting, Ojai, CA

<sup>46</sup> Knudsen, Kerry, lichenologists, UC Riverside Herbarium, email regarding Ash Hidden Valley property undescribed lichen species, *Placopyrenium* sp. nov., dated 19 August 2008.

<sup>47</sup> Wishner, Carl. 2008. Bryophyte Inventory – Ash Hidden Valley. Chicago Park, California. Report submitted to David Magney Environmental Consulting, Ojai, California.



October 3, 2008

County of Santa Barbara  
Planning and Development  
Attn: Tom Figg, Project Manager  
123 E. Anapamu Street  
Santa Barbara, CA 93101

**Subject:** Santa Barbara Ranch – Appropriate Protocols Were Employed in the Santa Barbara Ranch EIR to Evaluate for the Presence of Native Grasslands and Raptor Species

I am the manager for biological services of Impact Sciences, Inc. Impact Sciences provides biological consulting and survey services throughout California, including Santa Barbara County, which I oversee. Before joining Impact Sciences, I was employed for 14 years by the County of Los Angeles Department of Regional Planning, where I served as that department's chief biologist. For the last five years of this employment, I was in charge of the department's Impact Analysis Section, which is responsible for environmental review of all discretionary projects in unincorporated Los Angeles County. In addition, I have a doctoral degree in botany from the University of California at Davis and I am a contributing author to the Jepson Manual of California Plants and the Jepson Desert Manual.

I have reviewed the following comment letters submitted to the Santa Barbara County ("County"), which concern the native grassland and raptor survey procedures or protocols relied upon in preparing the Santa Barbara Ranch Project EIR:

- California Native Plant Society, dated August 25, 2008
- Elizabeth L. Painter, Ph.D, dated July 17, 2008
- David Magney Environmental Consulting, dated June 29, 2008
- J. Nick Todd, dated June 26, 2008

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I have also reviewed the Final EIR, the biological reports and surveys that were performed for the EIR and the responses to comments that are included in the Final EIR

As discussed below, based on my review of the record, additional surveys or protocol variations recommended in the comment letters would not provide different conclusions essential to the classification and analysis of native grasslands or raptors. Accordingly, CEQA, in particular Section 15151 of the State CEQA Guidelines, does not require that the County employ these specifically recommended protocols. A good faith effort at full disclosure is presented in the administrative record for the Project that is before the Board of Supervisors.

**I. The Santa Barbara Ranch EIR Appropriately Surveyed and Classified Native Grasslands**

The Holland (1986) vegetation classification system was appropriately and adequately employed in the vegetation surveys relied upon in the Santa Barbara Ranch Revised Draft EIR to identify native grassland species within the MOU Project and Alternative 1 sites and to assess potential impacts to native grasslands. As well, the record before the County, including the Final EIR, contains a good faith, reasoned analysis in response to comments claiming that different classification systems and survey guidelines should have been used to assess potential impacts to native grasslands. No additional surveys employing the classification systems and survey protocols suggested by the commenters would provide different conclusions essential to the classification of native grasslands or to the analysis of potential impacts to native grasslands. CEQA does not require the use of those alternate classification systems or survey guidelines in these circumstances.

**A. The Santa Barbara Ranch EIR Appropriately Applied the County's Environmental Thresholds and Guidelines Manual**

The Santa Barbara County Environmental Thresholds and Guidelines Manual defines native grasslands as areas where "native grassland species" comprise 10 percent or more of the total relative cover. Areas of native grasslands over 0.25 acres in size qualify for special protections.

As explained in the Final EIR, Holland (2003) surveyed most of the Project area between March 2003 and mid-July 2003 and found no areas where native grasses exceeded 10 percent of the total plant cover or otherwise

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met the County standards for grasslands. Holland lists nearly 70 species associated with the coastal and valley grassland habitat, with 59 herbaceous forb species, of which 17 are native species. (*See* Final EIR at pp. 3.4-9, 9.4-10.) Subsequently, SAIC (2004, 2005) conducted quantitative surveys for native grasses and herbaceous grassland species in extensive portions of the Project area and Alternative 1. (*Id.*) SAIC found that native non-grass herbaceous species did not contribute significantly to the relative cover calculation in the native grassland areas they identified and had little or no effect on the subsequent mapping of the boundaries of native grasslands. SAIC concluded that approximately 12.5 acres of native grasslands meet the County criteria of 10% relative cover and that the thresholds are present on the coastal portion (south of Highway 101) of the Project area. (*Id.*)

The California Department of Fish and Game ("CDFG") commented that it believed that the County's Guidelines had not been correctly applied. (Final EIR at p. 15-56.) Specifically, it expressed concern that the Draft EIR had not included all native forb species as grassland, as required under the County's definition of native grassland. CDFG requested a "clearer explanation for the apparent discrepancy, or the project site should be re-evaluated for native grasslands to include all native grassland species." (*Id.*) In response, the Final EIR confirms that the SAIC 2004 biological report's surveys included native grasses and native herbaceous grassland species in the percentage cover calculations, and the text of the Final EIR was revised to clarify this issue. (Final EIR at pp. 15-54 and 15-55.) The methodology employed by SAIC was developed in consultation with Santa Barbara County planning staff, with the target species including both native grass species and native herbaceous forb species. In addition, SAIC surveys utilized the California Native Plant Species recommended protocol of the point-intercept transect method. The data forms document that all species encountered, native and non-native, as well as grass or forb, were included in the percent cover calculations.

#### **B. The Santa Barbara Ranch EIR Relied Upon Appropriately Conducted Vegetation Surveys**

The vegetation surveys relied upon in the EIR employed the Holland (1986)<sup>1</sup> vegetation classification system in order to classify vegetation

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<sup>1</sup> Holland, R.F. 1986, *Preliminary Description of the Terrestrial Natural Communities of California*, California Department of Fish and Game, CA.

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on the MOU Project and Alternative 1 sites. A comment letter from the California Native Plant Society ("CNPS"), dated August 25, 2008 ("CNPS Letter") claims that the Holland vegetation classification system is "outdated and inadequate." CNPS states that this classification system has been "replaced" by the CNPS and California Department of Fish and Game ("CDFG") State classification system, as described in the CNPS *Manual of California Vegetation* (Sawyer and Keeler-Wolf 1995) and (CDFG 2003), and by the *National Vegetation Classification System* (NVCS 2008). But SAIC (2005) provided a key to allow reviewers to make direct comparisons between the Holland vegetation categories and those employed in the Sawyer and Keeler-Wolf reference book. Further, the Holland (1986) system has been consistently employed by the County, most recently in the biological protocols and analysis contained in the June 6, 2008 Santa Ynez Valley Community Plan EIR<sup>2</sup>.

As well, a comment letter submitted by David Magney Environmental Consulting, dated June 29, 2008 ("Magney Letter") alleges that the U.S. Fish and Wildlife Service ("USFWS"), CDFG, and CNPS have adopted protocols and guidelines establishing the minimum standards, different from the Holland vegetation classification system, by which botanical resource inventories are to be conducted. (Magney Letter at p. 2.) A comment letter submitted by Elizabeth L. Painter Ph.D on July 17, 2008 ("Painter Letter") similarly claims that the County "fail[ed] to meet Fish and Wildlife Service, California Department of Fish and Game, California Native Plant Society and Santa Barbara County protocols and guidelines for botanical field surveys and documentation of habitats of a project site." (Painter Letter at p. 1.)

However, CEQA does not require the use of the classification systems recommended by the CNPS, Magney or Painter Letters. This issue was directly addressed in *Association of Irrigated Residents v. County of Madera*, (2003) Cal.App.4th 1383, in which the Court of Appeal rejected claims that a lead agency violated CEQA by failing employ guideline methodologies recommended by commenters to survey for the presence of kit foxes. The Court explained that the claims were based on the "flawed" premise that CEQA "compels compliance with the survey guidelines as a matter of law." (*Id.* at 1396.) The court observed that the guidelines recommended in comment letters were not codified in the Public Resources Code, the Fish and Game Code, or the California Code of Regulations, nor

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<sup>2</sup> County of Santa Barbara, Office of Long Range Planning. *Draft Santa Ynez Valley Community Plan EIR*. Volume 1. June 2008.

were they posted on the CDFG's website. The Court further noted that neither CDFG nor USFWS had challenged the propriety of the methodology employed in the EIR. (*Id.*) The Court concluded that the fact additional studies might be helpful does not mean that they are required. (*Id.*; CEQA Guidelines §15024(a).)

Here, as was the case in *Association of Irrigated Residents*, there are no native grassland classification systems codified in the Public Resources Code, the Fish and Game Code, or the California Code of Regulations. Nor is there any evidence that state statutes or regulations have decreed that the Holland system has been "replaced." As well, though the Magney Letter attaches a copy of a set of survey guidelines for botanical inventories issued by the USFWS, and the Painter Letter recommends their use, no provision of California law or regulation requires the use of those guidelines in CEQA documents, nor did the USFWS itself question the use of Holland (1986), or recommend the different classification system when it commented on the Revised Draft EIR. (*See* USFWS comment letter dated January 23, 2008 ("USFWS Letter").) Further, although the Magney Letter also attaches a copy of survey guidelines for plant and natural communities issued by CDFG (and the Painter Letter recommends their use), the CDFG guidelines specifically state "the Department *may* recommend that lead agencies not accept the result of surveys that are not conducted according to these guidelines." (Emphasis added.) Here, the CDFG did *not* issue such a recommendation to the County. In fact, as with the USFWS, the CDFG did not question the use of Holland (1986), or recommend the use of a different classification system. (*See* CDFG comment letter dated January 22, 2008 ("CDFG Letter")<sup>3</sup>.)

The Final EIR also appropriately provides a good faith and reasoned explanation as to why the alternate classifications systems recommended by CNPS and Magney were not employed. (*See Berkeley Keeps Jets Over the Bay v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344 ["[w]here comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. There must be a good faith, reasoned analysis in the response".]) In response to a comment letter submitted by Mr. Magney on the

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<sup>3</sup> As discussed above, the CDFG did submit a comment regarding the County's application of its own environmental guidelines with respect to native grasslands, but the CDFG did not comment on, or question, the County's use of the Holland (1986) vegetation classification system.

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Revised Draft EIR (Final EIR Comment Letter G-3) the EIR addressed the same critiques made in August of 2008 in the CNPS and Magney Letters. The Final EIR explains, in responses to comments G-3-8 – G-3-50, that the County followed all provisions the County's Environmental Thresholds and Guidelines Manual, including Appendix A of the Manual, which sets forth the County's protocol for biological surveys. It also explains, in detail, why the protocols employed by Holland and SAIC resulted in an appropriate survey of the sites. For instance, the Final EIR states, in response to comments G-3-25/ G-3-26, that:

The Holland classifications system includes mapping of polygons and identification of plant communities based on the species present and their relative abundance. The result of such classification enable the identification of all riparian and other sensitive vegetation communities within the project area. Because this classification is sufficient to allow an understanding of the significant effects of the project, the more rigorous subclassification of these vegetative types into specific "series" as included in the Sawyer/Keeler-Wolf system is not required.

Indeed, it is my opinion that the use of the Holland (1986) vegetation classification system was sufficient to identify native grassland species on the Project and Alternative 1 sites without the need for additional surveys or the employment of alternate classification systems. The Holland natural communities classification system is a thoroughly researched document based on literature review and the individual knowledge of Dr. Holland. Each of the vegetation communities is carefully provided with a description of the physiognomy of community, the constituent substrate supporting the community, the distribution of the community within California, and a list of the characteristic species associated with the vegetation type. Utilization of the classification systems and survey guidelines suggested by the commenters would not provide additional information essential to the characterization of native grassland or to the analysis of impacts to native grassland. For example, the Sawyer and Keeler-Wolf treatment classifies the non-native grassland of Holland as California annual grassland. Both labels are accurate in that the vegetation community is primarily annual, comprised of non-native species. However, the Holland description identifies "numerous ... native annual forb" species as characteristic of the non-native grassland community.

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The CNPS Letter also alleges that native grasslands were not identified properly because the timing of the surveys was not adequate to completely capture native forb and grass species. First, there are no requirements regarding the timing of native grassland surveys codified in the Public Resources Code, the Fish and Game Code, or the California Code of Regulations, or in the County's Environmental Thresholds and Guidelines Manual. Second, the timing of the vegetation surveys was sufficient and was not confined to a particular season. The Holland (2003) floristic and vegetation surveys were conducted between March and July. The results of those surveys yielded a large number of species, the majority of which are non-grass species (59 of the nearly 70 species recorded), and included both native and non-native late-flowering species. The 2004 SAIC grassland assessment was predominantly conducted in April but a follow up day in May was also included. While a few of the late-flowering species (e.g., *Deinandra fasciculata* and *Eremocarpus setigerus*) would be difficult to detect in April, the three native perennial grass species would be discernible at the time of the April grassland protocol survey. And, with trained field investigators, the seedling rosette stage of *Deinandra fasciculata* would be observable in April and certainly in May. While the physiognomy of the annual grassland has progressive temporal changes, the majority of relative cover of the native grassland species, especially when calculated as numerical occurrence along a transect by counting individuals, as was conducted by SAIC, would be present during the time of the surveys.

The Painter Letter also alleges that Holland (2003) and SAIC (2005) should have collected herbarium voucher specimens, and that not doing so was a violation of the County's Guidelines, as well as other guidelines (CNPS, USFWS and CDFG) recommended by Painter. The County's Biological Survey Guidelines refer to the collection of voucher specimens in context of the use of conservation ethics, not as a requirement for biological surveys. As such, botanical field surveyors routinely collect voucher specimens for those species with which they may be unfamiliar or upon the discovery of species outside its expected geographic or ecological range. If voucher specimens are collected, then these specimens would be placed in a reputable herbarium for proper curation. Both Drs. Holland and Keil, professors at the California Polytechnical University at San Luis Obispo, are well trained botanists with considerable knowledge of the flora of the central coast of California and for whom voucher specimens would not ordinarily be necessary unless they came across an unusual specimen, which they apparently did not. The lack of voucher specimens does not invalidate the findings contained in the Holland 2003 report.

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The Painter Letter contends that the lack of a comprehensive plant species lists prevented the surveys from yielding thorough results for rare or sensitive plant species. Here, the Holland report is quite direct and states, "Our surveys did correspond to the time that rare plants would have been in identifiable condition; so we are confident that we were able to do a thorough search for sensitive species." Elsewhere in the same report (page 24), "During our survey of the ranch, we put special emphasis on searching for any rare plants that may occur on the site. None were found. ... Based on the disturbed nature of most of the ranch, we would not expect any rare plants to occur." Clearly, focused surveys for rare plants have been adequately addressed in this EIR.

The Painter Letter further alleges that Holland and SAIC's should have included additional plants in their list of native grassland species, the lack of which renders their survey results inadequate. Both the Holland (2003) and SAIC (2005) reports contain extensive lists of the species encountered. Contrary to the Painter assertion that the lists are not comprehensive, both lists are complete for the species encountered during the field studies. Holland states that the list is not a complete list of plants present on the site, but only as a caveat that a few species may have been missed because their surveys did not cover an entire year, which is not required under CEQA or the Santa Barbara Guidelines. They also state that most herbaceous plant species were identifiable during the timing of their surveys. This would include those species comprising the grassland habitats.

Finally, the Painter Letter comments that the SAIC grassland assessment protocol did not provide a clear definition of "relative cover." However, on page 13 of the SAIC report, relative cover is defined as the number of "hits" (encounter of a target species along the sample transect) for the target species divided by the total number of hits of living plant material (excluding bare ground and thatch). Target species included native grasses and herbaceous species.

## **II. The Raptor Surveys Conducted For the Santa Barbara Ranch EIR Were Appropriate and Adequate**

In a separate, but related issue, a comment letter from J. Nick Todd, received by the County on June 26, 2008 ("Todd Letter") claims that the raptor surveys for the Revised Draft EIR were inconsistent with the outlined protocols as dictated by the California Coastal Commission. (Todd Letter at p. 1.) The Coastal Commission raptor survey protocol requires conducting surveys during the nesting season (between March 1 and June 15), consisting

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of a minimum of five site visits spaced one week apart (see, for example, the February 29, 2008 Letter of Incompleteness from the California Coastal Commission to Santa Barbara County regarding the Goleta Beach County Park). CEQA does not require that raptor surveys be conducted in conformance with this protocol. Further, consistent with *Association of Irrigated Residents v. County of Madera*, the raptor surveys prepared for the EIR were adequate under CEQA to accurately identify the potential for raptor presence and habitat. There were six specific raptor surveys (two in April 2004, two in December 2004, and one each in February and March of 2005), complemented by 11 surveys between April 2004 and March 2005 addressing general wildlife or sensitive birds during which raptor species would have been apparent. These surveys are more than adequate to provide evidence for the likely presence of raptor species within the project site because their calls and conspectus aerial behavior would be noticed by field wildlife biologists. It is, therefore, my opinion that sufficient information is presented within the Final EIR in order for the Santa Barbara County decision makers to be appropriately informed regarding the potential presence of raptors on the Project and Alternative 1 sites in compliance with CEQA.

If you have any questions, please feel free to contact me at  
(951) 787-7808.

**Sincerely,**

A handwritten signature in black ink that reads "Daryl Koutnik". The signature is written in a cursive, flowing style.

Daryl Koutnik PhD  
Manager, Biological Sciences

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## **APPENDIX: RESPONSES TO COMMENTS**

### **13.0 GENERAL RESPONSES FOR MAJOR ISSUES**

The FEIR Responses to Comments (RTC) are incomplete and inadequate under CEQA.

The RTC sections: (a) are convoluted and unresponsive, often referring back to comments or responses that are not on point; (b) often address only portions of significant comments without addressing larger concerns; (c) misconstrue the meaning and intent of public comments; and (d) are often conclusory statements lacking evidentiary support.

Lead agencies must respond to all “significant environmental points raised in the review and consultation process.”<sup>1</sup> The lead agency may not rely on conclusory statements in responses to comments. The following discussion identifies specific examples of the FEIR’s failure to respond to all significant environmental points and the FEIR’s reliance on conclusory statements that are lacking or are contrary to evidence in the record.

The RTC sections confuse policy consistency issues with CEQA impact and mitigation issues. Comments regarding the Local Coastal Plan (LCP) and the Coastal Act are not adequately addressed.

### **13.1 TRANSFER OF DEVELOPMENT RIGHTS**

#### **13.1.3 TDR Capacity**

The FEIR states “the figure of \$20 million is viewed as the feasibility threshold for implementing transfers.” However Solimar found the \$20 million would merely be the initial capitalization of the TDR bank. Solimar’s estimate of \$20 million initial capitalization was based on *donations* raised to effectuate the land transfer at Ellwood Mesa in 2003. (FEIR at 13-4) In terms of TDR program operation, Solimar found that the limited pool of eight receiver sites considered after eliminating over 70 possible receiver sites could generate \$185 million from TDC sales into the TDR Program.<sup>2</sup> This figure was adjusted downward to \$73.2 million based on “political realities” above and beyond eliminating over 70 possible sites.

The County cannot assert or suggest without evidence that Solimar’s conclusion were wrong and the TDR Program can only generate \$20 million.

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<sup>1</sup> CEQA Guidelines section 15132(d)

<sup>2</sup> Solimar Research Group March 26, 2006 “Santa Barbara Ranch Transferrable Development Rights (TDR) Feasibility Study” page 58.

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The FEIR notes that if TDR raises \$73.2 million, there would be a funding shortfall of \$52.8 to \$131.8 million to transfer all of the grid development potential. EDC's and Surfrider's MAI appraiser John Ellis has roundly criticized the TDR study for overstating values without substantial evidence. Nonetheless, partial TDR at \$73.2 million plus build-out of SBR under existing zoning (up to 14 lots) may be an economically feasible alternative. If partial TDR or if partial TDR plus SBR build-out under existing zoning pencils out for the SBR applicant then the County can avoid rezone of SBR.

Solimar was never asked to and did not perform an analysis to demonstrate whether partial TDR (\$73.2 million) plus build-out of SBR under existing zoning (14 lots) is feasible as a project alternative. Analysis of the economic feasibility of partial TDR and SBR build-out under existing zoning has not been undertaken. Until that analysis demonstrates whether partial TDR plus SBR build-out under existing zoning is feasible, there is no evidence on which to base a determination that a rezone can be considered under Policy 2-13.

Given the \$73.2 million capacity of TDR and the development of up to 14 estate lots under existing SBR zoning, rezoning all or some of SBR may not be necessary. If partial TDR and build-out of up to 14 lots is economically feasible, a rezone would violate Policy 2-13. However, the flawed EIR does not analyze any alternatives which avoid rezones.

The applicant's desires to build Alternative 1 instead of the grid do not justify the FEIR's position that any project other than Alternative 1 would not fulfill project objectives. (Table 11.8-1) Alternatives need fulfill only some, not all objectives, and may be less profitable than the project or cost more. To be economically feasible, an alternative must be practicable to proceed i.e. must pencil out. But no analysis of the applicant's costs and the alternatives' values has been conducted to determine whether partial TDR with limited SBR development is an economically feasible way to mitigate significant impacts.

### **13.1.5 Project Alternatives**

Limiting the range of alternatives based on select objectives violates CEQA's requirements relating to alternatives. An EIR must analyze a reasonable range of alternatives which fulfill most project objectives and substantially lessen or avoid any significant environmental impacts.<sup>3</sup> Findings for project approval cannot be made if feasible alternatives would avoid or substantially lessen the project's significant environmental impacts.<sup>4</sup> The County's FEIR limits the range of feasible alternatives based on one or two related objectives: the applicant's desire to build Alt. 1 instead of the

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<sup>3</sup> CEQA Guidelines Section 15126.6(a)

<sup>4</sup> CEQA Guidelines Section 15091(a)

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grid, and resolving existing litigation with the landowner. As a result, notwithstanding the FEIR's unsupported conclusion that the largest Alternative Alt. 1 is environmentally superior to all other alternatives, all other alternatives have been cast aside in violation of CEQA simply because they do not fulfill the applicant's narrow, profit-oriented objective.

TDR cannot be used to pay the applicant to mitigate impacts pursuant to CEQA.

The FEIR claims that TDR can be used to pay the developer to mitigate significant impacts by building something akin to Alternative 4. (FEIR page 11-47) However under CEQA a lead agency is required to avoid and mitigate significant impacts to the maximum extent feasible. A lead agency is prohibited from approving a project if there are feasible alternatives which avoid or substantially lessen a significant impact.<sup>5</sup> By reducing the development and clustering, both Alternatives 4 and 5 feasibly and substantially lessens several projects impacts including significant land use, cumulative biological and visual resource impacts. Therefore, the project cannot be approved as proposed.

TDR cannot be used to pay the applicant to change the project to mitigate impacts which CEQA requires the lead agency to avoid or substantially lessen through feasible project changes, mitigation measures and alternatives. Proposing to pay the developer to mitigate impacts that can feasibly be mitigated through project changes (e.g. reduced density alternative) violates CEQA, harms the public's environment at the applicant's benefit and cannot be tolerated.

While the new TDR Program must be given time to work, TDR must only be applied to an approved project or alternative's entitlements after the project or the alternative's impacts have been mitigated to the maximum extent feasible. If effective, TDR would pay the developer to lessen impacts beyond that required by CEQA and coastal policies (i.e. mitigate impacts beyond the maximum extent feasible absent outside funding). TDR is not intended to pay applicants to mitigating significant impacts that can be avoided through feasible alternatives and mitigation measures; CEQA already requires such mitigation.

The impacts of the draft TDR ordinance are not speculative and must be analyzed.  
(Addresses FEIR sections 13.1.5 and 13.1.6 CEQA Relationship.)

Sections 13.1.5 and 13.1.6 of the FEIR claim that an analysis of TDR's impacts is speculative. However, Solimar's analysis found \$73.2 million could be raised for TDR. If successful as demonstrated by Solimar TDR will reduce otherwise unavoidable impacts to agriculture, cultural resources, views, land use and habitat at Naples. The beneficial

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<sup>5</sup> CEQA Guidelines Section 15091(a)

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impacts as well as other impacts of TDR are not speculative and can be analyzed in a CEQA document at a program-level or a project-specific level.

Failure of the FEIR to analyze the project-specific and cumulative effects of the foreseeable TDR Program is a significant omission. The TDR Program and the Project's environmental review are linked but have been piecemealed by the FEIR and separate CEQA exemption for the TDR Program.

The FEIR misrepresents findings regarding the viability of TDR.

Page 13-6 of the FEIR also misstates Solimar's report by stating Solimar found only \$20 million could be raised for TDR. As noted above Solimar found that \$20 million could be raised initially to capitalize the bank and that \$185 million could be raised from a limited pool of receiver sites – a figure that was reduced to \$73.2 million. For staff to now suggest only \$20 million can be raised throughout the TDR program life misrepresents Solimar's findings. Solimar found that after whittling down receiver sites by 90% and then also applying a large discount for "political realities" \$73.2 million can be raised.

Based on the evidence in the record, TDR is more viable than the FEIR suggests – particularly if coupled with build-out of SBR under existing zoning – and may avoid the need to rezone all or some of SBR.

However no analysis has been done on the economic feasibility of partial TDR plus build-out of SBR at existing zoning (up to 14 estates). Therefore it is premature to consider rezoning Naples.

### **13.1.6 CEQA Relationship**

This section informs readers that the County is not necessarily committed to running an effective TDR Program to transfer development from Naples. "Such an action does not commit the County to fund the extinguishment of rights." (FEIR 13-7) The TDR ordinance if adopted in its current Planning-Commission-endorsed form does not commit the County or the applicant to implementing TDR. This is why the TDR program as proposed is facing strong criticism by TDR proponents as a facade designed only to pay lip service to Policy 2-13. The draft TDR program's lack of teeth and County's lack of commitment to TDR shows that the County wants to give the appearance the County tried to encourage TDR. However, the County is not encouraging TDR to avoid rezoning SBR. To comply with Policy 2-13, the County must (1) take an "active" role in TDR, (2) capture all upzones, and (3) not allow Naples lot owners to sell lots to developers seeking to build estates when the TDR Authority offers a fair amount for the lot's or lots' TDR.

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Despite this lack of teeth, the Planning Commission-endorsed TDR Program leads to reasonably foreseeable impacts including beneficial effects at the known sender site i.e. protection of agricultural land, land use consistency, habitats and views at Naples.

### **13.2 Project Description – Guest Houses and Residential Second Units**

The FEIR does not analyze the impacts of RSUs – provisions for which are contained in the NPD. The MOU Project and Alt. 1 include 43 and 59 guest houses respectively. The proposed NPD ordinance in FEIR Appendix B section 35-xxx.4(7) would allow Residential Second Units (RSUs) in place of guest houses. RSUs unlike guest houses are permanently occupied. The Planning Commission discussed but has not recommended that RSUs be allowed only with a CUP. We recommend that RSUs be subject to Major CUPs.

By way of their inclusion in the NPD, RSUs are reasonably foreseeable results of the proposed NPD. Pursuant to the NPD, owners can convert guest houses to RSUs or build RSUs instead of guest houses. Therefore we recommend the FEIR analyze the reasonably foreseeable impacts of RSUs including traffic, air pollution, solid waste generation, etc.

The FEIR asserts that because 43 and 59 guest houses are proposed for the MOU and Alt. 1 Projects respectively, there could never be more than 11 and 13 RSUs, respectively. This analysis overlooks the fact that owners of guest houses can convert guest houses to RSUs. Therefore there is still a reasonably foreseeable maximum potential for up to 72 and 54 RSUs for Alt. 1 and the MOU Project respectively. The FEIR still fails to analyze the effects of the proposed project and RSU build-out pursuant to the NPD in a project specific or cumulative sense.

While the FEIR notes that the environmental impacts of RSUs would be analyzed at the time they are proposed, prior to issuance of a CUP, this would be a piecemeal, case-by-case environmental review of up to 72 RSUs. Such an approach could never consider the combined impacts of the RSUs, much less mitigate impacts of project/RSU build-out. The piecemeal approach taken by the FEIR ignores the reasonably foreseeable impacts of RSUs which add to the impacts of the primary units. The FEIR is deficient as a result.

### **13.3 Cultural Resources**

#### **13.3.1.2 Archeological Resources Identification and Evaluation – SBA-77, -78, -79 and -144**

The FEIR still inexplicably overlooks the larger picture choosing to only recognize areas of mapped artifacts rather than the larger archeological resource - the Chumash villages of Mikiw and Kuyamu. Part of the environmental baseline includes

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these two pre-historic village sites. Considerable testimony has been presented to the County planning staff and Planning Commissioners by Chumash including Chumash elders and persons and agencies with cultural resource and archeological expertise identifying this larger cultural landscape resource as significant and threatened by the project. Failure to consider impacts to the larger cultural landscape resource (i.e. the village sites) is a serious omission and an example of the FEIR missing the forest for the trees.

Data recovery does not mitigate cultural resource impacts. (See 6-30-08 letter from State Office of Historic Preservation) Data recovery does not avoid, minimize, offset or compensate for losses of significant cultural resources caused by construction in the sensitive areas located mostly on DPR.

Avoidance is a feasible mitigation measure that substantially lessens the impact considered a significant impact by the State Office of Historic Preservation. CEQA requires avoidance of archeological sites when feasible.<sup>6</sup> Consistent with CEQA's requirements to avoid or mitigate significant impacts, SBR-only alternatives (e.g. Alternatives 4 and 5, MOU Project) feasibly avoid DPR's cultural resources. Only Alternative 1 results in this controversial, significant impact to sensitive cultural resources including the villages and specific areas of artifacts.

### **13.3.2.1. Efforts to Avoid SBA-78 and SBA-79**

#### **13.3.2.1.1 DP-15**

The FEIR notes that moving proposed development in Lot DP-15 entirely into Locus 2 would "drastically" reduce impacts at this location. (FEIR page 13-13) However, the FEIR fails to move all proposed development in Lot DP-15 into Locus 2 to "drastically" reduce the impacts at this lot. (FEIR p. 13-13) The FEIR's assertion in section 13.2.1.1 is that the applicant changed the project "to incorporate this measure as much as reasonably feasible." However, this conclusory assertion is not supported by the necessary evidence i.e. that fully incorporating this measure by moving development into Locus 2 is infeasible. Therefore the FEIR does not provide evidence to demonstrate that it is infeasible to drastically reduce the Lot DP-5 cultural resource impact.

#### **13.3.2.1.2 DP-16**

The FEIR describes efforts to avoid SBA-78 and -79 at lots DP-15, DP-16 and DP-20, but stops short of avoiding the impacts to these sensitive sites or mitigating impacts to the extent feasible. Lot DP-16 contains the highest density of tools and prehistoric items in SBA-78. The home on DP-16 is over 5,200 square feet. The lot includes a detached guest house, separate garage of 875 square feet and an extensive

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<sup>6</sup> CEQA Guidelines section 15126.4(b)(3)(A)

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septic system leach field of approximately 2,000 or more square feet in the sensitive archeological site. The FEIR proposes limiting the home to the existing home's footprint but this does not avoid impacts. The home construction, trenching, guest house and leach field construction and operation will all impact the very sensitive, high density archeological site.

The significant impact at DP-16 can feasibly be avoided as required by LCP Policies 10-1 – 10-3 and CEQA. *No development should be allowed in DP-16 due to its high level of constraints.* (See 6-30-08 letter from State Office of Historic Preservation.) Avoidance is feasible through the MOU Project, Alternative 2, Alternative 4, Alternative 5, or some combination, or through deletion of the proposed development in Lot DP-16 and inclusion of the lot in an OSCE. CEQA requires avoidance if feasible. Evidence shows avoidance is feasible. No evidence shows avoidance by one of the above means is infeasible.

DPR should not be included in the project because of the significant cultural, land use impacts DPR's inclusion causes and increases. These impacts could be avoided by limiting development to SBR as proposed in the MOU Project and most alternatives e.g. Alternatives 4 and 5.

If DPR is included, to comply with CEQA and LCP Policies 10-1 – 10-3, Lot DP-16 must be set aside in perpetuity to protect archeological resources from significant impacts of lot development. Such a set aside is feasible and warranted. There is no guarantee that applicants receive entitlements for every project (or alternative) unit for which they apply – or for which they desire. Indeed, County policies and CEQA both necessitate reductions in project scope and size when feasible and warranted i.e. to comply with policies and mitigate significant impacts, as is the case at Lot DP-16.

There is no evidence that eliminating DP-16 is infeasible. Such evidence would require a finding that the MOU Project is infeasible because the MOU Project avoids DP-16. If evidence is submitted demonstrating that it is infeasible to avoid DP-16 (i.e. all SBR-only alternatives and the MOU Project are infeasible), then the FEIR has an inadequate range of feasible alternatives. By definition, the applicant's proposed project – the MOU Project – is feasible. Since the MOU Project is feasible, avoiding impacts to DP-16's significant cultural resources is feasible.

### **13.3.2.1.3 DP-20**

The FEIR notes that *moving the proposed home in DP-20 west would minimize impacts to a significant, sensitive archeological site SBA-78, but rejects this measure because it would interfere with the DPR applicant's private views from Casa Grande.* An applicant's desire for a private view does not justify rejecting a feasible measure that would lessen impacts to significant cultural resources. The County must not prioritize one home's private view over significant archeological resources. To do so would violate

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CEQA and indicate the County's clear bias towards the applicant at the expense of the public's environment. Instead the FEIR must recognize that avoiding development of Lot DP-20 through the MOU Project, Alternative 2, Alternative 4, Alternative 5, or some combination feasibly avoids significant cultural resources impacts as required under CEQA.

### **13.3.3 Project-level EIR**

The FEIR notes on page 13-16 that the FEIR concludes "that the project could have significant impacts to archeological sites." The FEIR finds this impact to be Class II. The FEIR acknowledges that it is not known what resources will be uncovered, including burials. Thus the FEIR is flawed for classifying the impact as Class II instead of Class I. To the extent it is unknown what resources will be dug up, the FEIR should err on the side of caution in identifying and mitigating impacts to non-renewable resources.

Even though impacts would be documented by data recovery, the impact would not be lessened through its documentation and would be significant (Class I).

### **13.4 Water Supply – Issue of Potential Creek Diversions**

See G-2-537 and G-2-538 below.

New Information: California Department of Fish and game July 17m 2008 letter

The water diversion described as part of the Alt. 1 Project site's water supply on DPR lacks a necessary Streambed Alteration Agreement permit from the California Department of Fish and Game (DFG). DFG requires immediate cessation of creek water diversions, and seeks DPR to apply for DFG approval.<sup>7</sup> DFG requires all alterations to streams to be approved through issuance of a valid Streambed Alteration Agreement pursuant to the California Fish and Game Code. The lack of permits for the Alt. 1 Project site's primary water supply – Dos Pueblos Creek – is significant new information warranting revision to the FEIR and possible recirculation of a revised draft EIR for Alt. 1 in particular.

The FEIR notes that water diversions will not exceed demand for agricultural uses and that therefore the diversions from the creek will not serve the project's domestic purposes.

However, if the CDFG Streambed Alteration Agreement limits the summertime diversions of creek water to protect the federally-Threatened red-legged frog and federally-Endangered southern steelhead in DP Creek, then the applicants may not have enough water from the creek to serve agriculture, such as Alt.1's essential ACEs. If the

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<sup>7</sup> July 17, 2008 letter from DFG to DPR

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creek diversion is limited by now foreseeable DFG action, then Alt. 1's use of SWP and shale wells may reduce or preclude use SWP and the shale wells for agriculture. This is particularly true during droughts when diversions must be curtailed to protect endangered species. The WMP at page 16 prioritizes the homes' interior use of water over existing agriculture, so if there is a shortage, the ACEs and agriculture would suffer. The entire waster supply analysis for Alt. 1 must be redone factoring in the DFG permit requirements before it can be determined whether there is adequate water for the ACEs.

Now that new information illustrates that the ACE lacks irrigation water, the ACE cannot be relied upon to mitigate significant agricultural impacts, or to support findings to rescind the agricultural preserve contract.

#### Project may Increase Ag Water Diversions

In addition, the FEIR does not clearly demonstrate i.e. through mitigation measures or project description that the Dos Pueblos Creek diversions for agriculture will be increased as part of the project's agricultural elements. For instance, the project includes an ACE that encourages agriculture. The Water Management Plan notes that water will not be diverted to serve Alt. 1's residential demand, however Alt. 1 may increase annual or seasonal agricultural water demand in the ACE and hence impact the creek flow and the creek habitat, but this is not analyzed in the FEIR.

The FEIR provides a range of *annual* surface water flow and *annual* creek diversion rates. However, there are no seasonal or daily creek flow and creek diversion measurements to describe the environmental baseline. "Detailed records of actual water diversions and uses have not been kept by Dos Pueblos Ranch." (FEIR, p. 13-25) Therefore without enforceable prohibitions on increased seasonal diversions it is impossible to determine whether the project may increase seasonal diversion rates even if not increasing annual diversion rates. Due to the low summer and fall creek flows, increased daily or seasonal diversion rates can cause adverse impacts and mortality to listed aquatic species including steelhead. The FEIR's inadequate creek diversion baseline i.e. lack of seasonal diversion rate baseline precludes analysis of the impacts of potential increases in daily or seasonal diversions.

The EIR process has been ongoing for several years since the application was filed circa 2002. The County should have required – and still should require – metering and record keeping of existing water diversions to establish a baseline of annual, seasonal and daily diversion rates. Without baseline information on seasonal creek flows and diversion rates, and absent restrictions on increased agricultural diversions, it is impossible to determine Alt. 1's impacts associated with increasing agricultural diversions for Alt. 1's ACEs.

In summary, the Alt. 1 project may impact Dos Pueblos Creek through water diversions in at several ways. First, Alt. 1's agricultural elements and ACE may increase

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annual agricultural water demand, thereby increasing annual water diversions from the creek. The proposal to limit diversions to agriculture does not mitigate the impacts that would occur from increasing water diversions for the Alt. 1 Project's agricultural purposes and ACEs. No mitigation measures are proposed to limit agricultural water diversion for Alt. 1's ACE in order to protect species in the creek.

Second, the project may increase seasonal or daily diversion rates for agriculture, even if annual diversion rates are maintained.

Finally, the DFG streambed alteration agreement permit may limit water that can be diverted for agriculture, in order to comply with Fish and Game Codes and protect fish and wildlife. Since the MOU Project and Alt. 1 Project rely on SWP and may use shale wells, these sources may not be entirely available for agriculture in the event creek diversions are restricted in order to protect endangered species. Absent a secure and proven source of water for agriculture in the ACEs the FEIR cannot rely on Alt. 1's ACE to mitigate impacts to agriculture.

The critical water supply issue brought to light by new information from DFG related to the adequacy and permitting of creek diversions to serve Alt. 1's ACE is unresolved. Until DFG authorizes use of the DP Creek diversion to serve Alt. 1's ACE, the FEIR's water supply and agricultural resources sections are deficient for relying on the creek water diversion to serve Alt. 1's ACE and the FEIR cannot be certified with particular regard to Alt. 1.

### **Table 13-3 Summary of Sources and Uses, Alternative 1**

During very dry years when the creek flow will be 10% of normal (i.e. 161 AFY), the diversion will take 67% (322 AFY) of the creek's total discharge. Taking two-thirds of a creek's flow during a very dry year is expected to have significant adverse impacts on aquatic species such as trout and red-legged frogs.

#### **13.4.7 SWP Reliability**

Importantly the FEIR notes that "an updated Draft Reliability Report has been published by the SWP" which finds that 80% of the time the SWP will only be able to deliver 40% (not 80% as assumed in the RDEIR) of its allotment. (FEIR page 13-28) This is a reduction of 50% of the SWP water availability over 80% of the time. The FEIR tries to minimize this new information, but this level of reduction coupled with DFG's new information about the creek water diversion's lack of permits necessitate FEIR re-evaluation of water supplies.

The FEIR relies on the turnback pool to improve the reliability of deliveries. The FEIR does not mention that when the SWP turnback pool is available it is limited to relatively short periods of time.

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## **13.5 Biological Resources**

### **13.5.1.1 – Volume of Surface Flow**

The DFG recently informed the County that the Dos Pueblos Creek water diversion does not have a Streambed Alteration Agreement. Therefore, the creek diversion cannot be relied upon in the FEIR to serve all agricultural needs including Alt. 1's ACE.

### **13.5.1 .3 – Steelhead**

The FEIR states that no steelhead can get above Highway 101 due to an impassable barrier. The FEIR still fails to acknowledge or respond to evidence in the record showing that (1) an adult steelhead was observed above the barrier, and (2) the barrier is not a complete barrier but is an impediment to migration. The Conception Coast Project assessed the structures in south coast creeks, measured and assessed the structure at Highway 101 in Dos Pueblos Creek and determined that the structure at Highway 101 is not completely impassable to migrating steelhead.<sup>8</sup> The impediments upstream and downstream of the impediment at Highway 101 are both rated more severe (.90) than the Highway 101 impediment (.80).<sup>9</sup>

The County FEIR should recognize DFG's and NOAA's expertise and evidence in the record and should acknowledge that there are still native steelhead in the creek, rather than suggesting with no evidence the endangered native trout may be a non-native planted trout (FEIR p. 13-29)

### **13.5.4 Red-legged Frog**

The FEIR fails to address how to avoid or minimize impacts to red-legged frog dispersal. The FEIR fails to offer measures (other than combining a few driveways south of the railroad tracks and using rounded curbs and gutters) to reduce the impact to red-legged frog dispersal across the coastal terrace. Reducing the development footprints and eliminating lots on the coastal terrace to maintain dispersal corridors for red-legged frogs would help mitigate this impact but the suggestion to eliminate coastal terrace development from the projects has been rejected with no evidence it is infeasible.

## **13.5.2 Marine Resources**

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<sup>8</sup> The Conception Coast Project Steelhead Assessment is available at [http://conceptioncoast.org/projects\\_steelhead.html](http://conceptioncoast.org/projects_steelhead.html)

<sup>9</sup> The Conception Coast Steelhead Assessment ranks barriers in Dos Pueblos Creek at: [http://conceptioncoast.org/Map\\_Images/Tables/Table\\_7.7.9.2\\_tecolote\\_dp\\_gato.pdf](http://conceptioncoast.org/Map_Images/Tables/Table_7.7.9.2_tecolote_dp_gato.pdf)

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The FEIR predicts that beach-use will increase from 3-fold to 6-fold. (FEIR p. 13-32) Based on sheer numbers, this is a significant increase in disturbance to wildlife and biological resources on the environmentally sensitive Naples Beach habitat. The FEIR does not mitigate this impact to below significance and effective mitigation is infeasible as long as the staircase is proposed. This impact can largely be minimized by eliminating the staircase and providing access at DPR as specified in CLUP Policy 7-18. This feasible access alternative is improperly rejected by the County due only to the Alt. 1 applicant's desires.

### **13.5.3 Environmentally Sensitive Habitat Area**

First, this response mischaracterizes comments on the RDEIR by stating that a recurring theme is "any presence of a sensitive species defines the existence of ESHA." Having read all the RDEIR comments, EDC and Surfrider can attest that the FEIR's characterization of comments regarding ESHA is not accurate and serves to misrepresent comments and confuse the public.

Comments about ESHA have carefully cited to the County's definition of ESHA. Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role or nature in the ecosystem and which could be easily disturbed or degraded by human activities and developments is ESHA.<sup>10</sup> No comments suggested ESHA meant something else.

The FEIR mischaracterizes Section 30240(a) of the Coastal Act by claiming that "the guiding directive is to avoid significant disruption of habitat values." This statement overlooks the second clause of 30240(a) that "only uses dependent on those resources shall be allowed within those areas." The FEIR confuses CEQA's requirements to avoid significant impacts with the Coastal Act Section 30240's stricter requirement to avoid significant habitat disruption *and* prohibit uses in ESHAs that are not dependent on the ESHA's resources.

The FEIR also mischaracterizes the County CLUP description of ESHA by suggesting that the list of categories of ESHAs is all-inclusive. (FEIR 13-4 and -5) These categories are merely examples of types of ESHAs.

#### **13.5.3.2.2 Wetlands**

See comments below regarding (1) failure to delineate wetlands on DPR and some wetlands on SBR, and (2) wetland identification failure to follow scientific standards. See also comments below re failure to avoid 100-foot buffers.

#### **13.5.3.2.3 Native Grasslands**

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<sup>10</sup> Coastal Act section 30107.5

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See comments below and evidence in the record regarding failure to properly map native grasslands pursuant to scientific standards and pursuant to the County and DFG methods. The EIR's baseline is not founded upon substantial evidence because surveys did not follow basic scientific standards.

The FEIR claims on 13-36 that the educational value of the trail is dependent on its location on the Coastal Terrace. EDC and Surfrider strongly agree that a pedestrian trail must be on the Coastal Terrace.

#### **13.5.3.2.4 Vernal Pools**

The FEIR claims vernal pools or their species were not found onsite. This overlooks the fact that vernal pool fairy shrimp was found in wetlands along the railroad tracks within the geographical area of the project site.

#### **13.5.3.2.6 Marine Mammal Rookeries and Hauling Grounds**

The FEIR fails to recognize that there are feasible ways to avoid the haul-out ESHA i.e. by providing vertical access at DP Canyon. Seasonal closures may be infeasible and merely create a conflict where none need be e.g. with access at DP Canyon. Relocating the vertical access away from the haul out is necessary to comply with the LCP and Coastal Act section 30240.

#### **13.5.3.2.7 White-tailed Kite Habitat**

The FEIR alleges that "currently there is no ESHA established for either white-tailed kite or non-native grasslands that could potentially support white-tailed kite." (FEIR p. 13-37) However, the County's CLUP designates considerable areas of More Mesa's non-native grasslands ESHA due to their support for white-tailed kites so there is precedent for such designations.

The Coastal Commission also identifies nonnative California annual grasslands as habitat deserving of consideration as ESHA on a case by case basis. (See attached memorandum from the California Coastal Commission 2003.)

Easily disturbed portions of the Coastal Terrace supporting rare species qualify as ESHA. The FEIR tries to limit the discussion to white-tailed kites, minimizing the Coastal Terrace grassland's value to numerous other rare species. Twenty-eight rare animal species are identified in the FEIR as dependent on and/or expected in the grasslands. Table 9.4-4 of the EIR identifies impacts to these grassland species from the development i.e. "habitat loss and fragmentation." The justifications for designating Coastal Terrace grasslands ESHA goes far beyond white-tailed kites. The FEIR finds that 15 raptors known or expected to occur on the project site have a grassland association.

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Based on observations of white-tailed kites undertaking pairing activities in spring 2008, we believe white-tailed kites nested onsite or adjacent to the site in 2008. Regardless, the grasslands support for so many other state-designated and federally-listed species - many of which are breeding on the Coastal Terrace – qualifies the portions of the Coastal Terrace especially south of the railroad tracks as ESHA. While the white-tailed kite is an important special-status species using the Coastal Terrace grasslands as important foraging habitat, the FEIR's continual focus on one species – the kite - downplays the Coastal Terrace grassland's environmental sensitivity.

During summer 2008 Planning Commission hearings involving EIR issues, the EIR consultant and staff indicated that the Coastal Terrace grassland is not ESHA because it does not meet the second prong of the ESHA definition i.e. easily degraded or disturbed by human uses and activities. Staff and EIR consultants claim the grasslands are already disturbed (by cattle grazing) and cannot be easily disturbed or degraded by human uses and activities. However, approximately fifteen rare species of birds of prey and the numerous special-status mammals and other animals in Table 9.4-4 co-exist with cattle grazing on SBR Coastal Terrace as noted in the FEIR. Building dozens of large estates and homes and guest houses on the grassland habitat of these species causes different and more severe impacts than cattle grazing, and easily disturbs, degrades and displaces the grassland habitat. Most rare species that coexist with grazing cannot co-exist with homes, cars and pets. These species would alter their use of the grassland and certain species may likely be eliminated from the Coastal Terrace according to the FEIR at 3.4-68. The FEIR clearly demonstrates that the proposed development and human uses will degrade and disturb the Coastal Terrace grassland habitat of these species. Such a finding fulfills the second prong of the ESHA definition.

The FEIR claims that the CLUP's four "policies" Policy 9-26 – 9-29 are "development standards" and as such would only apply to areas designated ESHA. However, these policies apply to white-tailed kite habitat regardless of whether it is designated ESHA. The LCP Notes that, "The following policies shall apply to development on parcels designated as a habitat area on the land use plan and/or resource maps and to development on parcels within 250 feet of a habitat area or projects affecting an environmentally sensitive habitat area." (LCP page 120) The Coastal Terrace parcels have ESHA identified in the EIR including wetlands, native grasslands and coastal bluff scrub. Therefore the LCP policies including Policy 9-29 apply to these parcels. Policy 9-29 requires preserving as much grassland as possible for feeding areas for white-tailed kite. It is feasible to preserve more grassland acreage than proposed. The MOU project impacts about 60 acres less than Alt. 1. Alt. 5 impacts some 40 acres less than the MOU Project.

The FEIR claims inaccurately on 13-38 that the project design and mitigation measures implement Policy 9-29. However, the projects fail to protect the maximum area of grassland for feeding areas for kites and thus violate Policy 9-29. Alternatives such as Clustering (Alternative 5) and Alternative 2 substantially lessen or avoid impacts to the

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Coastal Terrace grasslands. There is no evidence to support the conclusion on page 13-38 that the project design and mitigation measures ensure the maximum possible grassland area is preserved for kite foraging habitat. Specifically, no evidence shows that a smaller development project that avoids all or more of the Coastal Terrace kite feeding area is economically infeasible.

### **13.5.3.2.13 Streams**

The FEIR errantly claims, "Dos Pueblos Creek is the only drainage on or near the project site that is specifically listed in this category of ESHA." (FEIR page 13-40) The FEIR on 13-40 fails to acknowledge that Tomate Canada Creek and the unnamed drainage to the east - where they occur off the project site - are designated stream ESHAs. (FEIR Figure 9.4-3) Tomate Canada and the drainage to the east designated ESHA on Fig. 9.4-3 do not stop being ESHAs where they cross over the project site. These streams also qualify as ESHA on the project site and should be protected as ESHA onsite. These streams are inappropriately limited to ESHA only where they occur off the project site. Such designation fails to consistently protect ESHA, lacks biological justification, is arbitrary and gives an unfair edge to the applicant compared to adjacent property owners.

#### Limitations on Designation of ESHA

The FEIR notes that the CLUP at page 119-120 lists Dunes, Wetlands, Native Grasslands, and Vernal Pools but does not list "non-native grasslands" as a specific category of ESHA. However, the CLUP at page 119-120 lists "white-tailed kite habitats" as a specific category of ESHA. Kites require grasslands for foraging and would not persist without grasslands for foraging. The FEIR plays word games but the fact remains that the CLUP does specify "white-tailed kite habitat" as ESHA, and white-tailed kite habitat includes non-native grasslands essential to this species survival.

### **13.6 Coast Trail**

#### **13.6.7.1 Resource Protection**

The FEIR indicates that two vertical accesses: one at Makar and one at SBR would provide more access than called for in the CLUP. (FEIR page 3-45) The analysis presumes seasonal closures on both SBR's and Makar's vertical accesses. Having two vertical accesses causes cumulatively more resource impacts, but these are not analyzed in the FEIR.

The FEIR fails to analyze limiting the number of vertical accesses at SBR, DPR, Las Varas Ranch and Makar to one. The FEIR fails to analyze the best location for vertical access given environmental constraints and existing policies. Each of these four ranches has current applications pending with the County. Lack of analysis of offsite

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access alternatives limits the FEIR's ability to mitigate significant impacts to sensitive resources such as Naples Reef, the seal haul-out, the beach and intertidal area, and the coastal bluffs.

### **13.6.7.2 Redirected Access**

The FEIR is quick to point out that DPR has constraints for public access including contained aquaculture facilities, habitat and archeological resources, but does not mention that SBR has similar constraints to access including sensitive habitats, grazing, and a 100-foot tall bluff.

The FEIR notes that Gato Canyon would be preferred access over Dos Pueblos Canyon. However several factors suggest DP Canyon is ideal: (a) DP Canyon already has paved access to the beach, (b) DP Canyon has several disturbed areas to accommodate parking, (c) DP Canyon Beach has no bluff so no staircase needed, (d) DP Beach is a wide sandy beach, (e) DP Canyon has existing recreational areas i.e. lawn and flat areas, (f) DP Creek riparian habitat can be completely avoided, (g) use of DP Canyon for vertical access via existing paved roads would avoid archeological resources, and (h) DP Canyon connects to Las Varas on the west and SBR on the east, and can support a roped pedestrian coastal trail south of the railroad tracks that avoids significant cultural impacts.

### **13.6.8 Interconnectivity**

The FEIR at 13-47 uses the idea of future trails connecting the coastal zone to the national forest as justification to site the Coastal Trail along the north (inland) side of Highway 101. EDC and Surfrider strongly agree with the notion that the Coastal Trail connect to inland trails such as the existing USFS Gato Trail described and depicted in our RDEIR comment letter. However, we note that connections to the national forest can be provided at numerous locations from the coastal side of Highway 101 e.g. under bridges. Therefore future trail connections to the national forest are not grounds for siting the Coastal Trail inland of Highway 101. EDC and Surfrider continue to support placing a pedestrian branch of the coastal trail south of the railroad tracks through SBR to align with a future trail through Makar, DPR and Las Varas. We support a multi-use trail through SBR and (for Alt. 1) DPR south of Highway 101 as depicted conceptually in our alternative trail and access plan maps. These alternatives comply with coastal policies, enhance coastal recreation experiences, add opportunities for and easier coastal access, and minimize significant impacts to coastal resources such as Naples Reef and the seal haul-out.

## **15.2 RESPONSES TO COMMENTS FROM FEDERAL AGENCIES**

### **F-1-1**

The FEIR claims in Response to Comment (RTC) F-1-1 that steelhead have been extirpated from DP Creek and that access for steelhead above Highway 101 is

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impossible. However, the revised text in the FEIR states that the impediment at Highway 101 is passable during certain hydrological conditions. Table 9.4-4 states that the identity of the rainbow trout is unknown. The RTC and FEIR text are internally inconsistent and incorrect in their treatment of the impediment and the current status of steelhead including juvenile steelhead (i.e. rainbow trout) in the creek.

### **15.3 RESPONSES TO COMMENTS FROM STATE AGENCIES**

#### **S-2-8**

The CCC can assert jurisdiction over the voluntary lot mergers in the coastal zone. The County coastal zoning ordinance may not give the County jurisdiction over voluntary lot mergers *that reduce the development potential*. However, at Naples the lots being merged for the purpose of transferring development inland have questionable development potential due to severe constraints related to habitat, slopes, bluffs, floodplains etc. Merging lots which lack development potential to create lots with development potential *increases rather than decreases development potential*. Therefore, the CCC is right to assert jurisdiction over the proposed coastal zone lot mergers.

In addition, the CCC must still consider the Official Map. The CCC may not agree that the existing lots under the Official Map are valid legal lots. Therefore merging these lots to create development potential – potentially where none exists is subject to CCC jurisdiction.

### **15.5 RESPONSES TO COMMENTS FROM GROUPS**

Generally, the Responses to Comments are difficult to navigate and generally unresponsive. Specific comments on many issues are presented below; however, wherever a Response to Comment states that “no further response is needed,” we generally and respectfully disagree. Any requests for information that were stated in our previous comments on the RDEIR and in public testimony, and which were not satisfied in the FEIR or Response to Comments, remain outstanding.

#### **G-2-8**

This response does not adequately address the issues raised in our comments on the RDEIR. Neither Response to comment G-8-126 or General Response Section 13.2 is an adequate response. Our comment was not primarily about visual impacts, but rather the entire host of impacts expected from RSU build-out.

#### **G-2-14**

Many mitigation measures in the FEIR lack detail or measurable performance standards. In particular, impacts to biological and cultural resources are often “mitigated” via reference to future surveys. All mitigation measures should be revised. Specific recommendations are presented below and in our previous comments on the EIR.

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**G-2-16**

The attached 2008 letter from DFG is an example of information that is necessary to an adequate baseline analysis, but that is missing from the FEIR. The FEIR presents an inadequate baseline for many impact areas, including water supply and habitat, and these issues are discussed in greater detail below.

**G-2-21**

Overall, the Project will result in a net reduction in actual prime agricultural land. The 56 acres converted will cannot be adequately mitigated. Acres to placed under an ACE are not currently threatened by conversion. Thus, there is no net benefit to agriculture, and there is a negative impact. This should be noted as Class I, significant and unavoidable.

**G-2-30**

The Alt. 1 or Alt. 1B Projects result in more significant impacts than the MOU or other alternative Projects. The purported "benefit" from Alt. 1 is insubstantial, and Alt. 1 cannot be deemed environmentally superior.

**G-2-34**

The NPD or NTS is a component of the Project, and therefore alternatives that lessen impacts from the NTS should be considered in a revised EIR.

**G-2-37**

The FEIR must include a more accurate description of the Project's growth inducing effects. Regardless of the limits of the NTS, putting residential development further up the coast from Goleta will doubtless lead to imitation and competition for more development up the coast.

**G-2-76**

Policy consistency analysis is proper where it may lead to the mitigation or avoidance of significant environmental impacts. For example, a more thorough exegesis of the County's Visual Resources policies would demonstrate that the Project is in violation of several policies. The FEIR however, is cursory in its examination of many policies, and is therefore inadequate.

**G-2-124**

The FEIR assumes that existing, non-conforming structures are part of the environmental baseline and/or have no environmental effects. This should be analyzed in detail for confirmation, and any impacts from the non-conforming structures should be addressed and mitigated in revised EIR.

**G-2-156 – Cumulative Impacts of Existing and Proposed Septic Systems are not Considered in FEIR**

The FEIR states that no testing for placement of septic systems was done for DPR lots. RTC G-2-156 states the RDEIR does not analyze the impacts of individual septic

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systems. The FEIR states that the 20-acre to 30-acre lot sizes provide adequate room for filtration and “available dilution factors.” However, as noted in comments by Dr. Keller relating to the project’s treated wastewater discharges, when soil is saturated, any water that is applied must go somewhere. When soil is saturated there is no filtration, and dilution does not eliminate pollution. A Threshold of Significance is “degrade water quality.” (FEIR 9.3-24) Even diluted wastewater causes pollution “particularly after rain events and during periods of high groundwater.” (FEIR 9.15-21)

Additionally, Comment G-2-156 is about cumulative impacts of DPR’s existing, on-site antiquated / unpermitted / non-conforming septic systems and DPR’s proposed septic systems. The comment asked specific questions about existing septic systems i.e. whether they meet standards, whether they have been tested, and whether they contribute to water quality impacts. None of these significant, relevant environmental questions/comments were answered or responded to. The FEIR notes that the proposed septic systems on DPR south of 101 may release wastewater directly to surface and groundwater, “particularly after rain event and during periods of high groundwater.” (FEIR p. 9.15-21)

RTC G-2-157 notes baseline monitoring indicates “existing systems in the area may have had a localized impact to groundwater.” (p. 15-147) Considering the possible ongoing water quality impacts from existing septic systems and potential impacts from proposed septic systems noted on page 9.15-21, the FEIR is incomplete for omitting analysis of the cumulative water quality impacts of DPR’s existing and Alt. 1’s proposed septic systems.

In addition, the FEIR claims on page 15-146 that “the RDEIR does not address the placement of individual septic systems on Dos Pueblos Ranch properties.” However the FEIR does identify the location of septic systems on DPR. (Figure 8.3-1D) The septic system leach fields proposed under Alt. 1 on DPR south of 101 extend into archeological sites and prime agricultural soils. The FEIR does not address the impact of leach field construction and operation on archeological artifacts such as burials. Chemicals in the waste may alter the artifacts. Trenching for leach lines in these DP lots clearly may damage artifacts.

### **G-2-160 – Drying and Transport of Sludge**

Comment G-2-160 is that the wastewater treatment plant’s operations are not defined with enough clarity to enable FEIR evaluation of impacts. In response, the FEIR refers readers to RTC L-8-3. There is no RTC L-8-3 in the FEIR or errata. The FEIR (including responses to the RWQCB’s comment letter L-9) still fails to respond to the basic environmental question and comment G-2-160: what are the environmental impacts of drying, transporting and disposing of sewage sludge generated by the project. The FEIR is silent – and thus insufficient - on this important environmental issue.

### **G-2-161 – Sewage Lift Stations not Adequately Described; Impacts not Analyzed**

The FEIR claims it is not the intent of CEQA to analyze the impacts of infrastructure on energy demand, and uses this claim to justify its inadequate description of the wastewater

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system. There is no mention of lift stations on 9.3-29 - the description of the STP system and gravity collection system - where lift stations should be described. FEIR Sections 3.5.3 and 8.5.3 describing the MOU Project's and Alt. 1's sewage collection and treatment systems do not mention lift stations. Page 9.15-14 of the FEIR says there is a sewage pump station. Page 15-148 of the FEIR says "A lift station may be required to lift sewage to the wastewater treatment plant; however, specific details of the sewage treatment system infrastructure have not been finalized." While every detail need not be known to analyze impacts, a basic fact of whether or not sewage must be pumped uphill using million dollar lift station(s) is not a minor detail and is relevant to environmental impacts including potential sewage spills, grading impacts on archeological resources and habitats, visual impacts, and energy demand. The FEIR's project description is all over the place when it comes to whether expensive, energy intensive lift stations - which substantially increase risks of failures and sewage spills compared to gravity flow systems - are in or out, and are inadequate to ascertain the impacts of the lift station(s).

#### **G-2-162 – Sewage Lines not Adequately Described; Impacts not Analyzed**

The FEIR states that the location of sewage lines is not yet known, and that a CDP will be required for infrastructure in the coastal zone.

The lack of description of sewage infrastructure including lift stations, sludge drying and processing and sewage lines is troubling because it precludes meaningful analysis of the impacts of these project elements. Sewage and treated wastewater lines must be trenched and may impact habitats or archeological sites, but these impacts cannot be determined absent some description of these project elements.

The location of infrastructure like sewage lines relative to the coastal zone boundary is relevant to the project's impacts because the applicant proposes to build the inland lots before the Coastal Commission approves the coastal zone project elements. If the CCC does not approve certain elements such as sewage lines that may cross habitat or archeological sites, then homes could be built in the inland areas with no coastal zone infrastructure to serve them, causing unnecessary impacts to views, habitat, etc. The FEIR must clearly describe the location of the infrastructure relative to the coastal zone.

To avoid unnecessary impacts, construction (not merely occupation) of inland lots served by coastal zone infrastructure should be restricted until the CCC approves the coastal zone infrastructure for the inland lots. This phasing of the project can avoid unnecessary impacts of building inland lots that may never receive CDPs for roads or sewage lines.

#### **G-2-164 – Stockpiling Violations and related Work; Lots 49 and 50**

The County is aware that EDC inquired about the zoning violations on lots 49 and 50 and other zoning violations referred to in County-applicant correspondence attached to EDC's RDEIR letter. County staff Tom Figg and Steve Chase informed EDC's Brian Trautwein that the permits to correct the subject zoning violation would not be issued until the SBR

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Project was considered. Email correspondence between Tom Figg of the County and Brian Trautwein of EDC is in the County's administrative record for this project. This communication illustrates the link between the stockpiling, road and drainage improvement work and the project. The prior unpermitted work included transporting large quantities of dirt from Lot 132 to lots 49 and /or 50, sorting rock from the dirt and transporting the rock back through the coastal zone to build the drainage work to serve the inland lots. This activity links the already-completed, unpermitted work to the proposed project. The unpermitted work requires CDPs and permits appealable to the CCC. County reversal on this issue i.e. determination the stockpiling work does not require a County permit is no defense against appeal to the CCC.

The FEIR is unclear regarding, "This work" referenced in Comment G-2-164. This work is specifically defined in Comment G-2-164 as the grading and stockpiling of dirt from Lot 132 on lots 49 and 50, sorting rocks from the soil, and transporting material through the coastal zone to sort and to use the rocks on the drainage improvements i.e. gutters. This work is part of the project because it was done to create storm drainage gutters that will serve the proposed inland lots and must be analyzed in the FEIR.

The County bends over backwards to accommodate the applicant's development by ignoring documented zoning violations. Permitting the zoning violations requires County issuance of appealable coastal zone permits. The County must not allow as-built project elements to remain constructed without permits, as it proposes to do.

#### **G-2-165 – County must not exclude Already-Completed Project Components**

The FEIR refers readers to RTC S-2-8 for response to comment G-2-165. But RTC S-2-8 does not address the project's already-completed stone gutters in comment G-2-165; it speaks generally to development in the coastal zone.

RTC S-2-8 says that all development in the coastal zone will be required to get a CDP. However, the RTC G-2-164 indicates the grading bears "no relationship to proposed drainage improvements" indicating this grading and stockpiling and related work on Lot 49 and 50 – a documented County zoning violation – will not be subject to permitting as part of the project. The County cannot overlook project components because they have already been built. These components – the grading, stockpiling and gutter work are part of the project and while already constructed still require permits.

#### **G-2-166 - O&M Impacts not Analyzed**

The FEIR offers no new analysis of the impacts of operating and maintaining facilities such as the wastewater sludge drying, transport and disposal, and cleaning storm water facilities including detention basins which often are colonized by wetland and wetland species. The FEIR still fails to describe the impacts of operations and maintenance and thus does not describe to Comment G-2-166 regarding this relevant environmental point.

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**G-2-168 – FEIR does not Analyze Impacts of Proposed new Fire Station Mitigation Measure**

The FEIR does not respond the EDC and Surfrider Comment G-2-168 which asks what the impacts of building a new fire station would be. CEQA requires analysis of the impacts of mitigation measures.<sup>11</sup> However the FEIR completely overlooks the impacts of building the new fire station needed to serve this project. The FEIR is inadequate for failing to analyze the land use, visual, habitat, water quality, traffic, noise, etc., impacts of building a new fire station as proposed in Mitigation PS-2.

In response to RTC G-2-168, the FEIR refers readers to RTC G-2-532 and L-1-35. While these RTCs address the building of another fire station and whether that station would mitigate the projects' fire services impact, neither the RTCs nor the FEIR disclose the environmental impacts of building the fire station as required under CEQA.

**G-2-169 – Inadequate Mitigation for Significant Fire Protection Services Impacts (Also addresses G-2-531 – G-2-534)**

The FEIR states that since the fire protection "staging area" would only be required in the event that Fire Station 10 is not operational in time to serve the SBR project, no analysis of the staging area as a project feature is necessary. The FEIR does not analyze the biological, visual or water quality impacts of clearing / constructing a fire staging area pursuant to Mitigation PS-3.

First, analysis of the impacts of clearing a staging area is necessary because the FEIR relies on the staging area as a necessary mitigation measure in the event a fire station is not built. The staging area could remove sensitive habitats, impact cultural resources, and cause erosion, water quality impacts and visual impacts. By virtue of Mitigation PS-3, these impacts are reasonably foreseeable consequences of the project.

Moreover, since the cleared staging area would not be staffed by fire-fighting equipment it would be an ineffective and environmentally damaging mitigation measure. The FEIR fails to explain how an unstaffed, unequipped staging area would mitigate fire protection services impacts. To be effective at mitigating the fire protection services, this staging area must be staffed and equipped.

Second, RTC G-2-169 dismisses the comment in G-2-169 that the impacts of Fire Station 10 – a project mitigation measures – are not disclosed in the EIR. RTC G-2-169 makes the point that the impacts of known mitigation measures must be evaluated as project elements.<sup>12</sup> "Uncertain" measures such as - allegedly - the staging area need not be analyzed, according to the FEIR. However, much like the staging area, Fire Station 10 is a known, certain and necessary project mitigation measure / project element. The FEIR is deficient pursuant to CEQA because it does not evaluate the station's impacts, such as

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<sup>11</sup> CEQA Guidelines section 12126.4(a)(1)(D)

<sup>12</sup> CEQA Guidelines section 15126.4(a)(1)(D)

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enabling and inducing future development on the Gaviota Coast, visual, noise and biological resource impacts.

RTC G-2-531 states that “there are no emergency response standards for rural areas within Santa Barbara County” suggesting that because there are no standards, the impact is not significant. Lack of an emergency response time standard for rural areas does not negate the impact described in the FEIR. While the FEIR claims this impact would be temporary because the fire station and or staging area would be built, the fire station and staging area are not ensured. This FEIR does not commit nor does the County propose to commit the applicant (or any entity) to build the fire station. Absent evidence demonstrating the County’s ability to ensure effective mitigation prior to project occupancy, the EIR has no basis to find the project’s impact on fire protection services mitigated to less than significant. Absent assured, effective mitigation, Impact PS-5 is by definition a Class I impact.

#### **G-2-171 – RSUs are Part of the Project**

The FEIR refers readers to G-2-85. However RTC G-2-85 states that Comment G-2-85 is not related to CEQA. The RTC suggests the two comments are only about policy consistency. However, Comment G-2-171 states that “The REIR fails to analyze the environmental effects of the NPD’s allowance for RSUs or employee dwellings (up to 54 for the MOU Project and up to 72 for the Alternative 1 Project.)” Comment G-2-171 raises a substantive CEQA issue that requires response. The FEIR’s failure to respond to Comment G-2-171 is a flaw in the FEIR. FEIRs must respond to substantive comments on draft EIRs including in this instance Comment G-2-171 that the FEIR did not analyze the impacts of RSUs.

RSUs are included in the NPD and are reasonably foreseeable, along with their impacts e.g. water use, traffic, solid waste, and air pollution. Requirement RSUs be subject to approval of major CUPs (recommended by staff but absent from the EIR) will help ensure the RSUs’ impacts are reviewed – but only on a piecemeal lot-by-lot basis. There is no analysis of the RSUs’ reasonably foreseeable effects in the EIR even though the project’s proposed zoning ordinance would theoretically allow an RSU on every lot (in pace of guest houses).

#### **G-2-172 – The FEIR is Inconsistent regarding Treatment of Special Problems Area Designation**

The FEIR notes the project is changed to retain the site’s Special Problems Area (SPA) designation. However, findings to allow development of lots in the special problems area cannot be made. The FEIR does not specify how findings to approve development in a SPA can be made.

Moreover, the FEIR is internally inconsistent, claiming in newly added text on page 8-28 that the Special Problems Area will be “removed over those portions of the property

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within the NPD<sup>13</sup> designation.” This is inconsistent with the FEIR at page 15-50, which states the SPA designation will be retained.

#### **G-2-176 – Streambed Alteration Agreement needed for DP Creek**

The FEIR claims the creek water diversion does not require a stream bed alternation agreement. The stream water diversion does not currently have a streambed alteration agreement from DFG.<sup>14</sup> The water supply for the Alt. 1’s ACEs does not have proper permits and cannot be relied upon.

Due to Alt. 1’s reliance on SWP and shale well water, not all the SWP and shale well water will be available to serve agriculture, compromising the ACEs’ ability to mitigate impacts and enable the essential agricultural preserve contract rescission.

#### **G-2-173 – Sequencing Inland Approval Prior to Coastal Commission Approvals**

In response to Comment G-2-173, the FEIR refers readers to RTC S-2-8. RTC S-2-8 states that all coastal zone development will be subject to CDPs. However, Comment G-2-173 also states that CUPs are necessary for specific parts of the project e.g. the road to Lot 185, and that the RDEIR excludes reference to the necessary permits for all project elements. This shortcoming has not been rectified by the blanket statement all coastal zone development will be subject to CDPs. For instance the road to Lot 185 passes through the coastal zone into the inland areas and requires a CUP pursuant to the MOU. No mention of this permit requirement is made in the EIR even though the EIR purports to list all specific approvals and permits needed (see e.g. FEIR Section 8.9).

#### **G-2-177 – Cumulative Impacts of Tajiguas landfill and Project not Analyzed in FEIR**

The FEIR claims the cumulative impact analysis considers the Tajiguas Landfill Expansion Project in Sections 5.5.1.5 (MOU Project) and 10.5.1.5 (Alt. 1). Unfortunately, there are no such sections in the RDEIR or FEIR, and still no inclusion of the Tajiguas Landfill Expansion project in Table 8.10-2, Cumulative Projects. Mention of the landfill on page 9.15-25 does not discuss the cumulative effects of the SBR and Tajiguas Expansion projects including loss of habitat and impacts to views, traffic and land use along Highway 101. Given the nature of the projects’ visual and land use impacts including SBR’s Class I impacts, this is a significant omission from the FEIR’s cumulative impact analysis that must still be remedied.

#### **G-2-178 – Cumulative Impacts of Goleta General Plan Revision not Considered in FEIR**

The FEIR did not add the City of Goleta General Plan update to the list of cumulative projects. As noted in correspondence from the City of Goleta, the Goleta General Plan

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<sup>13</sup> The NPD designation is itself now outdated and confusing; the County purported to have changed NPD to Naples Town Site (NTS) in the FEIR but failed to make such changes, leading to additional confusion.

<sup>14</sup> DFG letter to DPR July 17, 2008

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draft update includes a policy that would specifically allow TDR from Naples into Goleta and is highly relevant to the Naples project.

The Goleta General Plan may also affect agricultural land conversion, causing a cumulative impact with Naples.

Both projects share Highway 101 as the major transportation corridor running through the projects. Cumulative traffic impacts from the Goleta General Plan update and from the Naples project (SBR) are a clearly identifiable cumulative impact excluded from the FEIR.

**G-2-179 – The FEIR fails to Analyze Impacts of NPD allowance to add Makar and Morehart to NPD**

RTC G-2-179 illustrates that the EIR preparers did not read RDEIR comments closely. Comment G-2-179 is clear that the “Makar and Morehart projects are planned on lands ... that could be annexed into the NPD pursuant to the NPD’s language. ... Development of these areas is envisioned and provided for under the proposed NPD and should therefore be analyzed as part of the subject project.”

Comment G-2-179 is about the RDEIR excluding analysis of the foreseeable impacts of building-out Morehart and Makar pursuant to the NPD section 35-xxx.2. Comment G-2-179 was not that these projects should be in the cumulative impact analysis because as noted, they are in the cumulative impact list. Since the proposed NPD allows for these properties to be included in the NPD, such inclusion is reasonably foreseeable. Failure to analyze the effects of building-out Makar and Morehart pursuant to the proposed NPD standards is a significant omission.

**G-2-181 re: Inadequate Environmental Baseline for Impact Analysis**

I response to Comment G-2-181, the FEIR refers readers to RTC S-2-62 and G-2-725. RTC G-2-725 has nothing to do with environmental baseline issues.

RTC S-2-62 claims that environmental baseline information is provided throughout the FEIR’s impact analysis sections. This conclusory response lacks understanding of and substantive response to Comment G-2-181.

**G-2-191, G-2-201 and G-2-202 – Treated Wastewater Discharges Threaten the Coastal Bluff**

The FEIR notes that soils are well drained, but fails to respond to geologist Dr. Norris and to hydrologist Dr. Barry Keller who noted that the bedrock underlying the soils may direct water to the bluff where it may accelerate erosion. The FEIR’s responses to Comments G-2-191, -201 and -202 note that the project would minimize excess irrigation and runoff but do not address the larger and much more voluminous treated wastewater discharges. As proposed but now unclearly defined, these discharges would occur on the coastal bluff soils, atop the lower-permeability Monterey Shale. Dr Keller

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considered how the increased amount of water to be applied to the coastal bluff may migrate and affect the bluff but the FEIR lacks this analysis. The FEIR includes no analysis or evidence that soil moisture levels and erosion will not be increased from the discharge or treated wastewater onto the bluff. Therefore the brief response fails to respond to the major concern raised in the comment: wastewater discharges migrating through soil atop the shale to the coastal bluff, day-lighting on the bluff and causing bluff erosion.

The FEIR is inconsistent in its discussion of treated wastewater discharges, claiming on one hand that all treated wastewater would be discharged onto the surface including on Lot 93 (FEIR page 9.3-29 and -30), on another hand that treated wastewater would be discharged of as subsurface irrigation, and on yet another hand that treated wastewater would be placed into undefined seepage pits when the soil is too wet to irrigate orchards. The project description is unstable preventing proper analysis of the impacts of treated wastewater discharges.

#### **G-2-203 – Storm Drains Funnel Water onto Fragile Eroding Coastal Bluff**

The FEIR fails to respond to EDC's and Surfrider's comments that the storm drains for the homes on the bluff may direct water onto the bluff in specific locations, act as French drains further concentrating water in eroding bluff gullies, and increase erosion. The FEIR refers readers to RTC L-3-6 which only refers to the storm drain for the coastal staircase structure. This storm drain is different from the homes' storm drains. The homes' storm drains collect runoff and may collect permanent subsurface water percolating from irrigated areas such as lawns. The concern remains that these storm drains depicted in the FEIR figures will direct water to specific locations in gullies on the bluffs. As noted by Dr Norris, increasing the bluff's water content can decrease geological stability, exacerbate erosion and pose safety hazards to beach users.

Further, while the staircase storm drain is described as piping water to the base of the cliff, the estates' storm drains discharge runoff and irrigation water in eroding gullies on the bluff face, not at its base. (FEIR Figs. 8.3-1A and 8.3-1C) Discharging water on a bluff face is a greater erosion threat than piping water to the base of the bluff. The FEIR fails to address EDC's and Surfrider's comments about the erosion impacts from the bluff-top estates' storm drains. The FEIR is specifically not responsive to Comment G-2-203 or to the hydrologist's and geologist's written and verbal testimony regarding "spring sapping" on the bluff and an increase in bluff erosion.

#### **G-2-204 – FEIR fails to consider a more Effective Measure to Prevent Impacts of Future Seawalls**

The FEIR notes that the "project proposes measures to protect against of bluff erosion," but in its simplicity the RTC misses the explicit point of comment G-2-204 i.e. that the proposed measures to limit future seawall construction do not ensure that the impact is mitigated below a level of significance. The proposed measure – a condition of approval – can be overturned by a vote of any future board of supervisors. The measure EDC and

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Surfrider propose on the other hand – lifted straight from the Coastal Commission’s proposed conditions for the adjacent ARCO project – is a deed restriction that cannot be overturned by a future board to allow ecologically destructive sea walls. The FEIR’s proposed measure does not assure protection of the coast from a seawall into the future, but a deed restriction is effective. Unfortunately, RTC G-2-204 in its brevity failed to address comment G-2-204 because it failed to distinguish between the effectiveness and permanency of the FEIR’s proposed measure and a permanent deed restriction such as that drafted by the CCC for the ARCO project.

**G-2-206 – FEIR Incorrectly claims Project Involves no Disturbance along Steep Creek Banks or the Coastal Bluff**

The FEIR RTC G-2-206 does not explain away a factual inconsistency presented in the FEIR. The FEIR claims on 15-158 that the project design avoids disturbance along steep slopes and creek banks, and limits sediment production and erosion to relatively flat areas. However the FEIR Figure 8-3.1F shows that the design involves grading along steep banks for the hairpin turns proposed in drainages / stream banks in Lots DP-01, DP-04 and DP-05. The bluff staircase involves disturbance on a very steep slope, but the FEIR continues to falsely claim in contradiction with its own maps that “the project design avoids grading and disturbance along steep stream banks and the coastal bluffs.”

**G-2-207 – FEIR Factually Incorrect: DP Creek and Tributary are Defined as Major Streams**

The FEIR response to comment is factually incorrect in claiming that Dos Pueblos Creek and its tributary crossing Lot 57 are considered minor creeks. (FEIR page 15-58) The LCP notes Dos Pueblos Creek is a perennial creek distinguishing it from intermittent creeks. (LCP p. 135) The County Conservation Element identifies DP Creeks as one of the most important creeks deserving of greater protection. The Article II Coastal Zoning Ordinance defines “major” stream as having a total watershed of 500 acres or more. The EIR notes in Section 10 that “With the exception of Dos Pueblos Creek and its tributary crossing Lot 57, all of the drainages within the Alternative 1 area are considered minor streams.” (Proposed Final EIR page 10-54) The RTC is therefore factually incorrect and internally inconsistent to claim on 15-58 that Dos Pueblos Creek with its 4,655 acre watershed is minor creek and that a 50-foot setback complies with LCP Policy 9-37.

**G-2-208 – Water Quality Degradation is Significant Impact**

The FEIR is satisfied with mitigating water quality and sedimentation impacts caused by rainy season grading when these impacts can be avoided by prohibiting grading during winter rains. Impact *avoidance* is the preferred form of mitigation because unlike impact *minimization*, no impact occurs when avoidance is feasible.

The Threshold of significance for water quality impacts include: “degrade water quality.” Therefore measures which reduce but do not avoid water quality degradation do not avoid significant impacts.

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### **G-2-212 – ACE Water Supply lacks DFG Permit**

The FEIR does not respond to EDC's specific request about Department of Fish Game streambed alteration agreements for the existing water diversion. These agreements are relevant to the Alt. 1 ACEs' water supply. If the water supply is not available or seasonally less available (e.g. to support steelhead pursuant to Fish and Game Codes) this will very likely adversely impact agricultural water supplies. Lack of Fish and Game approval of the creek water diversion throws into question this significant water supply for the DPR ACEs. The lead agency must ensure the water supplies are permitted and thus available for the life of the project before it can certify the FEIR and make findings for approval of a project i.e. Alt. 1.

### **G-2-215 – FEIR fails to Respond to Comment about Water Treatment Plant Impacts**

The FEIR RTC mistakes the "water treatment plant" – the subject of Comment G-2-215 - for the project's proposed "wastewater treatment plants." As a result of this misreading of our letter whether due to lack of care or hurried review, RTC G-2-215 is off-point. The RTC is unresponsive to the comment that the RDEIR does not describe the conditions related to the "water treatment plant's potential use of chemicals and/or wastewater discharges." The FEIR must not omit impact analyses and responses to substantive comments; the FEIR be completed with responses to substantive comments before the FEIR can be certified.

### **G-2-217 – FEIR Lacks Baseline Floodplain Maps for Project Site**

The FEIR still does not explain why in the absence of FEMA National FIRM maps floodplains were not mapped or estimated for the projects' sites. If existing non-conforming or permitted structures onsite (e.g. along Dos Pueblos Creek corridor in Alt. 1) or offsite (e.g. along the tributary to Dos Pueblos Creek north of HWY 101) are in a floodplain or floodway and the development in the watersheds would increase runoff then this is a potentially significant impact. However failure to respond by including essential floodplain mapping deprives decision-makers and the public of important information about the projects' impacts.

### **G-2-218 – FEIR Fails to Describe Fish and Game Code 5937 as part of Regulatory Baseline**

The FEIR claims that the referenced Fish and Game Code section 5937 is in FEIR sections 3.4.3.1 (MOU Project) and 9.4.3.1 (Alt. 1 Project). However, while the FEIR references some Fish and Game codes, the FEIR still fails to reference Fish and Game Code section 5937 – the subject of Comment G-2-218. This oversight by the FEIR preparers is significant because it omits from the EIR's regulatory setting description a relevant law which governs operation of the creek diversion – a major water supply for Alt. 1's ACEs. If the creek diversion must be brought into compliance with Fish and Game Code 5937, then there may be less water available for agriculture, especially given the Alt. 1 Project's reliance on SWP and shale wells.

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**G-2-219 – FEIR Mischaracterizes LCP and Coastal Act Water Quality Provisions**

The FEIR claims that protection of water quality is an adequate reference to anti-degradation. However as applied in the FEIR, protection of water quality allows degradation and indeed degradation of water quality comprises two adverse Class II project impacts (Impacts WQ-1 and WQ-3) which are not avoided. The EIR grossly mischaracterizes the Coastal Act's no-degradation water quality standards as allowing degradation of coastal water quality in creeks, groundwater and the ocean.

**G-2-220 – Steelhead in DP Creek**

See F-1-1 above.

Southern Steelhead have not been extirpated from Dos Pueblos Creek. The FEIR identifies rainbow trout in the watershed. These "trout" are juvenile steelhead (*O. mykiss*). There are no other trout in Santa Barbara front country creeks. Steelhead that have not yet been to the ocean are resident rainbow trout. Rainbow trout and steelhead are the same species in coastal California creeks. In addition to juvenile steelhead, EDC's biologist identified an adult steelhead above the impediment at Highway 101 migrating towards the ocean. This observation has been relied upon by NOAA the lead federal agency managing Southern Steelhead and is documented in the record. The FEIR claims there are "man-made barriers" that block steelhead migration. The CCP report by Matt Stoecker – the definitive work on this topic - notes that the "barriers" to steelhead migration are not complete barriers but are instead impediments which can be navigated periodically. These impediments must be removed for steelhead to thrive. However, the FEIR's statements that steelhead were extirpated and that the impediments are impassable barriers are not supported by the evidence in the record. The evidence in the EIR and in the record shows there are resident rainbow trout i.e. resident steelhead in DP Creek and adult steelhead still access DP Creek above and below the Highway 101 impediment. By excluding steelhead, the FEIR paints an inaccurate baseline which compromises the FEIR's biological impact analyses.

**G-2-221 – DP Creek Diversion is Necessary Part of Alt. 1**

The FEIR notes that diverted Dos Pueblos Creek water will not be used for new homes under the projects. However, diverted creek water is necessary to serve existing or potential expanded agriculture in the proposed ACE. Alt. 1 requires the ACEs for mitigation and to rescind the agricultural preserve contract, and the ACE requires the creek diversion for irrigation. The creek diversion is therefore a necessary part of Alt. 1.

**G-2-222 – FEIR excludes analysis of Projects' consistency with LCP Policies 2-2, 2-3, 2-5 and 2-6; Violation of Policy 3-19 Triggers Class I Water Quality Impact**

First, in reply to Comment G-2-222, the FEIR says that "greater detail is provided in sections 3.3.2.3.1 and 9.3.2.3.1." However these sections also fail to include the relevant LCP policies presented in EDC's and Surfrider's comments including LCP Policies 2-2, 2-3, 2-5 and 2-6 related to protection of water resources.

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Second, while the RTC notes that the “RDEIR does consider the provisions of Policy 3-19, which requires that new development not result in degradation of the water quality” the RDEIR does not apply this policy’s plain language standard. The County Thresholds of Significance listed on FEIR p. 9.3-24 state that “a project is considered to have a significant adverse impact on the environment if it would: violate any water quality standard.” The thresholds also state that a project is considered to have a significant adverse impact if it “would otherwise degrade water quality.” The FEIR finds the project will degrade the water quality due to runoff from the development and altered watersheds and possibly from septic systems “particularly after rain events and during periods of high groundwater.” (Impact WQ-1 and WQ-3; see also p. 9.15-21) This degradation exceeds the no degradation standard set forth in the County’s thresholds of significance i.e. “otherwise degrade water quality.” Therefore the FEIR must find that water pollution is a significant (i.e. Class I) residual environmental impact of the proposed sprawling project.

#### **G-2-223 – Water Quality Mitigation Measures do not eliminate Significant Impact**

The FEIR suggests that the “measures included in FEIR sections 3.3.3.2 and 9.3.3.4 are adequate for the purposes of the CEQA.” However CEQA requires that significant environmental impacts be avoided if feasible or mitigated to the maximum extent feasible. The proposed measures come up far short of the measures imposed by the Coastal Commission to protect water quality from runoff (EDC Comment G-2-250 and March 5, 2005 Bay View project Coastal Commission Staff Report – Special Condition 9.) While the FEIR’s measures offer some minimal help in reducing runoff, CEQA requires that significant impacts (i.e. degradation of water quality) be avoided if feasible or mitigated to the extent feasible. An EIR does not have to consider every feasible alternative or mitigation measure. However, when a feasible mitigation measure is proposed that will substantially lessen a significant impact, the lead agency must analyze and include the measure – or find it infeasible. The MOU and Alt. 1 projects’ significant impacts to coastal creek and ocean water quality can and must be mitigated substantially further through application of the feasible Bay View project special conditions employed by the Coastal Commission – an agency specifically charged with protecting coastal waters.

#### **G-2-224 – LCP Policy 3-19 is the County’s – not RWQCB’s - Policy**

In response to EDC’s comment that the FEIR fails to acknowledge LCP Policy 3-19 as a standard for water quality and thus as a Threshold of Significance, the FEIR claims that the RWQCB enforces the anti-degradation policy. However the RWQCB does not enforce Policy 3-19 and is not the lead agency for this EIR. These are Santa Barbara County’s duties. Policy 3-19’s plain language and clear intent is that water quality degradation “shall not result from development of the site.” Santa Barbara is responsible for ensuring the SBR project complies with Policy 3-19, and for identifying a Class I impact to water quality unless the project complies.

#### **G-2-225 – Water Quality Degradation Triggers Thresholds of Significance**

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The FEIR claims that thresholds of significance are met through compliance with RWQCB regulatory programs incorporated into the County's Stormwater Management Program. However, the thresholds on page 9.3-24 plainly state that the project will be considered to cause a significant environment impact if it degrades water quality. The FEIR's interpretation of this threshold allows for degradation of water quality to not be considered a significant environmental impact (i.e. Class II) – the opposite of the thresholds plain language. The County must properly interpret and apply its water quality thresholds to identify a significant adverse environmental impact (Class I) since the project will degrade water quality, and must avoid or mitigate the impact to the maximum extent feasible.

### **G-2-226 – Creek Diversion and Impacts to Creek Flows**

See response to section 13.4.

### **G-2-228 – Lack of Floodplain Map renders Hydrology Baseline Insufficient**

Failure to include a map showing whether existing structures are in the floodplain or to otherwise describe the location of existing structures relative to the floodplain represents an inadequate baseline and makes it impossible to determine if existing homes are threatened.

### **G-2-230 – Impacts of Treated Wastewater Discharges are not Mitigated**

The FEIR fails to respond to Comment G-2-230 and Dr. Barry Keller's comment that during the rainy season and periods of high groundwater the discharge of treated wastewater can have hydrological effects. No analysis of water quality impacts from treated wastewater discharges on the bluff has been made thus there is no evidence for the conclusory statement that wastewater discharge will not cause any hydrological effects e.g. during times of heavy rain when the soil is saturated.

First, discharges of treated wastewater onto lots on the Coastal Terrace such as discharges onto Lot 97<sup>15</sup> have the potential to cause the effects identified by Dr. Keller and Dr. Norris. These impacts were not analyzed in the FEIR which dismisses Dr. Keller's and Dr. Norris' comments.

In addition RTC G-2-230 suggests that all wastewater discharges will be for "subsurface irrigation of orchards." (FEIR page 15-170) The FEIR is internally inconsistent and misleading. The FEIR says treated wastewater will be discharged on the bluff in Lot 97. (FEIR page 9.3-30) The FEIR contradicts itself again by noting that the project has changed – there will be seepage pits established to discharge treated wastewater during rainy conditions when it cannot be discharged as subsurface irrigation or to water orchards. (FEIR p. 9.15-14) The locations of these seepage pits are not shown or described. Their locations relative to fractured bedrock, and their capacity to dispose of

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<sup>15</sup> FEIR page 9.3-30 identifies coastal terrace lot 97 as a location for surface discharge of treated wastewater.

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wastewater during the entire rainy season, are not described. Seepage pits may fill with rain water or groundwater during the rainy season and thus not have capacity to discharge treated wastewater without impacts to water quality or bluff stability. The FEIR contains no analysis of these newly-proposed and inadequately described seepage pits, their effectiveness to help get rid of treated wastewater when the groundwater is high or the soil is saturated, or their hydrological or geological impacts. The newly-proposed seepage pits must be described adequately to determine whether they may affect groundwater quality or geological stability due to, for instance, their locations. Dr. Norris and Dr. Keller found that the wastewater discharges could migrate to the bluff, surface and cause hydrological and/or geological effects. Nothing in the FEIR including the new, vaguely described seepage pits changes or mitigates these experts' conclusion that wastewater discharges may migrate through the soil - especially during times of high rainfall - and may cause hydrological and or geological effects.

#### **G-2-231 – FEIR Lacks Description of proposed Sewage Sludge Operations**

Response G-2-231 states that responses are included in the responses to the RWQCB's letter. However, responses to the RWQCB letter do not address EDC and Surfrider's specific comments about sludge drying (is it dried on or offsite) and transport, TDS impacts, surface water impacts from discharges during high and low groundwater conditions and saturated soil conditions, impacts on water quality in OSCEs e.g. Lot 48, or impacts of lift stations. The FEIR fails to respond to these comments.

#### **G-2-232 – FEIR Does not Describe Treated Wastewater Effects on Wetlands**

The FEIR does not address the comment that discharged treated wastewater may expand wetlands. The RTC does not specify where treated wastewater will be discharged during rainy times (i.e. the newly proposed seepage pits) and does not describe the soils and geology conditions of those locations. The geology and soils are relevant to whether the treated wastewater, once discharged, may flow to an area on the surface and become a wetland or an expanded wetland. The FEIR does not respond to EDC's comment that the vast volume of discharged wastewater from 54 to 72 homes, etc., may increase the size of wetlands found throughout the property.

#### **G-2-235 – Instead of Reducing Water Pollution, the FEIR allows Additional Homes to use Septic Systems**

The FEIR's Mitigation WQ-2 for Alt. 1 still allows there to be more septic systems than the FEIR describes for Alt.1. Instead of limiting septic systems to DP-11 and the DP lots south of Highway 101 as proposed under Alt. 1, or prohibiting septic systems on DPR, *Mitigation WQ-2 allows for additional septic systems on SBR and DPR north of 101 if avoiding the use of septic systems is infeasible.*

If avoiding the use of septic systems is infeasible in areas of concern to RWQCB and EHS, then these lots should not be built. It is feasible to avoid building certain lots instead of jeopardizing environmental and human health by allowing more septic systems than proposed under Alt. 1.

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**G-2-237 – Newly proposed larger Leach Fields on DPR Threatened Archeological Resources.**

The FEIR refers to larger leach fields on DPR lots to ensure adequate wastewater treatment and disposal. This is new information that substantially increases the impacts to archeology in the DP lots south of 101 including DP-15, DP-16 and DP-20. The FEIR notes in section 13.3 that significant archeological resources are present in these lots. The FEIR finds that limiting development envelopes to certain parts of lots e.g. Lots DP-15 and -20 is necessary to mitigate archeological impacts. But now the public is informed for the first time that the construction envelopes for leach fields have to be larger for the DP lots south of Highway 101. This new information results in increased archeological impacts and triggers a need to recirculate the EIR.

**G-2-238 – Wastewater Discharges Degrade Water Quality and Violate Policy 3-19**

The FEIR claims that the RDEIR provides an adequate analysis of impacts of the use of septic systems and dry wells, and that the septic systems and dry wells will have to comply with Coastal Policies of the County. However, the FEIR finds that the septic systems and dry wells might degrade water quality (FEIR page 9.15-21). County LCP Policy 3-19 prohibits degradation of coastal water quality. If the FEIR finds the projects' septic systems will degrade water quality, the FEIR is illogical and flawed to claim that the septic systems and dry wells can be found consistent with Coastal Policies including Policy 3-19 which prohibits water quality degradation.

**G-2-240 – Boring Sewage Lines under Highway 101 Poses Impacts not Analyzed in the FEIR**

The FEIR notes that drilling for sewage lines under Highway 101 may be required. Yet the impacts of such drilling – including release of drilling muds recognized in RTC G-2-240 – are not analyzed or mitigated in the FEIR. The FEIR's recognition of this impact but deferral of analysis and mitigation violates CEQA's basic requirements to disclose and mitigate impacts.

**G-2-241 – FEIR fails to analyze Setbacks between Proposed Septic Systems and Wetlands and Streams**

The FEIR defers identification of the locations of septic systems and whether they have adequate setbacks from wetlands and streams. This basic information – the location of development and setbacks to wetlands and streams, is an essential part of any EIR. Omission of this basic information and explicit deferral of the information and analysis to a later time – after EIR certification – defeats CEQA's dual purposes of informing the public and mitigating impacts.

**G-2-242 and G-2-248 – FEIR fails to Analyze Cumulative Impacts of Existing and Proposed Septic Systems**

The RTC does not respond to the concern raised: that there are cumulative impacts on water quality from the existing unpermitted septic systems and the proposed project.

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These cumulative impacts of then existing septic systems and the project were not analyzed in RDEIR as noted in comment G-2-242, and are not identified or analyzed in the FEIR. Instead the discussion is a vague generalization of cumulative water quality impacts from development across the south coast. This overly-general assessment fails to capture what is happening on the ground at DPR where existing antiquated septic systems may add to the project's impacts – a cumulative impact that remains to be analyzed.

The FEIR defers the discussion of cumulative impacts of existing and planned septic systems to the future when "A minor CUP as well as a CDP will be required." Analysis of cumulative water quality impacts is needed prior to EIR certification because if there are problems with the existing unpermitted septic systems on and near DPR, it would make little sense to approve Alt. 1 and add to the cumulative problem. Unfortunately the cumulative impacts of existing unpermitted septic systems and proposed systems were not analyzed so this information is unavailable to inform decision-makers regarding impacts, mitigation measures, and the value of SBR-only alternatives that avoid cumulative septic system issues on DPR.

#### **G-2-247 – Formation of CSD to Manage STP Operations**

Formation of a CSD as proposed by EHS, RWQCB and EDC would help ensure effective mitigation measures for water quality by ensuring adequate funding is available. Requirements for a CSD are relevant to the EIR's role of identifying feasible effective measures to mitigate environmental impacts.

#### **G-2-249 – Mitigation WQ-1a does not require implementation of specific measures or include performance standards assuring implementation of effective measures**

The problem with the FEIR's Mitigation WQ-1a is it requires that only "some or all of the following specific mitigation measures" be implemented. Thus, implementation of any two measures would satisfy mitigation WQ-1a. Instead, the measure probably intends to – and should – state that *all* the following measures must be implemented. Otherwise, only 2 of the 37 specific measures may be implemented. Only implementing 2 of the 37 specific measures would not mitigate water quality impacts to below significance or to the extent feasible - but unfortunately would fulfill the language of Mitigation WQ-1a.

#### **G-2-250 – Water Quality Mitigation Measures merely Provide Examples of Mitigation Measures and do not Require Implementation of Listed Measures**

EDC supports the intent of Mitigations WQ-1a, WQ-1b and WQ-1c. However the FEIR still does not include performance standards to ensure Mitigation Measures WQ-1a's and WQ-1b's intent is fulfilled. The FEIR notes the performance standards are in the Stormwater Management Plan on the County's website but this is not part of the FEIR. The FEIR merely requires implementation of some of the specific mitigation measures listed in Mitigation Measures WQ-1a and WQ-1b. See response to RTC G-2-249 above.

Mitigation Measure WQ-1b requires a combination of structural and non-structural measures and BMPs, and lists several good measures, but does not require their

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implementation. Instead, the FEIR uses these as examples of measures that may be implemented. The FEIR stops short of requiring the specified measures and states: "LID elements *such as* bioswales, bioretention, permeable pavement, tree box filters and cisterns shall be incorporated..." (Emphasis added). The measure should specify which example measures will be implemented rather than leaving it to decision-makers and the public to guess which, if any, of the example measures will actually be implemented - and whether Mitigations WQ-1a and WQ-1b will be effective.

The FEIR states that comment G-2-250 provides no new information that would clarify the analysis. However the comment provided specific mitigation measures used by the CCC to mitigate water the Bay View project's quality impacts and to ensure the project complied with coastal policies. These are thus feasible, specifically-required measures (as opposed to example measures) deemed necessary by the CCC to approve a coastal zone project. The measures proposed in Comment G-2-250 go further than the FEIR's mitigation measures by requiring specific actions and prohibitions, and thus further mitigate significant water quality impacts identified in the EIR. These measures are necessary to mitigate significant water quality impacts and should be required mitigation rather than ineffective and unenforceable recommendations.

### **G-2-252 – Coastal Terrace Drainages Threatened by Increased Runoff and Hydromodifications**

The FEIR agrees with EDC's and Surfrider's Comment G-2-252 that hydromodification would occur if the projects are built. The FEIR however incorrectly states that "The Coastal Terrace (Watershed W-7) does not have a defined watercourse that would be subject to hydromodification." The FEIR identifies several drainages within the Coastal Terrace. (FEIR Figs. 9.2-4 and 9.4-1B) Many of these drainages have wetlands along their defined stream beds identified by Holland in 2002 and by SAIC in 2005. (FEIR Fig. 9.4-2) These drainages discharge over the Coastal Terrace bluff. Increased runoff rates acknowledged in RTC G-2-252 would increase erosive forces and erosion of the drainages and the coastal bluff: a potentially significant hydromodification impact that was not considered in the FEIR.

While the RTC includes the list of example measures in WQ-1a and WQ-1b that may be implemented, these measures are not required. Moreover, these measures address water quality not hydromodification impacts. The FEIR improperly dismisses the need for a discussion of hydromodification impacts in the Coastal Terrace, where accelerated runoff from the impermeable surfaces into numerous wetland-containing drainages will increase erosion of the fragile coastal bluffs.

### **Biological Resources**

#### **G-2-254 (also applies to G-2-255 and G-2-256) – Baseline Biological Surveys are not consistent with Scientific Standards**

##### Raptors

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The FEIR refers readers to RTC S-2-45 for the response to comments that the raptor surveys were inadequate and do not comply with CCC raptor survey protocol. However RTC S-2-45 is not related to adequacy of the EIR's *baseline* raptor surveys. While the RTC S-2-45 refers to *future* raptor surveys to ensure construction avoids nests, it does nothing to respond to the criticism in G-2-254 that baseline surveys done to inform the FEIR, public and decision-makers did not meet CCC protocol. These surveys did not follow any scientific standards for raptor surveys and remain insufficient to establish an adequate baseline for raptors.

Moreover, now the EIR is outdated; the inadequate raptor surveys are now three and a half years old. The recirculated draft and proposed final EIR are deficient for failing to include up-to-date raptor surveys which follow established scientific standards such as those in the CCC protocol. The FEIR is flawed and deficient for not responding to Comment G-2-254's specific criticisms of the EIR's baseline raptor surveys.

#### Wetlands

The RTC refers readers to G-3-95 through G-3-97 for responses to comments that wetland delineations were not done according to scientific standards such as the methodology spelled out in the County's Environmental Thresholds and Guidelines Manual. As noted in comments regarding the RDEIR, the County's Thresholds and Guidelines Manual describes specific scientific standards for wetland delineation and impact analyses in County EIRs. The Guidelines are specific that wetlands are to be delineated using U.S. Army Corps of Engineers' methodology. Admitted failure by this EIR to delineate wetlands for the EIR undermines credibility in the FEIR. It is deficient for failing to delineate the extent of wetlands because it did not follow scientific standards such as those in the County Thresholds and Guidelines Manual adopted for this specific purpose of ensuring adequate baseline wetland delineations. The FEIR acknowledges some wetlands were not delineated and proposes future wetland delineations after EIR certification and project approval. Promises of post-EIR certification wetland delineations do not ensure the EIR is complete and do not provide sufficient information to groups like EDC and Surfrider seeking to understand impacts and protect the yet-to-be delineated coastal wetlands.

#### Native Grasslands

The FEIR refers readers to S-6-4 for a very brief response to comments criticizing native grassland mapping methodologies as inconsistent with County, DFG and scientific standards for mapping native grasslands. The RTC S-6-4 states that SAIC did properly map native grasslands using the proper definition of "native grassland species." While SAIC did identify native grassland species including some native non-grass species that occur in native grasslands, the non-grass species were not counted in measurements of percent cover of native grassland species. Thus SAIC did not follow established scientific standards for mapping native grasslands.

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CEQA Responsible Agency California DFG remains highly critical of the FEIR's native grassland maps because the surveys did not follow scientific standards.

SAIC's 2004 – 2005 native grassland mapping is outdated. Furthermore, the surveys were not done at the proper time of year to capture all native grassland species – violating basic scientific standards for biological surveys. For instance, according to botanist David Magney in June 2008 the SBR grasslands are covered in many areas over 50% by tar plant, *Hemizonia fasciculata*, which is a native grassland species according to the only substantial evidence in the record on this point. (Magney, 2008; Painter, 2008) Were the grasslands on SBR to be surveyed for native grassland species now (July 31, 2008), larger areas would qualify as native grasslands, including Lots 122 and 119 on the Coastal Terrace, because they support more than 10% cover of native grassland species including tar plant, and native grasses depicted on Fig. 2 of SAIC 2005.

In addition, SAIC never employed any native grassland surveys and transects on DPR, again violating basic scientific principles of biological surveys. SAIC 2005 is limited to SBR. Native grasses and other native grassland species were encountered on DPR, but grasslands were not quantitatively surveyed on DPR to identify native grasslands using the County's 10% relative cover standard. Therefore the FEIR's native grassland surveys and maps remain inadequate because they failed to follow basic scientific standards for surveys; they were done at the wrong time of the year to capture certain dominant native grassland species such as tar plant, excluded certain native grassland species, and excluded DPR.

#### **G-2-257 – Failure to map two of the seven seasonal water bodies**

The FEIR notes that two of the seven seasonal water bodies identified on SBR south of Highway 101 in addition to those previously delineated by SAIC, were dry in fall 2006 and were therefore not mapped in Fig. 3.4-4. Wetlands such as vernal pools and freshwater marshes often dry out in arid climates in the fall but this does not mean they are not wetlands. All seasonal water bodies – unless delineated pursuant to the County's adopted methodology and proven to not be wetlands – must be mapped and analyzed. Exclusion of these two of seven seasonal water bodies from Fig. 3.4-4 without supporting scientific evidence i.e. wetland delineations is a serious omission from the FEIR's baseline environmental setting.

#### **G-2-258 – Wetland buffers are not 100-feet as stated in FEIR**

Comment G-2-258 identifies an inadequate wetland buffer in Lot 93; the buffer is not 100 feet and therefore does not comply with LCP Policy 9-9 or adequately protect the wetland in Lot 93. The FEIR refers readers to RTC G-3-102. RTC G-3-102 states wetlands have 100-foot buffers. The setback for wetland SAIC 4 in Fig. 9.4-3 is about 100 feet from the proposed road. However the road's development envelope shown in Fig. 9.4-1B east of the proposed road just south of the railroad tracks extends to near (within approximately 20 feet) wetland SAIC 4 depicted in Fig. 9.4-3 in the northwest portion of Lot 93. In

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addition, the proposed 16-foot wide paved trail in Fig. 9.4-B would go through or next to this wetland without a 100-foot buffer.

The FEIR is inaccurate and deficient for claiming the wetland in Lot 93 has a 100-foot buffer. Additionally, all seasonal water bodies and wetlands still have not been delineated pursuant to scientific standards or pursuant to the County's adopted methodology for EIR wetland delineations, so it is not possible to determine whether proposed development is 100 feet from all wetlands.

**G-2-259 – Inadequate analysis and depiction of wetland impacts**

The FEIR overlays maps of the development envelopes on habitat maps except wetlands. Without showing the development plans on the same map as wetlands, it is difficult to understand the project's potential direct and indirect impacts to wetlands. EDC and Surfrider had to closely compare Figures 9.4-1, 9.4-2 and 9.4-3 to try to ascertain whether the development would impact wetlands e.g. Lot 93. The FEIR suggests that Table 9.4-5 and Impact Bio-8 provide enough written information to describe impacts to wetlands. However as noted above there appears to be direct wetland impact in Lot 93 (the paved trail). Furthermore, indirect impacts such as alteration of watersheds draining into wetlands are not described in the FEIR. Direct and indirect impacts to wetlands would be apparent if the FEIR included one map showing wetlands and project components. Failure to map wetlands and project structure on one map renders the EIR's wetland impact analysis unclear.

**G-2-261 (also applies to G-3-100 and G-3-101) – Fig. 3.4-4 not a “Compilation” of wetlands including SAIC’s work**

The FEIR clarifies that only one of the previously delineated SAIC wetlands are being removed based on the area not meeting wetland parameters.

The FEIR page 3.4-63 incorrectly calls Figure 3.4-4 a “compilation of information from the original SAIC work and subsequent surveys.” Figure 3.4-4 excludes over 40 wetlands delineated by SAIC. Calling Fig 3.4-4 a compilation of SAIC's work and other wetland surveys is misleading and inaccurate. The FEIR remains inaccurate and deficient with regards to existing wetlands.

**G-2-264 (also addresses G-3-23, -44, -46, -47, -48 and -49) - Native Grasslands not mapped according to Scientific Standards or County and DFG Definition**

See G-2-254 – G-2-256.

FEIR RTC G-3-47 and -47 states that, “no native grassland areas were mapped” north of Highway 101. However, as noted in RDEIR comments, EDC's biologist saw large areas of native grassland species fasciculated tar plant north and south of Highway 101 on site visits. Botanist David Magney identified areas with high percent cover of this species in June 2008 and submitted photos into the record on 6-30-08. Tar plant comes out in the summer, after SAIC's spring surveys. Had SAIC surveyed the proper time of year when

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tar plant is a dominant, the percent cover of native grassland species would have measured greater than 10% in certain areas including Lots 122 and 119.

#### Spring Grassland Surveys and Transects were undertaken too Early in the Growing Season to Capture Dominant Native Grassland Species

The FEIR says that SAIC's botanist did spring surveys in a wet year when the likelihood of detecting and identifying species was high. The County Thresholds and Guidelines Manual call for surveys at the proper time of the year to ensure that plant species are properly identified. Tar plant was not listed by SAIC as a native grassland species encountered in its native grassland transects and measurements. Tar plant does not come out until later i.e. summer and grows throughout the summer, becoming dominant well after spring when SAIC surveyed native grassland species. Summer surveys would have captured a higher percent cover of well-adapted native grassland species such as tar plant that come out later in the growing season, but SAIC's spring transects did not include tar plant. Given recent evidence that in the summer tar plant is a dominant native grassland species, SAIC's surveys were clearly done at the wrong time of year and thus did not follow County EIR biological survey guidelines or scientific protocol. The FEIR's suggestion that surveys were done at the appropriate time of year to identify *rare plants* is misleading because the native grassland surveys were to quantitatively determine the extent of *native grasslands*. It is not appropriate to determine native grasslands by percent cover of native grassland species only in the spring before dominant native grassland species become large enough to measure. Seasonal measurements that capture percent cover in the spring before native grassland species are prominent ensure native grasslands are not properly mapped pursuant to the County definition and scientific survey protocol. Spring surveys for native grasslands under-represent native grasslands because they are too early in the growing season to capture native grassland species that do not emerge until after spring.

#### Lack of Quantitative Native Grassland Measurements on DPR

However, SAIC and Holland were not contracted to work on DPR, and URS did not take quantitative measurements of native grassland species pursuant to the County's native grassland definition and pursuant to scientific standards on DPR. The native grassland baseline is flawed throughout the project site due to improper application of the County's native grassland definition and especially on DPR where no quantitative measurements were taken.

#### Fasciculated Tar plant is a Native Grassland Species

Tar plant is a native grassland species; that is grassland is the habitat in which tar plant is most typically found. References by URS that tar plant is a weedy species are not accurate and not supported by any substantial evidence in the record. Botanist David Magney submits evidence in sworn testimony that this species does not readily invade disturbed areas as weeds do. Magney confirmed with numerous other botanists that tar plant is not a weedy species and that it is a "native grassland species." This information is in the record. Tar plant should be included in the percent relative cover measurements

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pursuant to the County's definition of native grassland, and surveyed at a proper time of the year.

Native Grassland specialist Dr. Beth Painter researched the classification of fasciculated tar plant in detail. (Painter, 2008) Painter found that of all major California botanical references, all characterize tar plant as a native grassland species. While a native grassland species, tar plant also grows in other areas including sometimes in disturbed areas such as areas affected by fire. (Painter, 2008) All scientific sources cited to by Dr. Painter agree that tar plant is a native grassland species and does not fit the definition of weed used by biologists.

FEIR fails to group nearby Patches of Bunch Grasses pursuant to County and DFG Scientific Standards for mapping Native Grasslands

Comment G-2-264 also criticized the RDEIR's failure to group nearby patches of native grasslands, but this comment was not addressed in the FEIR RTC G-2-264. The County's CEQA Thresholds and Guidelines Manual definition of native grasslands is shared with California DFG's definition. This definition requires that nearby patches of bunchgrass be grouped together, increasing the chances that nearby patches will exceed the County's .25 acre threshold for native grasslands. The RDEIR and FEIR at 9.4-19 state that only nearby patches which themselves exceed .25 acres were counted as native grasslands. Patches measuring less than .25 acres were not counted as native grasslands and were not grouped together pursuant to the County and California DFG definition and scientific standards for native grassland mapping.

Plant Taxa not identified to level Necessary to Determine Rarity

RTC G-2-264 states that surveys were done at the appropriate time of year to identify rare plants: spring. However, according to Dr. Beth Painter, several specimens were not identified to the sub-species level preventing determination of their status as rare or common.

**G-2-265 – Improperly mapped Plant Communities on MOU Site not corrected**

The FEIR refers readers to RTC G-3-31 for a response to comment G-2-265. However, RTC G-3-31 does not respond to the comment in G-2-265's concern that coastal sage east of and near the dam was improperly mapped as grassland. Comment G-3-31 addressed an area mapped as coastal sage that included trees and houses and is therefore a different comment than G-2-265.

In response to G-3-31 and purportedly to G-2-265, the FEIR claims "The area in question, around the lake, is outside of the Santa Barbara Ranch (MOU Project) considered by SAIC." However, a portion of the coastal sage errantly mapped "without detailed field checking" as grassland near the dam in Fig. 3.4-1A is on the MOU Project site in the northern part of Lot 103. This area mapped as grassland is clearly visible as non-grass vegetation in Fig. 3.4-1A. Such sloppy mapping of a considerable area of onsite coastal sage as grassland (and other errors pointed out by Magney and EDC)

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underscores the FEIR's inadequate environmental baseline. The surveys were not performed to meet scientific standards as is evident by such basic mistakes. The failure of the RTC G-2-265 and -266 to acknowledge that part of the mis-mapped coastal sage habitat is in the project site on Lot 103 is evidence that the responses to comments and the FEIR are inadequate. The FEIR improperly maps onsite habitats.

**G-2-266 – Coastal Sage should be designated ESHA; failure to Respond**

The FEIR refers readers to the response to comment G-3-83. However the subject of G-2-266 and G-3-83 are different. G-3-83 deals with a CEQA question and analysis of impact to coastal sage as a sensitive habitat pursuant to CEQA. Comment G-2-265 dealt with the FEIR's failure to treat coastal sage as "ESHA" pursuant to the LCP and Coastal Act. The difference is that CEQA allows development in coastal sage when it cannot be avoided, whereas the LCP and Coastal Act do not allow urban development in coastal sage ESHA. The FEIR fails to respond to G-2-265 and this is an error of omission. G-2-265 raises a significant and unique issue not addressed in RTC G-3-83 or elsewhere in the FEIR.

**G-2-267 – No Analysis of Beach, Sandy Beach Tiger Beetle & Shorebird Impacts (analysis limited to seal haul out, sea otter and Naples Reef); Inaccurate Response**

The FEIR claims to but does not analyze impacts on beach resources including shorebirds, and instead only analyzes impacts to Naples Reef, southern sea otter and the seal haul out. (FEIR p. 3.4-59 and -60)

The FEIR's RTC G-2-282 notes that the FEIR was updated to show that the sandy beach tiger beetle has been observed onsite. However, there is no analysis of the impacts on this special-status species in the FEIR including in Impacts Bio-16 (Effects on Beach Invertebrates), Bio-17 (Special-status invertebrates), in Bio-6 (Increased Beach Use and Effects on Naples Reef) or in Bio-10 (Effects of Increased Recreational Use on Seal Haul-Out Area). The FEIR was updated to describe the sandy beach tiger beetle as present onsite but then omits analysis of impacts completely. The FEIR is totally inadequate with regards to project effects on the sandy beach tiger beetle.

**G-2-268 – Raptor Baseline; Inadequate Response**

Despite noting the importance of raptor nests in 13.3.5, the FEIR has still not mapped raptor nests and roosts on and near the project site. No updated surveys have been undertaken since the outdated raptor surveys over three years ago. The environmental baseline with regards to raptors is outdated and the baseline regarding nesting is not defined. See G-2-254.

**G-2-271 – Presence of Steelhead – Failure to Respond to Comment**

In response to comment G-2-271 – that the FEIR improperly fails to identify steelhead (*Oncorhynchus mykiss*) present in the creek (a fact confirmed by DFG and NOAA) - the FEIR refers readers to RTC S-6-7. However, S-6-7 is about the water diversion and DFG Code 5937's requirement to bypass water into the creek at the point of diversion to protect fish. The FEIR still rejects EDC's firsthand observation and DFG's and NOAA's

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expert opinion that the creek supports steelhead. The creek was designated by NOAA as critical habitat for steelhead. Failure to identify *O. mykiss* in the creek consistent with NOAA and DFG comments renders the FEIR's baseline factually flawed.

**G-2-277 – Non-avoidance of wetlands**

The FEIR claims that "the project would not result in the filling of wetlands in the coastal zone." (FEIR p. 15-182) However Figures 3.4-4 and 2.3-1B, when overlaid, clearly show that the coastal trail in 2.3-1B planned next to and/or through the wetland in Fig. 3.4-4. (For Alt. 1 see Figs. 8.3-1B and 9.4-4.)

**G-2-278 – CDFG Code 5937's requirement for bypass flows**

The FEIR claims that since the project is not installing a new water diversion, section 5937 does not apply to the project. However, all owners and operators of water diversions – not merely new ones – are required to comply with Fish and Game Code 5937.

Furthermore, it was discovered by EDC on July 1, 2008 that the subject water diversion is not permitted DFG. Therefore, regardless of whether it is new, it must be permitted in compliance with Code 5937. The Alt. 1 project is without adequate water to meet the agricultural needs of the ACE. Alt. 1's homes will rely on SWP and shale wells, water which will then not be available to serve agriculture. The Alt. 1 water supply evaluation must be redone in light of DFG's significant new information. Otherwise the FEIR is fatally flawed with regards to water supply for the ACE and agricultural impacts.

**G-2-280 – White-tailed Kite Policies apply Countywide in the Coastal Zone**

The FEIR alleges that the County's white-tail kite protection policies apply only in More Mesa. The policies include reference to More Mesa an example of where kites occur. However as the County knows based on experience with the ARCO golf course project site (now owned by Makar) east of SBR the CCC believes the County's kite policies must be applied countywide in the coastal zone to be consistent with the Coastal Act. The golf course was approved by the County but denied by the Coastal Commission due in part to kite protection issues. The CCC's staff report for the ARCO Golf Course project is in the record and clearly demonstrates that limiting these policies to More Mesa as the County intends is inconsistent with state law.

**G-2-281 – Impacts of loss of Habitat for Special-Status Species not Mitigated**

The FEIR responds to half this comment, but does not address the second half of the comment. The RDEIR does not offer mitigation for special-status species that would reduce the projects' impacts on those species caused by the loss of 138 acres (MOU Project) or 194 acres (Alternative 1) of grassland used by these species. Without any type of mitigation which substantially lessens or compensates for the loss of this extensive area of habitat, the impact is not lessened through mitigation to below a level of significance and must be classified as Class I.

The projects do not develop all grassland habitats; some grassland would remain. However, as noted in the FEIR at page 9.4-70 and -71, the remaining grasslands' habitat

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quality would be degraded by the development. Therefore, since grasslands not directly developed will be degraded, the FEIR cannot claim it is mitigating grassland impacts by not developing in all the grassland habitats onsite.

**G-2-285- Failure to Maintain 100-foot wetland buffers**

See G-2-258

**G-2-290 – Development in Native Grasslands is Inconsistent with CLUP**

In response to comment G-2-290 about the projects' lack of compliance with the CLUP policies for protecting native grasslands and ESHA, the FEIR refers readers to S-6-14. However S-6-14 does not address the CLUP consistency issue and instead addresses the adequacy of CEQA impact analysis and mitigation. The CLUP's native grasslands protections are very different from CEQA's requirement. The FEIR often confuses comments about policy consistency by responding about impact analysis under CEQA. The difference is the CLUP policies prohibit project development in native grassland ESHAs.

**G-2-291 – Loss of High Conservation Value Grassland Habitat not Minimized or Adequately Mitigated**

In response to G-2-291, the FEIR refers readers RTC S-6-13 and notes that the project has been designed "to preserve as much of this habitat as possible in areas that are as contiguous as possible." The FEIR rejects responsible agency DFG's (the state's expert on wildlife habitat) claim that additional mitigation measures are warranted and available to further mitigate the significant loss of "High Conservation Value" coastal terrace grassland habitat. However, the project concentrates much of the development including the largest homes and the largest lots on the Coastal Terrace grasslands. The Coastal Terrace grasslands are the most contiguous onsite and in the Goleta to Gaviota Coast region (FEIR 9.4-79). Therefore the project does not "preserve as much of this habitat as possible in areas that are as contiguous as possible" as incorrectly alleged in the FEIR

In fact, the FEIR includes no analysis of whether it would be feasible to reduce the number of homes or cluster them to better maintain the high conservation value contiguous grasslands. The proposed project and Alternative 1 do not cluster homes to maintain grassland contiguity. There is no evidence that eliminating coastal terrace lots and/or clustering said lots would be economically infeasible. Therefore the FEIR's claim on page 15-59 that the "project has been designed to preserve as much of this habitat as possible" is groundless.

It is feasible as noted by DFG to preserve more of the habitat. Clustering is possible. Reducing the number of bluff lots is feasible. If avoidance of all the grasslands is not feasible, it is also possible to mitigate offsite through purchase of conservation easements over grasslands in the area that are currently threatened e.g. Makar and Bishop Ranch. Absent these measures, the project does not offset or substantially reduce its contribution to the significant cumulative loss of grassland habitat. The FEIR does not propose any

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mitigation measures that are on par with and that would substantially lessen the severity of the loss of 194 acres (Alt. 1 Project).

The project would not develop all grassland habitat onsite. However, that which would remain would be degraded by the adjacent development and uses. (FEIR page 9.4-70 and -71) Remaining grassland which would not be developed would be degraded by the project. This is an adverse project impact and is not a mitigation measure.

RTC G-2-191 contains another factual error. The Conception Coast Project's (CCP) Regional Conservation Guide (RCG) cited by DFG does not "focus primarily on steelhead trout" as the FEIR alleges at S-6-13. The RCP is not about steelhead trout. The FEIR confuses CCP's RCP with another CCP document further illustrating the lack of careful and reasoned response to comments.

**G-2-292 – Measure Bio-2a Coastal Sage Restoration Further Displaces Grassland Habitat but is not analyzed in the FEIR**

The FEIR notes that coastal sage habitat restoration is planned as mitigation for the loss of 6.22 acres of coastal sage scrub habitat. Pursuant to Measure Bio-2a, grassland habitats will be converted to coastal sage in an effort to mitigate impacts to coastal sage habitat. CEQA requires that adverse impacts of mitigation measures be disclosed.<sup>16</sup>

The FEIR does not analyze the impacts of Mitigation Bio2a. While it may help mitigate coastal sage habitat impacts, it will convert approximately 18.6 acres of grassland habitat to coastal sage thereby further harming important grassland habitat. Mitigation Bio-2a would add 18.6 acres to the projects' identified grassland impacts (194 acres for Alt. 1 and 138 acres for MOU Project). The FEIR must disclose the adverse impact of Mitigation Bio-2a, and mitigate the projects' overall impact to grassland habitat.

**G-2-294 - Runoff from Homes above Tomate Creek will Effect Seeps**

The FEIR refers readers to S-6-19, the response to DFG's comment about Tomate Creek. However, RTC S-6-19 does not address comment G-2-294 which was about the potential impact to the freshwater seeps identified in the FEIR on the west facing slopes of Tomate Canada. The FEIR is unresponsive to the specific comment G-2-294, does not address potential impacts to the subject freshwater seeps, and is flawed due to this error of omission.

**G-2-295 – Water Diversions and Wells along Dos Pueblos Creek may Effect Special-Status Plant Species**

The FEIR mischaracterizes comment G-2-295 by only stating half of the comment. The comment raised questions about the RDEIR's lack of analysis of impacts from the Dos Pueblos Creek water diversions *and* "water wells on these water-loving special status species." The alluvial wells are potentially necessary to serve Alt. 1's ACE by ensuring

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<sup>16</sup> CEQA Guidelines section 15126(a)(1)(D)

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the ACE can be relied upon to rescind the agricultural preserve contract and mitigate agricultural impacts. This is especially true given DFG's July 17, 2007 letter to DPR stating creek water diversions must cease immediately. The RTC G-2-295 and FEIR do not address the impacts of the shallow creek-side alluvial water wells on plants or animals in the creek corridor.

The water diversion lacks a permit from DFG. Therefore agriculture in Alt. 1's ACE may require SWP or well water. Alt. 1's water supply needs re-evaluation considering DFG's recent revelation that the Dos Pueblos Creek water diversion is unpermitted.

**G-2-301 – Landowner / Alt. 1 Applicant Rejection of Feasible Alternative Access that Complies with Policies and Mitigates Significant Impacts makes Alternative 1 Infeasible**

The FEIR states that the alternative access plan utilizing DP Canyon as vertical beach access is infeasible because it crosses private property and the landowners are uncooperative. However, it crosses DPR and SBR, the Alt. 1 Project applicants' land and preferred project site. Therefore it is feasible for the County to (1) condition approval of an SBR-DPR project on alternative access plans, or Alt. 1 Project applicants refuse, (2) pursue an SBR only project. Vertical access at DP Canyon and coastal trail alignment south of the railroad tracks is identified in trail policies including CLUP Policy 7-18. Therefore the County is within its right and duty to pursue alternative trail and access alignments and to deem Alternative 1 infeasible based upon applicants' unwillingness to accept alternative which comply with access policies.

**G-2-302 – Wetlands not avoided by 100-foot buffers**

See G-2-285 and -258.

The proposed trails pass through wetlands along considerable reaches of the drainages in Lots 93, 119, and 122, as well as the wetland in Tomate Canada Creek in Lot 188. These wetland intrusions and lack of 100-foot buffers are visible by overlaying Figs. 9.4-2, 9.4-3 and 8.3-1C. The FEIR should have overlaid the project maps on the wetland maps to illustrate and disclose these impacts. The FEIR is simply incorrect to claim the project avoids wetlands and 100-foot buffers when the trail goes up the drainage bottoms containing approximately 10 SAIC-mapped state wetlands shown in Fig. 9.4-2 and crosses Tomate Canada Creek at or near a relatively large state wetland delineated by SAIC.

All suspected wetland areas were not delineated pursuant to scientific standards or standards set forth in the County's Thresholds and Guidelines Manual. Where SAIC delineated wetlands three to four years ago, they did not employ proper methodology, and the results cannot be relied upon.

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There are wetlands offsite that were not mapped within 100 feet of the property (i.e. on Makar's west side) which may be indirectly impacts by the access road and public path under the project configurations. Offsite wetlands must also be adequately buffered.

One hundred feet is the minimum wetland setback per the LCP; setbacks should be larger on an as-needed basis. The FEIR's continual reliance on the minimum setback with no explanation as to why larger setbacks are unnecessary is a shortcoming in the FEIR.

#### **G-2-304 – Wetlands not avoided by 100-foot buffers**

The FEIR claims that 100-foot setbacks are provided for, and that wetland delineations after EIR certification will ensure that wetlands are avoided by 100-foot buffers. Notwithstanding that wetlands must be delineated pursuant to scientific standards prior to the EIR to inform the public and decision-makers, the FEIR's response is challenged by the facts depicted in the FEIR figures. The project trails as proposed go through wetlands requiring fill and destruction of wetlands. No apparent effort was made to move the trails in Lots 188, 93, 119 or 122 to avoid the wetlands.

Clearly, wetlands must be delineated and overlaid with the project development on a map so that impacts such as these filling of wetlands in Lots 93, 119, 122 and 188 are disclosed. Only then will the decision-makers and public understand the wetland impacts, and only after understanding that there are direct impacts despite the FEIR's claims can the decision-makers require measures to avoid the wetlands and comply with LCP Policy 9-9.

#### **G-2-305 and -306 – Tomate Canada Creek is ESHA**

As a stream, wetland, and habitat for rare species such as red-legged frog, Tomate Canada Creek qualifies as ESHA under the County's LCP.

The FEIR refers readers to Section 13.5 of the FEIR for a response to Comment G-2-305 that Tomate Creek qualifies as ESHA. However FEIR Section 13.5 does not discuss Tomate Canada Creek or the specific reasons noted in Comment G-2-305 for why the creek is ESHA. As noted in our comments on Section 13.5 above, Tomate Canada Creek and the unnamed drainage to the east are *already designated ESHA where they occur off the SBR*. Designation of ESHA where these streams occur on the project site is biologically justified. Defining a creek as ESHA on one property, but not where it flows over another, may set up an unfair business practice wherein the County gives an unfair advantage on one property (SBR). By referring readers to responses that do not address the subject comments, RTCs G-2-305 and -306 highlight failure by the FEIR to respond to a substantive comment.

#### **G-2-307 and -308 – Inadequate Tomate Canada Creek setback**

The FEIR notes that Tomate Canada Creek is not a major stream so the 100-foot setback in CLUP Policy 9-37 does not apply. However, if Tomate Creek is a minor stream a 50-foot setback applies pursuant to Policy 9-37. The proposed Tomate Canada Creek bridge

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does not provide a 100-foot or even a 50-foot setback from the creek, and violates Policy 9-37. The FEIR does not respond to comments that the proposed Tomate Canada bridge violates Policy 9-37.

**G-2-309 - Lack of Adequate Buffers between Roads and Streams (Also addresses G-2-314)**

The FEIR states that “the proposed development envelopes do not encroach into the required 100-foot buffer around Dos Pueblos Creek or its tributaries, Tomate Canada Creek, or the unnamed drainage along the eastern border of the project area north of Highway 101.” (FEIR page 15-188) Upon careful examination and measurement of FEIR Figure 3.4-1A, the development envelope for the road to MOU Lot 103, etc., encroaches to within 60 feet of the east side of the tributary to DP Creek in Lot 103.

Fig. 3.4-1A also shows only a 50-foot buffer on the west side of the tributary north of Highway 101, but a 100-foot buffer on the east side of the tributary. The FEIR does not explain this discrepancy.

The development envelope for the road to Lot 47, 48, etc., is adjoining the 50-foot setback line. Therefore the FEIR is incorrect to maintain that there is a 100-foot setback between the development envelopes and the tributary to DP Creek.

Finally, the development envelope for the road in Lot 48 is not setback by 50-feet from the unnamed drainage on the west side of SBR north of Highway 101.

All of these examples of inadequate setbacks counter the FEIR’s claims that setbacks are sufficient to comply with policies and mitigate impacts.

Contradicting the response to G-2-309, in response G-2-314 the FEIR states that the roadways do encroach into buffers, but claims that Policy 9-37 allows buffers smaller than 100-feet wide for major streams. However, such an allowance to reduce the minimum buffer is not justified by consideration of factors specified in LCP Policy 9-37.

Policy 9-37 requires buffers to be set only after consideration of factors specified in Policy 9-37, including soil type, stability and slope, and must be determined only after consultation with CDFG and RWQCB. No analysis of these factors was made to justify a smaller than normal buffer. No consultation with CDFG or RWQCB was undertaken to determine that a smaller buffer is appropriate.

The FEIR lacks adequate buffers for these coastal zone creeks resulting in adverse habitat impacts and conflicts with CLUP Policy 9-37.

**G-2-310 Development Envelope Setbacks from Coastal Drainages are Inadequate (Also addresses G-2-312)**

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The FEIR notes that structures on the coastal bluff would be setback by 50-feet from the coastal terrace drainages, but that development envelopes would not be setback. Grading and fencing of development envelopes are forms of development and are prohibited within the setbacks to coastal drainages. The FEIR is flawed for claiming the setback from the coastal bluff drainages is 50 feet when the development envelopes are not setback from the drainages by 50 feet.

### **G-2-311 Elimination of Tomate Canada Bridge**

The FEIR states that the FEIR's mitigation measures for the biological impacts of constructing and maintaining the Tomate Canada bridge would "have the same effect" as deleting the bridge altogether. (FEIR 15-188) The FEIR's conclusion is illogical because the bridge would cause residual adverse impacts identified in the FEIR, and these impacts would be avoided by not building the bridge. The FEIR is factually incorrect and internally inconsistent in its claim that building the bridge would have the same effect as not building the bridge.

The RTC G-2-311 does not disagree with the comment that elimination of the bridge from the project is feasible.

The bridge should be eliminated from the project because it feasibly avoids all associated impacts to Tomate Canada Creek, avoids ESHA policy inconsistencies, ensures an adequate buffer, minimizes water pollution in the creek, and protects wildlife movement.

### **G-2-313 Avoiding culvert in drainages**

The FEIR fails to prioritize avoidance of impacts from placing culverts over minimizing impacts from culvert installation. Avoidance is superior to minimizing impacts and should be pursued whenever feasible.

### **G-2-315 – Impacts to Tomate Canada Creek**

The FEIR finds that impacts to hydrology, water quality and wildlife movement are mitigated by erosion control measures and a bridge over Tomate Canada Creek. The FEIR's response misses the comment's point with regards to the homes blocking movement of wildlife at the head of the canyon. Canyons are important wildlife movement corridors. The FEIR still does not explain how the impact to wildlife movement caused by ringing the Tomate Canada Creek watershed with development is mitigated, and is deficient by omission. The FEIR fails to analyze the impact to wildlife movement caused by the homes ringing Tomate watershed, and does not mitigate this impact.

### **G-2-318, -319 and -320 - Failure to mitigate grassland impacts; inadequate raptor surveys**

The FEIR refers readers to G-13-8 for a response to comments about the lack of adequate mitigation for the loss of 138 to 194 acres of grassland habitat. The FEIR notes that native grasslands will be restored at 3:1 (restoring less than 1 acre), driveways have been

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combined south of the railroad tracks, curbs, gutters and fences will allow wildlife movement, non-native plants will be controlled, and people will be educated to protect wildlife. While these measures each have their role, none of them substantially lessen, offset or compensate for the loss of 138 to 194 acres of grassland habitat. There is a gross discrepancy between the severity and size of grassland impacts and the size and extent of grassland mitigation measures. The evidence does not support finding impacts to grasslands Class II because the mitigation measures do nothing on the scale and scope needed to substantially lessen the impact.

Evidence in the record from raptor expert Morgan Ball and Santa Cruz Predatory Bird Research Group supports a finding that the loss of these raptor species' foraging habitat and the disproportionately more valuable Coastal Terrace grassland is a significant Class I impact, and that the proposed mitigation does not begin to mitigate the loss to less than significant.

The FEIR refers readers to S-2-45 for a response to comments about the adequacy of the EIR's baseline raptor surveys. Unfortunately, there is no response on point to the comment. Raptor surveys did not follow scientific standards. The FEIR responses do not claim that the surveys were adequate or consistent with CCC protocol submitted by EDC and Surfrider.

**G-2-321 – White-tailed kite and Special-status raptor foraging habitats are easily disturbed by development and qualify as ESHA**

White-tailed kite habitat is listed as a category of ESHA in the CLUP. RTC G-2-321 finds that the white-tailed kite habitat does not qualify as ESHA because it is not vulnerable "to disturbance by human activities." (P. 15-91) The FEIR concludes that because the project site's Coastal Terrace grassland has been disturbed by grazing, even though it supports a host of rare bird and mammal species in FEIR Table 3.4-4, the grassland habitat cannot be easily disturbed or degraded by human activities. However, the FEIR blindly fails to distinguish between disturbance by cattle grazing activities (the ongoing disturbance) and the proposed development's much higher level of disturbances: home, road, wastewater treatment plant, and equestrian center construction and operation. While the sensitive species coexist with grazing on the Coastal Terrace, they are vulnerable to disturbance by other forms of human developments and activities such as the proposed project. Evidence in the record supports a finding that the grassland is easily disturbed by human developments such as construction and operation of project. Grazing has not disturbed the grasslands that the host of rare species abandoned it. However the residential development will cause some species to abandon the grassland according to the FEIR page 9.4-73. The Coastal Terrace grassland habitats which support numerous special-status species would be easily disturbed or degraded by the projects meets both prongs of the ESHA definition.

**G-2-322 – The FEIR ignores the plain language of the LCP and Coastal Act and tries to limit the definition of ESHA to exclude the Coastal Terrace.**

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The FEIR claims that “the LCP does not contain any provisions that would allow for the designation of the site as ESHA for other special-status bird and mammal species.” (FEIR page 15-192 – 193) The FEIR continues by claiming that the Coastal Terrace cannot be ESHA because “None of the other [twenty-seven special-status] species identified as dwelling within the native and non-native grasslands fall within any of the thirteen categories of ESHA identified in the County’s certified LCP.” These statements on FEIR page 15-192 & 193 ignore the plain language of LCP’s and Coastal Act’s definition of ESHA which requires designation of ESHA in “any area in which plant or animal or their habitats are rare” or especially valuable, and which could be easily degraded by development.<sup>17</sup> The LCP does not list or contain provisions for designation of ESHA for every rare species and does not need to contain provisions for every rare species because the definition of ESHA includes areas in which species are rare and which could be easily disturbed or degraded. The LCP lists white-tailed kite habitats as a type of ESHA; it does not list each of the dozens of rare species in the County’s coastal zone. There are dozens of other rare species on the project site Coastal Terrace. The County’s assertion that the Coastal Terrace is not ESHA because white-tailed kites only forage onsite overlooks the presence of these other rare species and their habitats on the Coastal Terrace – resources which would be easily disturbed and degraded by the project’s intensive development - and ignores the plain language of the County’s ESHA definition.

The FEIR also suggests on page 15-193 that the County’s hands are tied with regards to its discretion to designate ESHA under the LCP. The RTC G-2-322 says that The LCP identifies only the following habitat types as areas that may be designated “ESHA: Dunes; Wetlands; Native Grasslands; Vernal Pools; Butterfly Trees; Marine Mammal Rookeries and Hauling Grounds; White-tailed Kite Habitat; Subtidal Reefs; Rocky Points and Intertidal Areas; Kelp Beds; Seabird Nesting and Roosting Areas; Native Plants; and Streams.” However, these thirteen categories are only categories of ESHA that have been designated on the land use map to date. These categories are not all-inclusive or inflexible, and do not preclude designation of other categories of ESHA based on new information available after the LCP was certified in 1981. According to the LCP, “These designations are not definitive and may need modification in the future” due to several factors including “discovery of new habitats.”<sup>18</sup>

The County recognizes habitats other than these 13 categories as ESHA including coastal sage scrub, coastal bluff scrub, oak woodlands, etc. which contain mixed native and non-native species. Similarly, the Coastal Terrace contains native plants mixed with non-native plants in the grasslands. The Terrace supports approximately 30 rare animal species. Contrary to the FEIR’s statements, the LCP does not limit the County’s discretion to designate habitat in areas where plant or animal life is rare and habitats are

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<sup>17</sup> PRC Section 30107.5 and the LCP text state that "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

<sup>18</sup> County LCP page 119

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easily degraded by human development. Moreover, the Coastal Terrace is "White-tailed Kite Habitat." The County is going beyond its own ESHA definitions by excluding White-tailed Kite habitat.

The Coastal Commission also recognizes California Annual Grasslands as potential ESHA. (See attached memorandum from the California Coastal Commission 2003.)

The County's new position set forth in the FEIR that it cannot designate ESHA in Coastal Terrace habitat supporting even as many as 28 special-status animal species flies in the face of the LCP and Coastal Act definition of ESHA.

RTC G-2-322 focuses on whether grassland is ESHA under the LCP. However, Comment G-2-322 is focused on a CEQA issue: the lack of adequate mitigation measures for the loss of 138 – 194 acres of grassland habitat. The RTC G-2-322 does not respond in any way to the comment's assertion that specific mitigation measures set forth in the FEIR are inadequate to reduce the significant loss of grassland foraging habitat to less than significant. The loss of 138 to 194 acres of grassland is not avoided, or mitigated in any way sufficient to substantially lessen the impact – including degrading remaining grasslands not directly converted.

This is another of many examples of the FEIR's RTCs simply not responding to significant environmental issues.

#### **G-2-324 and G-2-325 – Wildlife Movement**

The FEIR relies on minimal changes to the project which have a negligible effect on wildlife to find wildlife movement impacts mitigated. As biologist Morgan Ball notes in comments on the DEIR, consolidating a handful of driveways in one of five project regions, rounding curbs, and shifting a couple units to avoid wetland buffers does not substantially lessen wildlife movement impacts cause by converting 138 – 194 acres of grassland and fragmenting the remaining grasslands.

#### **G-2-330 – Wildlife Movement North of Highway 101**

The FEIR claims to respond to Comment G-2-330 in RTC G-2-329. However RTC G-2-329 does not address wildlife movement north of Highway 101. The only development footprint changes to address wildlife movement are south of Highway 101 and are minor. Other than claiming the area north of Highway 101 is less important for wildlife than areas south of Highway 101, the FEIR does not analyze effects on wildlife movement north of Highway 101, including the effect of ringing Canada Tomate Canyon with development. Rounding curbs and consolidating a few driveways does not offset or substantially lessen the effects of 54 to 72 estates with gust houses, driveways, lights and noise on wildlife movement.

#### **G-2-331 – Steelhead Migration Barriers**

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The FEIR incorrectly claims that the steelhead migration impediments in Dos Pueblos Creek are not on the project site. Several impediments are on Dos Pueblos Ranch, the applicant's Alt. 1 Project site. The DFG-unpermitted creek diversion structure is one of the man-made impediments to steelhead in DP Creek. It is on the Alt. 1 Project site and is intended to serve the Alt. 1 Project's ACE as described in the FEIR.

Related to inadequate assessment of the DP Creek steelhead barriers, the FEIR fails to mention the DPR refuses to restore the creek as a condition of participating in the Alt. 1 Project. (See attached DPR participation letter.)

### **G-2-335 – Biological Impacts of Potential increases in Cattle Grazing**

The FEIR notes that text has been amended to indicate grazing will not increase. However, the FEIR notes on page 9.4-76 that "Alternative 1 will create foraging habitat for this [nonnative European starling] species within and around the building envelopes and adjacent to the Dos Pueblos Creek riparian corridor (e.g., livestock pens, grazed pasture, etc.)" Hence, the FEIR still recognizes that Alternative 1 will create grazed pastures and livestock pens that will cause impacts i.e. increasing nonnative birds and displacing native birds. Unfortunately, RTC G-2-335 and FEIR are inadequate because they fail to identify any required mitigation that would ensure grazing does not increase.

### **G-2-338 – Cumulative loss of Coastal Terrace Grasslands**

RTC G-2-338 claims that "the project would not result in cumulative loss of coastal terrace habitats." (FEIR page 15-196.) However the FEIR also notes on page 15-196 that coastal terrace grasslands are the subject of Impact Bio-22. The discussion of Impact Bio-22 focuses on the "coastal terrace" which is also referred to as the "coastal plain." (FEIR page 9.4-79 – 9.4-82) The FEIR concludes that, "If it is not possible to preserve a substantial portion of the coastal terrace grassland on properties in this region in a manner that provides continuity and movement opportunity, then it will not be possible to avoid this significant cumulative impact." The FEIR classifies Bio-22 as significant, Class I. (FEIR page 9.4-79 to -82.) The FEIR thus claims on one page the project's direct loss of 138 to 194 acres of grassland habitat contributes to a significant cumulative impact and on another page claims the project does not contribute to a cumulative loss. The FEIR is internally inconsistent and dangerously inaccurate for claiming the project does not contribute to cumulative loss of coastal terrace when all the evidence in the record, including the FEIR itself, demonstrates the project conversion of up to 194 acres of grasslands contributes to a significant Class I cumulative loss of habitat

RTC G-2-338 refers readers to RTC S-6-13. RTC S-6-13 states on FEIR page 15-58 that "the Conception Coast Project Regional Conservation Guide focuses primarily on steelhead trout." This statement is factually incorrect. The RGC addresses conservation values and priorities and is not on steelhead trout. "Following the catalogue of the region's natural bounty and a discussion of conservation planning concepts, the Regional Conservation Guide presents a powerful modeling tool with which conservation goals and ecological data are combined with anticipated future threats to resources from

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growing human population, consumption and land-use trends.” (CCP Regional Conservation Guide, Executive Summary available at [http://conceptioncoast.org/Regional\\_Conservation\\_Guide.pdf](http://conceptioncoast.org/Regional_Conservation_Guide.pdf).) The EIR authors confuse CCP’s RCP with a 2002 CCP publication: Steelhead Assessment and Recovery Opportunities in Southern Santa Barbara County, California. The FEIR authors have not checked the factual accuracy of their statements and are incorrect.

### **G-2-341 – Impacts and Mitigation for Soil Remediation Activities Deferred**

The FEIR notes that it has not defined the baseline environment with regards to hazardous soils left behind from decades of old oil drilling activities. The FEIR states at page 15-197 that mitigation measures “require assessment and remediation activities where applicable, as condition(s) for approval of issuance for the individual CDP/LUPP for the lot(s) of concern.” The FEIR notes that assessing impacts of soil remediation would be “conjecture.” RTC G-2-341 helps make EDC’s and Surfrider’s point. Without first establishing a baseline of where contaminated soils are on the site through adequate surveys and investigations, all the FEIR could do is speculate about impacts. This is the reason why the FEIR should have relied on subsurface investigations of soil contamination in locations such as near public trails and private homes, so that impacts of exposing people to hazards would not be conjecture. Describing the existing environmental conditions and analyzing the project’s impacts are a primary purpose of an EIR; by failing to describe the existing conditions with regards to contaminated soils, the FEIR’s baseline is flawed and it does not and cannot evaluate – much less identify measures which avoid or mitigate – contaminated soils impacts.

Evidence in the record from Dr. Kram repeats that without an adequate contaminated soils baseline established through onsite soils investigations, the impacts are unknown and as a result, the mitigation measures to be required – and their economic feasibility - cannot be determined.

Deferring analysis of impacts and mitigation of hazardous soils remediation needed for the proposed project is dangerous because it could allow homes to be approved atop areas of soil contamination. With regards to CEQA, deferring analysis of impacts and mitigation measures is piecemeal review of the project. The impacts of soil remediation must also be disclosed in the FEIR for it to be complete.

### **G-2-342 – Mitigation Hierarchy**

In suggesting that the County Thresholds and Guidelines Manual Mitigation Hierarchy does not require avoidance of significant impacts when feasible, the FEIR illustrates that it does not first seek to avoid impacts before pursuing less effective mitigation measures. Unfortunately, the County chose not to avoid many significant impacts that could be avoided through project redesigns, and instead has employed less effective or ineffective measures which in many cases do not substantially lessen significant impacts. The County should pursue avoidance because there is no question about the effectiveness of avoidance as a mitigation measure.

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### **G-2-345 – Remaining Impacts to Native Grasslands**

The FEIR claims that all impacts to native grasslands will be avoided. However, FEIR Figure 9.4-1b clearly shows the proposed public access trail going through mapped native grasslands in Lots 122 and 123. This violates the Conservation Element, LCP Policy 9-18, and Coastal Act Section 30240.

Moreover, evidence in the record now clearly demonstrates that native grassland mapping suffered from several serious flaws that completely undermine reliability of the native grassland surveys and maps done for the FEIR. (Painter, 2008; David Magney Environmental Consulting, 2008) Many proposed development envelopes such as Lot 122 are currently covered by well over 10% relative cover by native grassland species including *Hemizonia fasciculata* and are incorrectly mapped as non-native grassland.

### **G-2-347 – Deferred Mitigation for Impacts to Rare Plant Species**

The FEIR notes that Mitigation Measures 1b and 2b have been updated to address Comment G-2-346 however the mitigation measures still lack performance standards needed to ensure their success. Specifically, the measures require collection of bulbs, cuttings or seeds from any rare plant species identified during deferred surveys but do not specify how many seeds, bulbs or cuttings will be collected or what percentage of rare plants found will have seeds, bulbs or cuttings collected for propagation. The mitigation measures as written would consider collection of only two seeds or two bulbs to be sufficient. This measure is still wholly insufficient because it defers the surveys and the seed, bulb and cutting collection to after EIR certification, and fails to specify standards for the number of plants, seeds, bulbs or cutting collected for propagation.

### **G-2-348 – Wetland Delineations**

New evidence submitted by Dr. E.L. Painter and David Magney in July 2008 supports additional evidence and EDC's and Surfrider's comments that wetland delineations did not follow proper County and agency standards (and were not done in certain areas, such as DPR and portions of SBR). The wetland surveys did not follow scientific standards. For instance, the delineations did not employ universally-accepted plant lists to determine whether areas were dominated by wetland plants, and used only 17 of 58 wetland plant species found on the site. (Painter, 2008) The FEIR's wetland delineations cannot be relied upon as substantial evidence supporting the FEIR wetlands environmental setting.

### **G-2-352 – Controlling Feral Cats**

The FEIR claims it "provides measures to control feral cats" which prey on native birds, mammals and reptiles. However upon re-review of Mitigation Bio-9b there are no measures required to control cats. The measure requires a presentation and literature by biologists to homeowners every two years. This is an educational measure but does not control cats or mitigate the physical biological impacts of non-native animals like cats and dogs, which often feast on wildlife. Prohibiting cats, and implementing a program to

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trap and take feral cats to shelters is necessary to protect the impact animal species present and avoid a significant impact on wildlife.

**G-2-354 – Mitigation Bio-4 fails to require Enforcement Monitoring**

Mitigation Bio-4 has been modified to suggest that law enforcement “should” patrol the area for dog leash law enforcement, but explicitly does not require such essential monitoring. As a result Mitigation Bio-4 is unenforceable and cannot be relied upon to find impacts Bio-Bio-6, -10 and -13 mitigated to less than significant.

**G-2-358 – Alternative 5 is not analyzed in Section 10**

The FEIR incorrectly states on 15-201 that Alternative 5 was “presented in section 10 of the RDEIR.” Upon close scrutiny of Section 10, the FEIR does not present or discuss Alternative 5 in Section 10.

**Hazards Impacts**

**G-2-362 – Definition of Hazardous Materials**

The FEIR misconstrues Comment G-2-362 which states, “Raw sewage appears to meet the definition of hazardous materials presented in the RDEIR, but the hazard impacts of sewage ... are not analyzed in Section 9.5.” The FEIR claims the comment said that the “RDEIR defines raw sewage as a hazardous material.” These are two totally different statements. The FEIR’s misrepresentation of EDC’s and Surfrider’s comments in this instance and others indicates the FEIR authors (1) did not carefully read comments on the RDEIR, or (2) misrepresented our comments for some other unknown reason, intentionally or accidentally. In either case, due to the FEIR’s mistake, the response does not respond to Comment G-2-362.

**G-2-369 – Baseline Misrepresented; Alternative 2 avoids Areas most likely to contain Contamination**

In response to Comment G-2-369, the FEIR refers readers to RTC G-2-840, which refers readers to Figure 9.5-1. The FEIR incorrectly claims on page 15-305 that “the approximate sites on [sic] known and undisclosed well sites are extensively outside of the coastal terrace.” However, Figure 9.5-1 shows that *most of the known potential or mapped oil well locations are on the coastal terrace* in the project vicinity. Thirty of 43 potential well sites, dry holes and plugged and abandoned oil wells are on the coastal terrace in Figure 9.5-1. Given this information, the coastal terrace more than inland areas are where contaminated soil impacts are most likely. The FEIR is factually incorrect and internally inconsistent in its claim that well sites are extensively located out of the coastal terrace.

**Land Use Impacts**

**G-2-371 – Partial TDR plus Build-out under Existing Zoning may obviate Rezone**

In response to G-2-371, the FEIR refers readers to RTC G-4-2. However RTC G-4-2 is unrelated to the subject matter in Comment G-2-371. The FEIR claims on page 15-353 that Comment G-4-2 “misinterprets the Alternative 3A (Grid Development) as requiring

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more development restriction compared to Alternative 1.” This response shows a clear misunderstanding by the FEIR authors of comment G-4-2 by John Ellis, MAI Appraiser retained by EDC and Surfrider. Comment G-4-2 does not address a difference in value between the Grid Alternative and Alternative 1. Comment G-4-2 very clearly states that the TDR Study “yields an incredible result” with regards to the Grid and Alternative 1. Specifically Ellis noted in G-4-2 that build-out of the Grid and of Alternative using Solimar’s 70% entitlement reduction factor results in values *greater* than values of these designs under build-out at 100%. Ellis’ comment is not a comparison of the Grid and Alternative 1 but a comment about the comparison of the Grid at 70% to the Grid at 100% entitlement, and a comparison of Alternative 1 at 70% to Alternative 1 at 100% entitlement. This failure by the FEIR authors to read and understand expert consultants’ comments undermines credibility in the FEIR. It is apparent from the responses to comments that the FEIR authors lack a background in real estate appraisal needed to respond to EDC’s and Surfrider’s appraiser’s comments. Responses to Ellis’ comments are off-point and insufficient as a result of the FEIR authors’ lack of understanding of Ellis’ comments.

Comment G-2-371 however, is not about a comparison between alternatives or about the 70% entitlement factor Solimar applied to address potential Coastal Commission entitlement limits. Comment G-2-371 is about the FEIR’s application of LCP Policy 2-13 and the FEIR’s failure to analyze whether partial TDR plus build-out under existing zoning (up to 14 units) is a feasible alternative. If build-out of SBR under existing zoning plus partial TDR proves economically feasible (i.e. it is practical to proceed) it would obviate the possible need to consider a rezone pursuant to Policy 2-13, and would substantially lessen or avoid the project’s significant impacts. RTC G-2-371 refers readers to RTC G-2-82. However, RTC G-2-82 merely refers readers to the FEIR of which comment G-2-371 is critical. This circular response contains no response. The FEIR still fails to consider whether partial TDR plus build out of SBR under existing zoning is a feasible alternative that avoids the need to rezone some or all of SBR pursuant to Policy 2-13, and thus that avoids or substantially lessens environmental impacts.

#### **G-2-372 – Future Development under NPD (NTS)**

RTC G-2-372 on page 15-204 indicates that “each subsequent project shall be interpreted by decision-makers when proposed.” However the FEIR still fails to analyze the impacts of the NPD proposed as part of the project. Build-out of adjacent lots and/or properties containing antiquated lots under the proposed NPD section 35.xxx-2 Applicability was not analyzed as part of the project in the FEIR but is part of the project. The NPD establishes standards by which adjoining parcels could be developed, making such development reasonably foreseeable consequence of the project. The FEIR is supposed to analyze the whole of the project but does not. Failure to analyze build-out of adjoining lots or properties under the NPD is a serious omission from the FEIR.

#### **G-2-374 – Fire Protection Impact is not Mitigated**

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RTC G-2-374 refers readers to L-4-1 and -2. Responses to L-4-1 and -2 do not address EDC's and Surfrider's comment G-2-374 or Fire Department comments L-4-1 and -2 because impact PS-5 is still listed as Class II. No refinements were made to ensure the fire station is built prior to project construction, so the impact is significant Class I. There is no assurance that the project developer's impact mitigation fees will result in construction of the fire station because the fees would not be sufficient to fund construction of the fire station. The project could be built and occupied for years with no new fire station. This is a Class I impact dangerously misclassified against the Fire Department's recommendation as Class II.

Furthermore, the responses to L-4-1 and -2 do not address Comment G-2-374 with regards to the inadequacy of the unstaffed, unequipped fire staging area mitigation measure.

Additionally, the FEIR did not respond at all to comment G-2-374 with regards to the comment's assertion that the FEIR fails to analyze the growth-inducing impacts of building a new fire station in a location where it could remove an obstacle to growth (i.e. remove the lack of fire protection services) on the Gaviota Coast.

#### **G-2-378 – Land Use Impact Analysis Baseline**

The FEIR still compares the with-project conditions to the proposed with NPD (a.k.a. NTS) conditions instead of to existing environmental baseline conditions, and as a result finds no impact. Using the existing environmental setting, project build-out will cause significant Land Use impacts. Failure to use the existing environmental baseline and instead using a hypothetical worst case future scenario is a failure to proceed in a manner required by CEQA and results in the FEIR's under-reporting of environmental impacts.

#### **G-2-380 – Policy 2-13 requires TDR before Rezone**

G-2-380 asserts the project causes Land Use Impacts / policy conflicts related to its failure to implement TDR to the extent feasible before the rezone. RTC G-3-380 refers readers to RTC G-4-2. G-4-2 is about TDR values – not about Land Use Impacts and policy conflicts - and is therefore unresponsive to Comment G-2-380.

RTC G-2-380 also refers readers to RTC G-2-82. RTC G-2-82 refers readers to the RDEIR which does not respond to the comment in G-2-380 that partial TDR or partial TDR along with build-out under existing zoning may be an economically feasible alternative that substantially lessens or avoids significant impacts and complies with Policy 2-13. The FEIR still does not address the present situation i.e. partial TDR feasibility because the FEIR fails to consider whether partial TDR (\$73M per Solimar) or partial TDR plus SBR build-out under existing zoning (up to 14 estates) may meet the applicant's bottom line while avoiding or minimizing environmental impacts.

The FEIR is flawed because it fails to apply Policy 2-13 through anything other than an all-or-nothing lens i.e. since TDR of 100% of the potential development rights is not

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feasible according to Solimar, the FEIR concludes all of SBR must be rezoned. This misapplication of Policy 2-13 unnecessarily leads to land use impacts and policy conflicts that may be avoided through an economically feasible partial TDR / build-out under existing zoning alternative. Unfortunately the FEIR chose not to respond to this significant environmental issue.

### **G-2-381 – Land Use Policy Conflicts**

The FEIR states that the comment expresses an opinion that the project is inconsistent with policies. However the FEIR says the project is inconsistent with policies. (FEIR page ES-9.) The FEIR's Land Use Impact analysis fails to identify Impact Land-1 as significant because the FEIR's impact analysis overlooks policy conflicts recognized in FEIR policy consistency analysis. The failure to identify Impact Land-1 as Class I is based on an error in the FEIR i.e. the EIR fails to acknowledge its own finding of policy conflicts.

Moreover, FEIR at page ES-9 does find there is a significant impact caused by land use conflicts. The FEIR is internally inconsistent for finding policy conflicts in the policy consistency analysis section and Executive Summary but not finding those same conflicts in the Land Use Impact analysis.

### **G-2-383 – Wrong Baseline in Visual Policy Consistency Analysis & Land Use / Policy Consistency Impact Land-1**

Comment G-2-383 is that the land use impact analysis uses an incorrect baseline because when assessing visual resources the FEIR compares the proposed project to the Grid Alternative which paints the proposed projects in a positive light. The FEIR does not respond to Comment G-2-383. Under CEQA, the baseline is normally the existing physical environmental conditions. The baseline is not a hypothetical future condition under the worst-case build-out scenario. Using the proper, existing physical environmental setting i.e. largely undeveloped lands, the projects result in visual policy conflicts including new skyline intrusions, and changes in the character of the area which must trigger identification of significant Impact Land-1. The FEIR fails to identify Land Use Impacts associated with visual policy conflicts because FEIR was not prepared in accordance with CEQA; the FEIR uses an improper environmental baseline.

### **G-2-384 – Effects of Guest Houses and RSUs (Also addresses G-8-39)**

The proposed projects' NPD section 35-xxx.4(7) allows RSUs as a permitted use. Planning staff has recommended RSUs be subject to issuance of CUPs. To the extent that the NPD may allow for development and uses not contained in the MOU or Alt. 1 Projects the NPD's impacts are greater than those of the proposed MOU and Alternative 1 Projects. The FEIR does not analyze the effects of the potential build-out of guest houses (i.e. 59 for Alternative 1) or the potential RSU build-out (i.e. 72 for Alt. 1), and instead only considers the effects of a 59 and 43 guest houses proposed under Alt. 1 and the MOU Project, respectively. The FEIR thus fails to consider the whole of the project. Whether RSUs are an allowed use in place of a guest house or require CUPs, the NPD's

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inclusion of RSUs makes RSUs reasonably foreseeable. The FEIR's piecemeal environmental review violates CEQA.

**G-2-385 – Impacts of NPD not Analyzed (Also addresses G-2-85 and G-2-459)**

The FEIR RTC G-2-385 does not address potential build-out of guest houses allowed on each lot. (FEIR p. 15-206) With regards to RSUs, the FEIR claims that the project does not propose RSUs. The FEIR continues to fail to recognize that the project goes beyond the proposed development of the MOU Project and Alt. 1 by inclusion of the NPD. The NPD in Appendix B is part of the project and allows more uses and development than proposed in Alt. 1 or the MOU Project e.g., hot houses, greenhouses, accessory structures (see permitted uses in Sec. 35-xxx.4). By failing to analyze the impacts of the NPD and instead focusing on only the MOU and Alt.1 Projects, the FEIR misses the whole of the project.

The FEIR claims that the decision to include a provision allowing RSUs is a policy matter outside the scope of the FEIR. (FEIR p. 15-130) Comment G-2-85 and related comments are couched as comments on the adequacy of the RDEIR and were critical of the documents failure to analyze the effects of RSUs permitted under Section 35.xxx-4 of the originally proposed NPD published in the FEIR. The decision whether to analyze the effects of the proposed NPD is a CEQA matter within the scope of the FEIR and the lead agency County.

During Planning Commission workshops and hearings staff has suggested the County may move RSUs into the category of uses allowed with CUPs such as Section 35-xxx.5. This would ensure environmental review on the permits for future RSUs.

However, this change has not been made. Requiring permits for future RSUs would result in a case-by-case review of future RSUs' impacts *but would miss the comprehensive analysis of RSU build-out that could only be accomplished through this FEIR*. The County must ensure its EIR analyzes the effects of the reasonably foreseeable RSUs allowed under the NPD, whether allowed with or without CUP.

**G-2-387 – FEIR does not analyze Impacts of NPD's allowance to add adjoining Properties' Official Map Lots**

On July 21, 2008, the Planning Commission proposed that the NPD include adjoining properties' (Dos Pueblos, Makar and Morehart) Official Map lots. (1) The FEIR fails to analyze the development potential of the DPR Official Map lots and presumes such potential without analysis. (2) The FEIR fails to analyze the impacts of the build-out of Makar and Morehart pursuant to the standards set forth in the NPD. Development of adjoining official map lots pursuant to the proposed NPD standards is a reasonably foreseeable consequence of the NPD (section 35-xxx.2(4)). By not analyzing the impacts of build-out of the adjacent official map parcels pursuant to the NPD, the FEIR fails to analyze the whole of the project.

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**G-2-391 – RSU impacts not analyzed**

The FEIR still fails to consider the impacts of RSUs allowed in place of guest houses under the Sec. 35-xxx.4 of NPD in Appendix B of the FEIR. These impacts can be lessened by removing the allowance for RSUs as discussed by County staff during Planning Commission Hearings, but this change has not been made in the FEIR. If this change is made, the cumulative impacts of the Projects and the RSUs allowed by permit must still be analyzed.

**G-2-392**

See G-2-387

**G-2-393 – FEIR fails to consider feasible mitigation measures for land use and related view impacts**

The FEIR notes that Land Use Impacts are significant. (FEIR p. ES-9) Under CEQA, significant impacts must be mitigated to the maximum extent feasible if they cannot be avoided. The FEIR improperly rejects feasible mitigation measures i.e. reduced development envelope lot sizes and home sizes that would reduce the Class I impacts to land use and views. The FEIR is flawed for failing to analyze the feasibility of - and for rejecting the concepts of - reducing home sizes and development envelope sizes to mitigate significant impacts.

**Agriculture**

**G-2-394 – Alt. 1 impacts 56 acres of Prime Soil v. 1 Acre impacted by MOU Project**

The FEIR has been updated to find that Alternative 1 will impact 56.2 acres of prime agricultural soils. This updated analysis highlights how alternatives limited to SBR substantially lessen conversion of prime soils. Alt. 1's conversion of prime soils is misclassified as and should be Class I based on County Thresholds of Significance for agricultural impacts because the proposed mitigation measures are unreliable and ineffective. Preserving agricultural land - which is not threatened - in an ACE, while beneficial, does not mitigate Alt. 1's physical loss of 56 acres of prime soils. The water supply for the ACE is now in question, and potential backup water supplies for the ACE would be used by Alt. 1. No mitigation proposed offsets the physical loss by adding new prime soils or protecting threatened prime agricultural soils so this impact is significant. This substantial conversion of prime soils under Alt. 1 can feasibly be almost entirely avoided through Alt. 5 or a reduced version of the MOU Project e.g. Alternative 4. Even the MOU Project as originally proposed reduces the physical loss of prime soils by over 98%, consistent with CEQA's requirements.

Alternative 1 therefore is not environmentally superior with regards to agricultural resources and impacts.

**G-2-395 – No Evidence to support .3 animal units per acre figure**

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The FEIR still lacks evidence supporting the statement the grazing levels are .3 animal units per acre, and thus that impacts to grazing are not significant.

**G-2-397, 398, and 399, 401 and 402 – ACE cannot be relied upon to Mitigate Agricultural Impacts; Failure to Respond to Comment**

By claiming the policy consistency issues are outside the scope of the EIR, the FEIR is factually incorrect at page 15-209. Comments G-2-397 – 399, 401 and 402 are about significant environmental issues within the scope of the FEIR. Comment G-2-402 is about the projects' failure to comply with County LCP Policy 8-2 and Coastal Act section 30242. Comments G-2-397 – 399 are about whether the Williamson Act contracts can be rescinded in certain areas to allow for conversion of prime soils out of agriculture, and thus about whether the ACE is legal mitigation. The FEIR must analyze policy consistency and respond the extensive detailed comments provided by EDC's legal staff identifying why findings cannot be made to rescind Williamson Act contracts, and why the project conflicts with agricultural protection policies. Under CEQA, conflicts with policies are a form of Land Use impact as noted on ES-9. To state that policy inconsistencies are not a CEQA issue is therefore flawed. The lack of substantive response to three pages of our detailed factual comments regarding the significant environmental issue of Williamson Act consistency violates CEQA's requirement for FEIRs to respond to significant environmental issues raised in comments on draft EIRs.

**G-2-400 – Failure to Respond to Comment – ACE Exchange Findings Cannot be Made**

This response states the EIR preparers' understanding of Comment G-2-400 but offers no response, no referral to other responses to comments, and no reason for not providing a response. The FEIR fails to respond to this significant environmental issue – that valuation findings are not sufficiently evaluated in the FEIR to support findings for agricultural easement exchange relied upon to mitigate agricultural impacts.

**G-2-403 – Policy 8-2 and Coastal Act section 30242**

The FEIR claims Comment G-2-403 recommends a 200 foot buffer between residential and agricultural uses. Comment G-2-403 does not address agricultural buffers or make such a recommendation, and the FEIR is flawed in its attribution of this comment.

More importantly, the FEIR dismisses the suggestion for agricultural buffers as "opinion" and "not related to the adequacy of the EIR." However, as noted in evidence submitted by EDC and Surfrider, the County's Agricultural Advisory Committee considers agricultural buffers are an effective mitigation measure that reduces land use conflicts and impacts to agriculture. By dismissing this comment as a non-environmental comment outside the scope of the EIR, the EIR authors miss the clear point that agricultural buffers are mitigation measures needed to mitigate impacts to agriculture and thus are related to the adequacy of the EIR. The FEIR is flawed for failing to respond with substance to significant environmental issues raised in EDC's and Surfrider's comments.

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In addition RTC G-2-403 restates Comment G-2-403's assertion that the project fails to comply with CLUP Policy 8-2 or Section 30242 of the Coastal Act, that the ACE does not render the project consistent with these laws, and that since the ACE findings cannot be made, the ACE cannot be relied upon to mitigate land use or agricultural impacts. However, as with comments G-2-397 – 399 above, the FEIR does not respond to EDC's and Surfrider's detailed substantive comments explaining why the findings for the Williamson Act contract rescission and ACE exchange cannot be made. These comments go to the heart of Land Use Impacts / policy conflicts as well as mitigation for agricultural impacts. Failure to respond to these significant environmental comments renders the FEIR inadequate.

#### **G-2-404 – Failure to offset the Physical Conversion of Ag Land**

The FEIR claims that setting aside land in an ACE mitigates agricultural impacts and that the projects' agricultural impacts are less than significant. The FEIR incorrectly assumes that the land to be preserved in the ACE is threatened with development, and that protecting the area in the proposed ACE has a significant benefit to agriculture. However, the area in the proposed ACE is not threatened with conversion. It is zoned Ag II-100, it is outside the urban boundary, and it is not in Williamson Act contract non-renewal. Preserving this non-threatened land in an ACE, while not a bad thing, is not such a good thing that it can be relied upon to find that conversion of 56.2 acres of prime soils is not a significant impact. The County Thresholds require identification of significant impacts to agricultural prime soils are being converted. The failure to identify significant agricultural impacts based on the Thresholds and evidence in the record that the Williamson Act contract rescission and agricultural easement exchange is illegal.

#### **G-2-405 – Ag Land Use Conflicts are not Mitigated by Buyer Notification**

The FEIR claims that agricultural fencing and buyer notification mitigates agricultural land use conflicts between the proposed residences and existing agricultural operations' noise, odors, dust, pesticide applications, etc. However there is no evidence in the record supporting the allegation that that these measures mitigate agricultural land use conflicts. On the contrary, evidence in the record finds that buffers are needed to ensure this impact is mitigated. No buffers are proposed for the MOU Project. Absent adequate mitigation, the FEIR is flawed for failing to find this impact significant.

Impact Ag-5 (Agricultural Suitability and Land Use Conflicts) is not fully mitigated to less than significant by Mitigation Ag-3, Buyer Notification. While buyers would be notified in advance, this notification would not change the fact that the physical environmental land use conflict i.e. application of pesticides on orchards adjacent to development envelopes would occur. Residents would likely be exposed to dust, noise and pesticides, etc. associated with agricultural operations, and agricultural operations would be impacted by adjacent homes. Impact AG-5 is Class I because Buyer Notification does not prevent the physical impacts from occurring; it merely *notifies buyers those physical land use conflicts between agricultural and residential uses will occur* and waives the buyers' right to file nuisance complaints.

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### **Water Supply for Agricultural Suitability is uncertain, Project may Compete for Water with existing Agriculture**

The FEIR classification of Impact AG-5's as Class II relies in part on the statement "water for irrigation is currently available over the project area, and would remain so." (FEIR p. 9.7-15) If the agricultural creek water diversions are limited – as predictable - to protect fish and endangered species pursuant to DFG's 7-17-08 letter, and if during droughts the homes require shale well water, this could take away an important and needed back up water supply for agriculture. In this way, the project's use of water and the DFG's potential limits on the creek diversion to protect fish and wildlife may combine to threaten agricultural suitability, but this was not analyzed. Impact AG-5 the Agricultural Suitability discussion omits analysis of the DFG 7-17-08. The significant new information in DFG's letter i.e. requiring immediate cessation of creek diversions changes the regulatory baseline for Alternative 1's water supply. The FEIR is factually incorrect to state with certainty that the water supply for irrigation will "remain" as is. Therefore Impact AG-5 Agricultural Suitability is therefore Class I.

### **G-2-407 – Ag Buffers**

Comment G-2-407 noted the lack of buffers between agricultural operations and proposed development envelopes. On page 15-211, in response to G-2-407, the FEIR claims there are 100-foot to 200-foot buffers between residential development envelopes and agricultural operations in the "project design." This is factually incorrect. Figure 8-2.1 and 8-3.1A when overlaid clearly show that the residential development envelope will have no buffer. See e.g. Lots DP-05, and 212 – 214.

### **G-2-408 – Misrepresentation of Comment**

The FEIR notes on 15-211 that "The comment incorrectly states that the FEIR concluded these impacts were "...not mitigated to less than significant (Class I)."" The FEIR misrepresents the comment. The comment G-2-408 did not state that the FEIR found Alt. 1 Impact AG-5 Class I. The point of the comment was that mitigation measures were insufficient so Impact AG-5 should be classified Class I. The FEIR does not respond properly to Comment G-2-408 because it misconstrues the clear language and intent of the comment.

### **G-2-411 – Prime soils converted by Alt. 1**

The FEIR responds to Comment G-2-411 in the context of the MOU Project but the comment was about the Alternative 1 Project as well. While the MOU Project reportedly protects more acres than it would convert, it only converts one acre. The Alt. 1 Project converts 56.2 acres. This makes the Alt. 1 conversion of prime spoils impact 56 times greater than the MOU Project's impact. This difference supports a finding that the Alt. 1 Project impact to prime soils is substantially greater than the MOU Project. The RTC G-2-411 did not respond to the comment about Alt. 1's much greater agricultural impact.

### **G-2-414 – Farmsteads not analyzed**

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The FEIR RTC G-2-414 on page 15-213 fails to respond to the comment about farmstead envelopes. The ACE is part of the project description and it depicts specific farmstead envelopes but the environmental impacts of these farmsteads are not analyzed as part of the project in the FEIR. The EIR thus fails to analyze the whole of the project.

The comment states the agricultural support buildings, animal boarding and breeding facilities and roads would be permitted in the ACE, but are already permitted in the contracted lands. The FEIR claims these facilities are not proposed, and the impacts do not have to be analyzed. However the ACE – which is an important part of the Alt. 1 Project – includes the depicted farmsteads. RTC G-2-411 omits response to the assertion the impacts of the proposed farmsteads were not analyzed in the FEIR, and the FEIR continues to improperly exclude analysis of the impacts of farmsteads.

### **G-2-415 – FEIR’s Improper Reasons for Rejecting Alternative 5**

The FEIR at page 15-214 states that Alt. 1 is reduced density and results in reduced economic returns compared to Grid Alternative 3. The FEIR notes that its consideration of whether Alternative 5 could be acceptable to mitigate impacts to agriculture – since it substantially reduces acreage impacts – is not mere issue of economic feasibility. The FEIR presumes an alternative that would reduce the applicant’s returns does not meet applicant’s economic objectives and will force him to pursue the Grid. The RTC G-2-415 says that the FEIR in Sect. 11 notes that project’s goal is “suitable return.” To be a suitable return, the EIR notes it would have to be enough money to deter applicant from pursuing the Grid. Thus County is improperly using the Grid as a baseline for comparison and analysis of impacts. Using the Grid as the baseline, the EIR is able to find that Alt. 1 is acceptable, and that that Alt. 5 is not because Alt. 5 does not earn the developer enough to deter him from pursuing the grid. However, this is not evidence that Alt. 5 is economically feasible or fails to meet most of the objectives. Therefore Alt. 5 cannot be rejected under CEQA. There are no substantive grounds to reject Alternative 5 as infeasible or failing to fulfill most objectives. Alt. 5 substantially reduces environmental impacts, if economically feasible and fulfills most project objectives set forth in the EIR. Alternatives do not have to fulfill every objective, and cannot be dismissed for failing to fulfill one objective. Moreover, the FEIR still fails to recognize that an alternative can be less profitable than applicant’s preferred alternative while still being economically feasible and fulfilling most project objectives.<sup>19</sup> The County has the right and a duty under CEQA to not approve a project with significant impacts if it is feasible to avoid or substantially lessen those significant impacts. In this case Alternative 5 substantially lessens the project’s significant impacts but is rejected because it is not quite as profitable as the applicant’s preferred Alternative 1. Rejecting Alternative 5 because the applicant won’t make as much money as he prefers project violates CEQA because (1) alternatives can be less profitable or cost more without being infeasible, (2) there is no evidence that Alt. 5 is infeasible and (3) there is no evidenced Alternative 5 fails to meet most of the project objectives.

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<sup>19</sup> *Citizens for Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167 [243 Cal.Rptr. 39].

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### **G-2-417 – Roads to Estates Counted in ACE acreage**

The FEIR notes on page 15-214 that the development envelopes are no longer counted in the ACE acreage. However the residential driveways to the estates in DPR south of Highway 101 are improperly counted in the ACE acreage. Inclusion of the roads in the ACE skews the size of the ACE. This skewing of the ACE acreage enables the FEIR to claim that more land is protected in ACEs than is converted. However, some of the protected agricultural land is really paved driveways, so it should not be counted as preserved agricultural land in the ACE. The ACE does not offer as much actual agricultural land as reported; some of this agricultural preserve acreage consists of driveways to estates.

### **G-2-419 – Ag Impacts not Mitigated to less than Significant**

The FEIR notes that the impacts to agricultural resources are mitigated to less than significant by measures in the FEIR and that additional measures are therefore not required. (FEIR p. 15-215) However the FEIR relies heavily on the ACE to mitigate Impact AG-5 and AG-6. The ACE would “allow for a net increase in prime agricultural lands under production.” (FEIR p. 9.7-18) New information in the form of the DFG’s 7-17-08 violation warning letter to DPR requires DPR to immediately cease diverting water from Dos Pueblos Creek. Dos Pueblos Creek is the primary water supply for agriculture according to the June 2008 Water Management Plan - including agriculture in the ACE. If the water supply for the ACE cannot be relied upon due to lack of DFG permits, the ACE cannot be relied upon as mitigation to lessen significant agricultural resources impacts including Impacts AG-5 and -6.

The primary purpose of the ACE is to encourage agricultural activities. Absent the primary water supply for irrigation in the ACE, the ACE cannot fulfill its primary purpose nor be relied upon as essential mitigation for significant agricultural impacts including AG-5 and -6.

Agricultural impacts remain significant. Additional measures, if feasible, are required to mitigate agricultural impacts. As noted in Comment G-2-419, eliminating lots and/or clustering or reducing the size of development envelopes will further mitigate agricultural impacts such as Impact Ag-5, cumulative Impact Ag-6, and physical conversion of 56 acres of prime soils under Alternative 1.

## **Visual Resource Impacts**

### **G-2-420 – The FEIR Response confuses Views “from” the Santa Ynez Mountains with Views “of” the Santa Ynez Mountains (Also addresses G-2-431)**

Comment G-2-420 notes that the FEIR includes no analysis of views from the extensive public Santa Ynez Mountains (Los Padres National Forest) looking south to the project site. The FEIR describes Alt. 1’s “Surrounding Views” on page 9.9-4 including State Scenic Highway views from Route 154, railroad views, residential views,

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recreational/commercial views and local Highway 101 views. Under recreational views, “two proposed trails” are discussed. However, views from the public’s *existing* Gato Trail, Condor Point Trail north of the project site and from West Camino Cielo – a public road used by recreationalists looking south are not described. These views will be impacted by the project but the FEIR does not mention, discuss, disclose or analyze impacts to views of people using the extensive public forest lands north of the site.

The response to comment G-2-420 on page 15-215 refers readers to response to comment G-2-431 regarding the “project area and including Los Padres National Forest and Santa Ynez Mountains.” *However RTC G-2-431 is about views from the Highway 101 looking north to the project site and Santa Ynez Mountains not about the change in views looking from the mountains south to the project site.* The response misconstrues the comment by 180 degrees. As a result, the FEIR still does not address the issue of visual impacts looking south from the Los Padres National Forest toward the project site and ocean.

**G-2-422 –Undermining Chances of Future Designation of Highway 101 as a Scenic Highway violates LCP Policy 4-8**

The FEIR notes that the County Scenic Highways Element considers the entire length of Highway 101 eligible for scenic designation. (FEIR page 15-277) LCP Policy 4-8 requires the County to actively seek state of California designation of “that portion of Highway 101 between Winchester Canyon and Gaviota State park as a “Scenic Highway.”” The County has not fulfilled this policy in the policy’s 20-plus year life and is not proposing to fulfill the policy in the context of the proposed project. Moreover, this project will damage the visual landscape and make such designation of Highway 101 less attainable. In effect, the County is precluding or undermining its future compliance with Policy 4-8 by degrading the visual landscape before seeking state of California designation of this specific reach of Highway 101 as a “Scenic Highway” as required by the policy. By precluding or undermining successful future scenic highway designation, the projects violate LCP Policy 4-8.

**G-2-429 – Skyline Intrusions violate LCP Policy 4-3; KOP 3, 5 and 6 are Class I Impacts due to Conflicts with Policy 4-3 (Also Addresses G-2-442)**

RTC G-2-429 is conclusory. It restates the FEIR’s unsupported and erroneous assertion that the project design appears to be consistent with applicable policies including LCP Policy 4-3. Policy 4-3 prohibits new structural intrusions into the skyline from public viewing locations. However, the FEIR at 9.9-15 also states that “intrusion of the rooflines of one or two residences into the sky may be considered inconsistent with above policy.” The FEIR overlooks evidence in the record including Figs. 9.9-10, -11, -12, 15, and -17 which depict the project structures intruding into the skylines as viewed from various public viewing locations at KOP 1A, 1B, 2, 5, 6B. Despite this incontrovertible evidence that the structures intrude into the skyline when viewed from public viewing locations, the FEIR fails to identify conflicts with Policy 4-3, fails to apply the conflicts in the impact analyses in FEIR Section 9.9.4.3.2, and fails to identify Class I impacts as a result. This is a failure to proceed in accordance with law i.e. Policy 4-3. The FEIR fails to

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properly apply the County's CEQA Thresholds of Significance for visual resources impacts by failing to properly apply Policy 4-3. The FEIR finding of consistency with Policy 4-3 is conclusory. The FEIR includes no explanation of how homes that intrude into the skyline when seen from public viewing locations comply with Policy 4-3 which prohibits such intrusions.

#### **G-2-433 – RSUs' Visual Impacts are not Considered in FEIR**

The FEIR refers readers to RTC G-2-385 which states that RSUs are not part of the proposed project. However, Appendix B of the FEIR describes the NPD Zone District which is part of the proposed project. The NPD includes a provision in section 35-xxx.4 allowing an RSU on each lot as an allowed use. As an allowed use in place of a guest house, the RSUs are reasonably foreseeable and their impacts must be assessed in the EIR.

Even if the RSUs would only be allowed with CUPs - as suggested by County staff - the RSUs would nonetheless be reasonably foreseeable and require analysis as part of this FEIR. The FEIR does not analyze the impacts of NPD's allowance for RSUs. The FEIR is seriously flawed because it does not consider the total project or the total environmental impact from the project including the impact of RSUs.

#### **G-2-435 – The FEIR improperly uses Future Visual Conditions Baseline to Find Trail Users' Impacts are less than Significant (Also addresses G-2-446)**

The FEIR at page 9.9-8 finds that trail users' "viewer sensitivity is heightened" and trail users would have a "stronger expectancy for scenic views especially south toward the ocean" at KOP 1A. However, the FEIR reverses this finding and claims that future amenities potentially to be approved as part of this project would degrade the visual setting and lessen viewer's expectations. On July 21, 2008 the Planning Commission discussed including only a footpath and few or no amenities. These amenities have not been built, may not be built, and regardless are not part of the existing physical baseline conditions. It is improper for the FEIR to assume that the project's access amenities will be approved as proposed, and to use this assumption to downplay the viewer sensitivity and visual impact susceptibility.

The FEIR must use the existing physical conditions as the baseline for the visual impact analysis not some future hypothetical conditions. Using the existing conditions, the FEIR notes on page 9.9-8 that, "Since the highway to the east and west of the project maintains scenic vistas to rural and recreational areas (including El Capitan State Beach to the west), the expectation of scenic views is more likely and therefore viewer sensitivity is heightened." Using the existing visual baseline as required under CEQA instead of presumed hypothetical future conditions, viewer sensitivity and visual impact susceptibility would rank high, not moderate. The high visual impact severity identified on FEIR page 9.9-20 coupled with high visual impact susceptibility derived using the proper CEQA baseline would result in a Class I impact. However, use of the incorrect (i.e. a hypothetical future) baseline resulted in the FEIR finding moderate viewer

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sensitivity, thus moderate visual impact susceptibility, and thus a Class II instead of Class I impact. Use of an incorrect baseline violates CEQA and renders the FEIR inadequate.

The FEIR offers new reasoning for supporting a finding that the significant view impairments at KOP 1A can be mitigated to less than significant. For instance, the FEIR suggests that the existing visual landscape is degraded (FEIR p. 15-218), and that railroad passengers are “often distracted.” (FEIR p. 15-221) However the existing visual environment looking east, south to the ocean and west from the location of KOP 1A is a natural view, does not contain homes or structures and is not visually degraded. Views of hikers and trail users are often focused on the surrounding landscape, so their visual sensitivity will be high rather than moderate.

#### **G-2-447 – KOP-1B – Response fails to address substantive comments raised**

In response to comment G-2-447, the FEIR refers readers to responses to comments G-9-5 and -15. But these comments and the FEIR’s responses thereto do not address the substantive issues raised in Comment G-2-447. Specifically, the FEIR does not address the comment that hikers may take an hour to hike the Coastal Trail roundtrip, but the FEIR dismisses view impacts because “the actual duration of their view through this KOP1B would be perhaps a few seconds to one minute because it occurs through a break in the windrow.” This myopic view towards visual impact assessment overlooks the larger picture i.e. that hikers will not only use this trail at KOP 1B but will travel its entire 7,800 foot length, and the views will be impacted over this length.

Comment G-2-447 provides a detailed point-by-point analysis of the RDEIR’s KOP 1B impact assessment, but the FEIR provides a cursory, dismissive response that does not address the points raised in comment G-2-447. This is an inadequate response pursuant to CEQA.

The FEIR uses the wrong baseline to find that viewer sensitivity at KOP 1B would be diminished. Using existing baseline conditions, viewer sensitivity would be high.

#### **G-2-448 – KOP 2 – Does not respond to allegations of factual inaccuracies; FEIR is Internally Inconsistent**

The FEIR incorrectly claims that no important open space would be lost and that “the natural character of the hillside would be retained.” These statements are factually incorrect – the EIR finds in Impact Vis-0 that the project will change the visual quality of the hills. For instance the FEIR notes, “One of the major visual effects of the Alternative 1 design will be to replace the existing sloping hillsides visible north of Highway 101 with a large lot residential development.” (FEIR page 9.9-18) However the FEIR relies on the incorrect statement that “the natural character of the hillside would be retained” to find impacts are not Class I.

#### **G-2-451 – FEIR Omits response to Specific Comments; uses Incorrect Baseline for Impact Analysis**

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RTC G-2-451 groups numerous comments about perceived flaws in the analysis of Impact Vis-5, and does not respond to each comment. The FEIR omits response to the comment in G-2-451 that KOP 5 is taken from a different vantage point for the MOU Project and Alternative, resulting in a skewed comparison that favors Alternative 1.

The FEIR still relies on a comparison of Alternative 1's view impacts to the MOU project to find the KOP-5 Impact less than significant for the Alt. 1 Project. However, the proper comparison is not made: comparing Alt. 1 to existing physical conditions. As a result of failing to use the proper baseline i.e. the existing conditions, the FEIR's KOP-5 impact analysis is flawed.

**G-2-455 – Responses to Select Portions of Comments Omits Response to Comment that Staircase violates Policy 4-3**

The FEIR responds to several points in G-2-455 but does not respond to a major point: that the staircase is a structure that would intrude into the skyline when viewed from public viewing locations, and violate 4-3.

**G-2-456 – Figure 9.9-7 misrepresents setbacks to bluff and bluff home visibility from ocean**

Figure 9.9-7 shows homes are 400 to 800 homes from the bluff, not 200 to 500 feet. If this figure is not to scale, the FEIR should state this. However the FEIR states this figure is to scale. Therefore, the figure misrepresents view impacts by indicating homes are set back from the bluff twice as far as they really are.

**G-2-458 – Public Viewing Locations of the Project Site exist Offsite; Visible Roads Violate Proposed NPD Visual Standards**

The FEIR is factually incorrect to claim that “no existing public view areas currently exist within the proposed project area.” (FEIR page 15-224) In fact, the railroad and Highway 101 pass through the project site and provide public viewing locations of the site.

Moreover, the proposed roads would be viewed from offsite public viewing locations and violates proposed NPD section 35-xxx.13(3).

The FEIR is factually incorrect and internal contradictory to claim that project roads will not be visible from public viewing locations. The project's roads and driveways will be visible from public viewing locations offsite, including Highway 101. Figure 2.3-1A has topographic lines and shows that roads will be on ridges visible from Highway 101. The FEIR claim on page 15-225 that the roads won't be visible from public viewing areas because no public viewing areas exist onsite is flawed in two respects. One, there are public viewing locations offsite as noted above. Two, the roads will be visible from public viewing locations according to the FEIR's figures.

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**G-2-459 – RSUs are Reasonably Foreseeable and their Impacts Must be Analyzed in the FEIR.**

(See G-2-385)

**G-2-460 – FEIR Fails to Define and Analyze Cumulative Impacts**

The FEIR claims that since Lot 132 is already built, and is not part of the project, the FEIR need not analyze the cumulative impacts of the project and Lot 132. However the FEIR mistakes the meaning of cumulative impacts. Cumulative impacts include the impacts of the project and past, present or reasonably foreseeable projects. Therefore, the cumulative visual impacts include the impacts of Lot 132, a past project which contributes to visual degradation of the proposed project. The FEIR is flawed for overlooking the cumulative visual impacts of the project and Lot 132.

**G-2-461- G-2-467 – FEIR Dismisses Feasible Mitigation Measures with No Analysis or Substantive Response**

On page 15-225 the FEIR avoids substantive responses to comments G-2-461- G-2-467 by writing them off as opinion. The FEIR identifies Class I significant view Impact Vis-0. CEQA requires that significant impacts be avoided or mitigated to the maximum extent feasible. Proposed measures which would further lessen the significant impact identified in the FEIR, such as those measures in G-2-461 – G-2-467<sup>20</sup> must only be rejected if substantial evidence shows them to be infeasible. As a matter of law responses cannot be conclusory and must respond to significant environmental issues raised in comments on the RDEIR. Comments G-2-461 – G-2-467 raise significant environmental issues i.e. mitigation measures to reduce Class I Impact Vis-0. However the response on page 15-225 is conclusory and lacks a basis of substantial evidence to support the FEIR's out-of-hand rejection of effective mitigation measures.

**G-2-470 – EIR fails to Consider Elimination of Lots which Cause “Significant Unmitigable Impacts”**

On page 15-226 the FEIR restates its Class Impact finding for Impact Vis-0. EDC and Surfrider identify factual and procedural flaws in the FEIR's visual impact analysis and identify additional Class I impacts. Nonetheless, the FEIR does not analyze eliminating any of the lots which cause the Class I impact(s) or intrude above the skyline. CEQA requires avoiding or mitigating significant impacts to the maximum extent feasible. This FEIR's failure to consider feasible mitigation measures i.e. elimination of lots in order to

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<sup>20</sup> Measures include: (1) locating structures outside Highway 101 viewshed to extent feasible; (2) screen homes with topographical features; (3) eliminate or cluster bluff development further north to protect trail users' views; (4) eliminate or relocate structures which intrude into skyline or contribute to significant visual effect; (5) eliminate proposed project / NPD allowance for RSUs with CUPs; (6) and offsite lighting mitigation i.e. retrofit of existing unshielded lighting on or near project site to mitigate project's night-sky impacts.

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substantially lessen the significant Impact Vis-0 is an error in the lead agency's application of CEQA.

### **G-2-471 – Failure of FEIR's Visual Resources Section to Consider Impacts on Views from National Forest Trails**

The FEIR does not analyze the project's impacts to views from Gato Trail, Condor Point Trail or anywhere in the entire Los Padres National Forest north of the project site. Trail and forest users are afforded spectacular ocean and coastline views from the low mountains above the project site. The project would directly impact these views. The FEIR says "All three features mentioned in the comment are mentioned in the Recreation sections of the RDEIR (Sections 3.10 and 9.10.)" However, the two public trails (Gato and Condor Point) are not mentioned in the Recreation sections of the FEIR. Views from the trails and forest are not mentioned in the Visual Resources Section of the FEIR or elsewhere in the document.

In addition, the FEIR claims on page 15-226 that since the forest is so large there is a low potential for the "project to have any appreciable effect on such a resource." This response entirely mistakes the comment. The comment stated that impacts *from* the forest to the project site were not analyzed but the response is about the impact of the project *on* views of the forest – not *from* the forest. As a result of misrepresenting comment G-2-471 the FEIR omits a response to the comment that the FEIR is deficient by omission for failing to consider impacts to views from users of the vast national forest that looms over the project site.

### **Recreational Resource Impacts**

#### **G-2-472 – Trail to Camino Cielo**

The FEIR dismisses the proposed trail to the Los Padres National Forest sand Camino Cielo by saying it is not needed to mitigate project impacts. However, County policies including the Comprehensive Plan Land Use Element, parks/Recreation – Policy 4 (FEIR 4-48) call for expanding trails. The FEIR fails to even consider expanding the trail system to connect with Los Padres National Forest trails.

#### **G-2-476 – Carrying Capacity Study Required Pursuant to LCP Policy 7-4**

On page 15-227 and -228 the FEIR dismisses the LCP's requirement for the County to conduct a carrying capacity study for all existing and proposed recreational areas sited near sensitive habitats such as dunes, wetlands and tide pools, such as the proposed recreational area at SBR. The FEIR seems to suggest the FEIR acts as the carrying capacity study. EDC and Surfrider continue to maintain the LCP requires a carry capacity study such as the draft study prepared by the County for Goleta Beach County Park.

### **Cultural Resource Impacts**

#### **G-2-492 – G-2--514 - Cultural Resources**

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All feasible measures to avoid impacts to cultural resources were not pursued, i.e. conservation easements, elimination of Lots DP -15, 16 and/or 20, shifting development envelopes to better avoid resource areas regardless of private views from Casa Grande. No evidence in the record suggests avoiding Lots DP-15, -16 and -20 is infeasible. Alternatives 2, 4 and 5 avoid these lots and impacts to the significant cultural resources thereon.

See Section 13.3 above.

The FEIR does not assess septic systems' leach lines and fields' cultural impacts. The DPR lots located south of HWY 101 propose large leach fields approximately 2,000 – 3,000 square feet depicted in the FEIR. See e.g. Fig. 8.3-1A. Failure to analyze the impacts of leach fields on cultural resources is an omission by the FEIR that undermines the FEIR's analysis of cultural resources.

Cultural resources impacts are deemed significant by the state agency with expertise on cultural resource impacts: SHPO.

The FEIR does not analyze the physical impacts from the leach field construction, or the possible impacts of changes in soil water moisture, pH or chemistry that may affect archeological resource, including bones.

**G-2-497 – Surveys are Establish the Baseline Conditions but are not Mitigation Measures**

The FEIR misconstrues and does not respond to Comment G-2-497 that Phase III cultural resource *surveys* (not mitigation) would be need to establish a proper baseline if Phase II surveys identify significant resources. The FEIR wrongly suggests Comment G-2-497 misunderstood that the FEIR may require Phase II surveys as mitigation. Comment G-2-497, however, clearly criticized the FEIR for relying on surveys as mitigation when surveys do not mitigate impacts. Surveys establish a baseline. The FEIR's continual reliance on surveys as mitigation is improper because surveys, like data collection, do not offset or lessen cultural resource impacts. Surveys and data collection merely help understand the resource and impacts to it, but do not reduce impacts.

**G-2-500 FEIR Misrepresents Comment that Cultural Landscapes and Areas of Artifacts are Cultural Resources.**

The FEIR dismisses Comments G-2-500 and 501 as "incorrectly" stating that "archeological sites are not defined by spatial distribution of artifacts but by landscape setting." Comment G-2-500 in no way suggests archeological sites are not defined in part by distribution of artifacts. The comment states that the FEIR focuses only on sites of artifacts to the complete omission of analysis of impacts to the cultural landscape setting. EDC and Surfrider recognize the significance of both archeological sites defined by artifacts and culturally significant landscapes like major village sites on DPR. The FEIR fails to consider impacts to the latter and is deficient through omission.

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**G-2-513 – Avoidance of Cultural Resources along Coastal Bluff summarily rejected Without Analysis.**

The Comment G-2-513 suggests avoiding development on the coastal bluffs area where the large estates are proposed to avoid impacts to cultural resources. The FEIR claims comment G-2-513 is not related to the FEIR and offers no response. The FEIR rejects this effective mitigation measure – avoiding the coastal terrace - without analysis of its effectiveness or feasibility. The FEIR rejection of cultural resource impact avoidance measures is unjustified in the face of significance impacts, violates CEQA and LCP Policies 10-1 – 10-3.

**Traffic Impacts**

**G-2-516 – Highway 101 qualifies as Expressway – Maximum Capacity Exceeded**

Comment G-2-516 applies the County's adopted Circulation Element definitions of "expressways" and "freeways" to Highway 101 in the project area, an exercise the FEIR omitted. This is a necessary exercise because expressways have a Circulation Element policy limit of 33,000 average daily trips (ADT) – which is exceeded at Highway 101 - while freeways have a 44,000 ADT maximum capacity – which is not exceeded. The FEIR rejects comment G-2-516 as opinion. Highway 101 in the project area meets the County's Circulation Element definition for expressway including "4-lane arterial highway with at least partial control of access which may or may not be divided or have grade separations at intersections" However, instead of applying the County's Circulation Element definitions, the FEIR claims Highway 101 is a freeway not an expressway. This misapplication of the County's expressway definition allows the County to apply the 44,000 ADT limit to Highway 101, and find the project consistent with the Circulation Element.

**G-2-517 – The FEIR does not analyze Alt. 1's consistency with the Circulation Element.**

The FEIR claims to analyze the projects' consistency with the Circulation Element but no such analysis exists. Since policy conflicts often help identify adverse impacts, the FEIR's failure to analyze consistency with the Circulation Element policies compromises the traffic impact analysis and renders the FEIR inadequate.

**G-2-518 – Failure to Consider Traffic Generation from the Agricultural Support Facility and Agricultural Operations in the Alt. 1 Project's ACE**

The FEIR disregards and does not respond to Comment G-2-518 with regard to the project's agricultural traffic to support operations of the proposed ACE.

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### **G-2-252**

In *Bakersfield Citizens for Local Control*, the Court found an EIR deficient for failure to analyze indirect effects of a proposed project. The SBR FEIR does not analyze all the direct and indirect effects of GHG emissions from the Project, and it must be revised accordingly.

### **G-2-523 and G-2-258 – Failure to Identify Significant Project-specific and Cumulative GHG-emission Impacts, and Failure to Mitigate GHG emissions to the Maximum Extent Feasible**

The FEIR ignores AB32's requirement to reduce GHG emissions to curb the effects of global warming. AB32's mandate to *reduce* GHG emissions establishes a de-facto threshold that any *increase* in GHG emissions is a significant impact. Under CEQA, significant impacts must be mitigated to the maximum extent feasible. The FEIR fails to mitigate GHG emissions to the maximum extent feasible; after proposed mitigation measures reduce the Alt. 1 Project still result in a maximum generation of 2,916,189.4 pounds of CO<sub>2</sub> per year (construction) and 2,801,648.7 pounds of CO<sub>2</sub> per year during the project's permanent occupation phase.<sup>21</sup>

The FEIR includes modest measures to reduce CO<sub>2</sub> pollution in Mitigation AQ-3. While complying with California Title 24 Energy Code for all relevant applications, installing heat transfer modules in furnaces, using light colored paint and roofing materials, using concrete instead of asphalt parking areas, and planting trees to shade homes and parking areas are moderately helpful, these measures do not mitigate significant impacts to the maximum extent feasible as required under CEQA.

Feasible measures to further mitigate the global warming impacts of increased CO<sub>2</sub> pollution that have been considered in the EIR or proposed in comments on the RDEIR, but were rejected include:

- The formerly proposed solar array on DPR;
- Reduced density alternatives;
- Transportation impact fees on developments to fund public transit service;
- Residential Solar Panels;
- Smaller home sizes; and
- Carbon emissions credit purchases that fund alternative energy projects.

No evidence supports a finding that these three important mitigation measures and alternatives - which substantially lessen and offset GHG emissions and the project's generation of global warming-causing CO<sub>2</sub> – are infeasible. Failure to include these feasible measures is a failure to proceed in accordance with law i.e. a failure to mitigate significant air pollution impacts to the maximum extent feasible.

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<sup>21</sup> Tables 9.14-3 and -4 total maximum daily CO<sub>2</sub> emissions times 365 days

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## **Public Services and Infrastructure**

### **G-2-530 – Impact of Guest Houses and RSUs on Solid Waste Generation not Analyzed**

Comment G-2-530 is that the public service impacts do not consider the guest houses or RSUs. The FEIR refers readers to G-8-44 for a response Comment G-2-530.

FEIR page 15-373 claims that no RSUs are proposed as part of the *MOU Project*. The MOU Project is *not the whole of the project*. The proposed project includes the County's creation of a new zone district (Naples Planned Development District (NPD) a.k.a. Naples Town Site (NTS)) to allow this urban development to proceed in agricultural lands. The NPD includes allowed uses and uses allowed with CUPs which are reasonably foreseeable by virtue of their designation in the NPD. As an example, while the MOU Project may include 43 guest houses and no RSUs, it is reasonably foreseeable that guest houses will be converted to more valuable and useful RSUs pursuant to the zone district language in section 35.xxx-4 in Appendix B of the FEIR. If as discussed inconclusively at Planning Commission hearings on the project and FEIR RSUs are only allowed in place of guest houses with a CUP, RSUs are reasonably foreseeable result of the proposed zone district. The impacts of RSUs cannot be excluded from the FEIR on the basis RSUs are not proposed as part of the MOU Project or Alternative 1 because the proposed zone district specifically lists RSUs as an allowed use.

With regard to Guest Houses, RTC G-8-44 mentions geological and hydrological impacts (page 15-372), visual, special-status plants and traffic impacts (page 15-373), but does not respond to EDC and Surfrider's comments that the solid waste impacts do not consider guest houses and RSUs. This is an error of omission; the FEIR fails to respond to our comment that the solid waste impact analysis excludes guest houses and RSUs.

### **G-2-531 – G-2-534 - Fire Protection Services**

See G-2-169 above.

### **G-2-535 and G-2-536 – FEIR Fails to Consider Public Services Impacts of RSUs**

RTC G-2-535 on page 15-240 notes that "Under Alternative 1, the proposed population sites included are either guest houses or RSUs; therefore the impacts of SP-5 [sic] are correctly analyzed." This is not accurate. On page 9.15-22, the FEIR states the anticipated population of 217 to 330 is based on the large size of the residences and guest houses, but not on RSUs. The impacts of RSUs were not considered even though they are identified in the NPD and are thus reasonably foreseeable results of this project.

The FEIR continues to underestimate the population by excluding consideration of the RSUs identified in the NPD, and as a result consistently underestimates public services impacts. Considering future RSU build-out under the proposed NPD, the population and public service impacts could be substantially greater than in the FEIR i.e. 72 homes at 3.01 people per home plus RSUs at 3.01 people per unit.

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This omission compromises the FEIR's analyses and conclusions that fire protection services, solid waste generation, school capacity and other public services impacts can be mitigated to less than significant.

**G-2-536 – FEIR incorrectly claims .11 is not student generation rate**

Comment G-2-536 notes that using the FEIR student generation rates and considering RSUs, high school student generation will exceed capacity. The RDEIR at 9.15-7 and the FEIR at 9.15-8 both state that the "SBHSD generation factor is 0.05 per SFD unit for grades 7-8 and 0.11 per SFD unit for grades 9-12." The FEIR incorrectly claims on 15-241 that, "The commenter incorrectly assumes a generation factor of 0.11 for school impacts, claiming a significant impact." The FEIR is inconsistent and inaccurate regarding the SBHSD student generation factor. Using the 0.11 per SFD unit used in the EIR's analysis, and applying it to the proposed homes and foreseeable RSUs, the high school student generation exceeds the area high schools' capacity. Only by excluding the foreseeable RSUs, the FEIR finds impact to high school capacity (Impact PS-3) can be mitigated to less than significant (Class II).

**G-2-537 - G-2-543 – Water Supply Analysis for Alternative 1 is Inadequate**

Comment G-2-537 – G-2-543 describe problems associated with the project water supply, and the creek diversion which is relied upon to serve the Alt. 1's essential ACE. The FEIR relies on its statement on page 15-245 that agriculture on DPR "will continue to be served by such [DP Creek water] diversions." However, the 7-17-08 letter from DFG to DPR requiring cessation of the diverting the state's water from DP Creek is significant new information relevant to Alt. 1's water supply. If the ACE no longer has adequate water – and some potential back up supplies are used by the project - the ACE cannot be relied upon as mitigation for otherwise significant agricultural impacts or to make easement exchange findings necessary for Alt. 1.

The reduction in water supply for agriculture is an agricultural impact that would not be so severe except for the proposed project which will rely on SWP and "On-site Shale Wells." Absent the project, SWP water and the shale wells could serve agriculture in place of the creek diversion. The Water Management Plan at page 7 prioritizes people's interior water use over agricultural water use so in the event of shortage, agriculture would suffer.

The FEIR attempts to separate the creek diversion from the proposed project. However the creek diversion and Alt. 1 are intricately linked via the ACE. By virtue of Alt. 1's reliance on the ACE to support the Williamson Act contract rescission and to mitigate significant agricultural impacts, the absence of DFG permits for the creek water diversion to serve agriculture in ACEs affects the Alt. 1 Project's ACEs' water supply.

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With Alt. 1 proposing to use SWP and shale wells there would be even less water available to serve agriculture in the ACEs in the event the creek diversions are limited to protect federally-Endangered steelhead and Threatened red-legged frogs.

California Courts have decreed that three species of salmon and steelhead are at risk of extinction due to the SWP diverting freshwater from rivers in the Central Valley. New restrictions on SWP not anticipated in DWR's 2007 Draft Reliability Report are forthcoming and foreseeable. Relying on SWP as the project's supply is relying on paper water. The Water Management Plan claims that "over the long term CCWA would be able to deliver to NWC between approximately 145 AFY and 152 AFY solely from the SWP. This figure does not account for additional water source available to CCWA, described above, or CCWA's storage options described above. When these sources are factored into equation [sic] CCWA has the ability to make up for any shortfall in SWP deliveries." (WMP, page 3) This analysis does not account for forthcoming, reasonably foreseeable restrictions to stave off the three Central Valley salmon and steelhead species extinction.

See comments on 13.4 above.

#### **G-2-543 – Dos Pueblos Creek Water Supply is overstated**

Geologist Hoover recommends as a good practice that the horizontal wells be shut down 4 months or more per year to protect the wells and groundwater. The FEIR notes on 15-246 that, "The RDEIR's analysis of water supply available from Dos Pueblos Creek is overstated based on assumptions regarding the continual operation of the horizontal wells, and lack of discussion of possible overdrafting and evapotranspiration."

Given Alt. 1's need for creek water to serve the ACE to mitigate agricultural impacts and facilitate the Williamson Act contract rescission, this overstatement of water available in DP Creek is relevant to Alt. 1 and further throws into question Alt. 1's water supply.

RTC G-2-543 is carefully worded to suggest DP Creek is not needed for the MOU Project or Alt. 1 but merely says "No water will be diverted from Dos Pueblos Creek for and MOU Project development or for any new residential development under Alternative 1." Alt. 1 also includes the ACE needed to enable the agricultural preserve contract rescission. The ACE's reliance on DP Creek water and the adequacy and reliability of DP Creek water to serve the ACE, is critical to Alt. 1. Until the DP Creek water diversion is permitted by DFG, it is premature to determine if adequate water will exist under Alt. 1 to support the ACE, and thus it is premature to certify the FEIR and make findings to approve Alt. 1. The FEIR must be recirculated for water supply impacts and related agricultural impacts in light of DFG's new information.

#### **G-2-546 – Water Diversions for ACE may Impact Steelhead; FEIR Omits Analysis**

The FEIR claims that since the creek diversion will not serve "any new residential development under Alternative 1." However the diversion will serve Alt. 1's critical

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ACE. Without the ACE, findings for rescinding the agricultural preserve contract to allow development cannot be made. Therefore the creek diversion is necessary for Alt. 1, and the impacts of the diversion must be considered. Analysis of the water supply for Alt. 1 in a recirculated DEIR can only proceed once DFG determines the amount of water that can be diverted from the creek for Alt. 1's ACE.

**G-2-551 – New Information SWP is Less Reliable than assumed in FEIR**

Please see the recent decision regarding State Water and endangered species; the text is available online at [http://www.earthjustice.org/library/legal\\_docs/salmon-remedies-decision-7-18-08.pdf](http://www.earthjustice.org/library/legal_docs/salmon-remedies-decision-7-18-08.pdf).

**G-2-558 – FEIR's claim Homes will be Owners' Second Homes is Unsupported**

The FEIR introduces and relies on a new, unsupported assumption that project homes will be "used as second homes" and as a result finds impacts to solid waste generation are not Class I. (FEIR page 15-251) No evidence supports this assertion. While normally such an assertion may not be of significance for an EIR, in this case the FEIR claims that because the homes will be used as second homes they will not generate as much trash as they would if they were not second homes, and will therefore not cause a significant solid waste impact. Findings must be based on substantial evidence but this finding is based merely on convenient speculation.

**G-2-559 – Failure to Analyze Solid Waste Generation Impacts using Adopted County Threshold of Significance**

The FEIR fails to respond to Comment G-2-559 that the RDEIR does not analyze the project's solid waste generation against both County's solid waste thresholds. Specifically, the County's adopted CEQA Thresholds and Guidelines Manual require that an EIR find a significant impact for a project that would generate 5% or more of the expected average annual increase in County solid waste generation." Instead of analyzing the projects against the County's adopted 5% threshold, RTC G-2-559 refers readers to RTC G-2-558 which also does not respond to the comment.

Failing to analyze the project's solid waste generation in accordance with the County's adopted measurable thresholds of significance is an inexcusable omission. Moreover it is arbitrary to abide by one County solid waste threshold but not the other. Whether or not the omission of the second threshold from the solid waste analysis is designed to conceal significant trash generation impacts, the FEIR's failure to assess the projects' solid waste generation to determine if it exceeds 5% of the expected average annual increase in waste generation is a substantive an error of omission.

**G-2-560 – Deferral of Solid Waste Mitigation Measures**

The FEIR still explicitly defers Mitigation PS-8's Solid Waste Management Program's measures to mitigate trash generation.

**G-2-563 – Cumulative Impacts of existing and proposed Septic Systems on DPR**

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Evidence in the record shows there are numerous structures served by non-conforming septic systems. The FEIR notes these systems may be contributing to water quality degradation. The FEIR also finds that new septic systems could contribute to water quality impacts. (FEIR page 9.15-21) The FEIR acknowledged the septic systems individual impacts, but completely overlooks the cumulative impacts of these existing and proposed DPR septic systems and is deficient in this regard.

**G-2-565 – FEIR fails to respond to Questions about MOU Project Septic Systems**

The Comment asks two questions regarding significant environmental issues. Why was the MOU Project not changed to exclude use of septic systems at County EHS' insistence? What were the results of percolation tests for the MOU Project's 16 inland lots' proposed septic systems? The FEIR offers no response to either specific question related to the MOU Project's water quality impacts, and is deficient for omitting substantive responses to these questions.

**G-2-566 – All Alt. 1 Homes are not to be Served by the Proposed Wastewater Treatment Plants**

The FEIR cites to the RWQCB recommendation that "all wastewater be conveyed to the proposed STP." The FEIR then claims that "use of the proposed STP systems would be required in order to avoid impacts to groundwater and surface water quality." (FEIR page 15-253) However, this is inaccurate. Mitigation WQ-2 allows septic systems for DPR lots south of 101, DPR Lot 11 north of Highway 101, "and possibly for isolated units elsewhere in the project" (FEIR page 9.3-41) The FEIR inconsistently describes whether all homes would be on septic systems, and incorrectly suggests that all proposed homes would be served by the Wastewater Treatment Plants as recommended by the RWQCB when Mitigation WQ-2 allows for multiple septic systems.

**G-2-567 – Impacts of Sewage Sludge Drying, Storage, Transportation and Disposal are not Analyzed in FEIR**

Comment G-2-567 identifies the FEIR's failure to analyze sewage sludge drying, transport and disposal. The FEIR does not respond to specific questions asking how the sewage sludge will be dried, stored, transported and disposed. Disposal of sludge, even offsite, is an impact of this project. Drying sludge can cause odor and other impacts. The FEIR does not specify if sludge will be dried onsite, or the impacts of transporting sludge which is often taken out of County in large, polluting trucks.

**G-2-569 – Sewage Plant to be run by Public Agency**

The FEIR does not include the County EHS' and Planning Commission's recommendation – under consideration - to require the treatment plants to be run by a public agency like a CSD to ensure water quality and other impacts are mitigated.

**G-2-576 – Promises of a New Fire Station do Not Mitigate Fire Protection Services Impact**

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Chairman Charles Jackson, Santa Barbara County Planning Commission

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The FEIR notes that the City of Goleta incorporated in 2002 and adopted a policy to provide land for a new fire station “near Winchester Canyon.” While the County and City of Goleta may plan for an eventual fire station in the future, no station exists and no funding exists to complete the station. Since the station is not funded, constructed or operational, the FEIR is flawed for finding significant fire protection services impacts mitigated to less than significant.

**G-2-578 – FEIR uses Improper Baseline of Grid Development**

Comment G-2-578 is that public services impacts would be reduced through a reduced development alternative. The FEIR finds that public services impacts are minimized *compared to the potential of developing the Naples town site lots at their full density.* (FEIR page 15-256) The worst-case scenario grid development is not the baseline for assessing environmental impacts. Failure to use the existing environmental setting as the baseline renders the FEIR flawed and compromises its ability to select an environmentally superior alternative.

**G-2-605**

Preservation of lands that are not threatened by development does not constitute adequate mitigation for the loss of prime soils, and the FEIR should find a Class I impact to agriculture.

**G-2-622**

The Grid is *one* no-project alternative, and it is speculative. The FEIR provides no evidence to show that the Grid development would occur absent the Project. Either the FEIR must be revised to include this evidence, or the Grid should no longer be used as a bogeyman to make Alt. 1 look more desirable.

**G-2-643**

The Project represents suburban sprawl north of Goleta. The Project is a residential development in an area primarily covered by agriculture and open spaces. No other comparable development exists adjacent to the Project. The “Grid” is not a likely development scenario, and the Project will certainly not “prevent” sprawl.

**G-2-689**

Visual policies prohibiting skyline intrusions are not subjective. Intrusion is not a matter of opinion. Structures that intrude into the skyline should be deleted or modified to comply with County policies.

**G-2-703**

As noted frequently in our prior comments and in this letter, the FEIR does not apply LCUP Policy 1-2 appropriately. The Alt. 1 Project is not most protective of coastal resources, and the manipulation of policies that the FEIR uses to excuse Alt. 1 do not give precedent to policies that are most protective of coastal resources.

## **10.0 CONSISTENCY WITH PLANS AND POLICIES**

The RDEIR must “discuss any inconsistencies between the proposed project and applicable general plans and regional plans.” CEQA Guidelines §15125(b), Appendix G. “A project will normally have a significant effect on the environment if it will: Conflict with adopted environmental plans and goals of the community where it is located.” (CEQA Guidelines, Appendix G(a).)

The “consistency” analysis in an EIR is one of the most significant sections, because every project must be consistent with the applicable plans and zoning ordinances. In fact, the requirement of “consistency” is the lynchpin of California’s land use and development laws. (*de Bottari v. City of Norco* (1985) 171 Cal. App. 3d 1204, 1213 [217 Cal. Rptr.790].)

The California Supreme Court has confirmed the General Plan as the single most important planning document and the “constitution for all future developments.” (*Leshner Communications Inc. v. City of Walnut Creek* (1990) 52 Cal. 3d.531 [277 Cal.Rptr. 1]; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553 [276 Cal.Rptr. 410].) The County may not approve a project if it is inconsistent with the County’s General Plan (referred to hereafter as “Comprehensive Plan” or “Comp Plan”), Local Coastal Plan, or zoning ordinances. (Gov. Code §§66473.5 and 66474(b); Pub. Res. Code §30604(b).) In addition, because the proposed project involves an amendment to the County’s LCP and Coastal Zoning Ordinance, it must comply with the California Coastal Act. (Pub. Res. Code §30514.)

The Santa Barbara Ranch RDEIR fails to adequately analyze the Project’s consistency with applicable County plans and policies. First, the RDEIR fails to analyze the policy consistency of the NPD and proposed LCP Coastal Land Use Plan (CLUP) Policies with all relevant existing LCP, Comprehensive Plan and Coastal Act policies.

Second, the RDEIR fails to use the existing environment as a baseline for comparison (e.g., for policies requiring compatibility with the existing character of the surrounding area). Furthermore, the RDEIR fails to analyze consistency with all relevant County policies and plans, including the Comprehensive Plan Conservation Element, Open Space Element, Housing Element, Energy Element, Circulation Element, and Scenic Highways Element, as discussed below.

### **Resolution of Conflicts between the County’s Comprehensive Plan and CLUP Policies**

When Santa Barbara County Comprehensive Plan and CLUP policies conflict, CLUP policies override Comp Plan policies. (CLUP Policy 1-3; RDEIR 10-13.)

### **Resolution of Conflicts amongst CLUP Policies**

When policies within the CLUP are in conflict, the policy that is the most protective of coastal resources takes precedence. (CLUP Policy 1-2; *Id.*)

### **Baseline for Policy Consistency Analysis**

Certain portions of the Policy Consistency Analysis rely on an incorrect baseline for determining consistency. For instance, the RDEIR finds the MOU and Alternative 1 Projects consistent with policies requiring compatibility with the surrounding area by finding that because the Projects would change the surrounding area, they would therefore be compatible with the *future* changed character of the area. Essentially, it finds that the Projects will be consistent with themselves. Instead, the RDEIR must analyze the compatibility of the Projects with the *existing* character of the surrounding area.

The RDEIR states that the Santa Barbara Ranch (SBR) and the Alternative 1 Projects “would be consistent with the maximum density afforded under the proposed NPD designation.” (RDEIR, 10-15) However, as noted above, the Projects should be analyzed for consistency with the County’s existing plans and policies. In this case, the proposed NPD and Project must still be consistent with the County’s Comprehensive Plan and LCP policies.

### **Consistency with the Conservation Element, Open Space Element, Housing Element, Energy Element, Circulation Element, and Scenic Highways Element**

The policy analysis fails to analyze consistency with several significant portions of the County’s Comprehensive Plan, including the Conservation Element, Open Space Element, Housing Element, Energy Element, Circulation Element and Scenic Highways Element. The analysis must be revised to fully describe and analyze the Project’s consistency with all applicable elements of the County’s Comprehensive Plan.

### **Consistency with Williamson Act and Uniform Rules**

The Policy section should include an analysis of the Project’s consistency with the Williamson Act and County Uniform Rules governing agricultural preserve contracts. As noted herein, the proposed cancellation of the existing Williamson Act contracts and creation of an agricultural conservation easement may not be feasible. As such, the Project would convert existing prime and non-prime agricultural lands in violation of Coastal Act and County policies that require the preservation of agricultural lands.

### **TDR**

As a general matter, the policy inconsistencies identified in the RDEIR and in this letter can be avoided or minimized through TDR.

## **10.4 CONSISTENCY OF CLUP AND ZONING AMENDMENTS WITH CALIFORNIA COASTAL ACT**

The RDEIR fails to analyze internal consistency of the CLUP and zoning amendments with other the existing LCP policies and Coastal Zoning Ordinance.

The RDEIR does not analyze whether the DPR grid lots being transferred to DPR north of Highway 101 and expanded in size are buildable.

#### **10.4.1 Policy Background**

The RDEIR states that only “up to four lots on 485 acres” could be developed on SBR under existing zoning. However the RDEIR fails to acknowledge that a portion of SBR is zoned U with 10 acres minimum lot sizes. Would the U zoning increase the development potential of SBR under existing zoning?

Many of the policy consistency determinations rely on the County’s all-or-nothing interpretation of LCP Policy 2-13. The RDEIR suggests that since Policy 2-13 envisioned a rezone of the Naples lots upon determination that TDR was not 100% feasible (if less than 100% of the existing development potential could be transferred offsite). The analysis overlooks the fact that partial TDR was deemed feasible by the County, this may avoid significant impacts and policy conflicts, and it may avoid or reduce the extent of rezones necessary to achieve an economically feasible alternative.

#### **10.4.3 Coastal Act – Public Access and Recreation, Marine Resources**

The NPD and LCP policies proposed as part of the Project involve significant public access and recreation issues as well as marine issues such as the location of the vertical coastal access and Coastal Trail and related impacts to marine resources. Proposed Policy 2-31 anticipates a coastal access staircase on the bluff contrary to existing Policy 7-19 requirements that vertical access be at the mouth of Dos Pueblos Canyon. As noted above in Section 9.10 Recreation the Project and by default the NPD’s access and recreation plan does not protect marine resources and would result in significant impacts to coastal resources and ESHA including the haul out and Naples Reef. These impacts can be avoided by an alternative trail location and access point proposed herein.

The RDEIR incorrectly claims “there are no major planning issues involving the proposed NPD designation and ordinance and” access and recreation and marine resources. (RDEIR, 10-4.) Perhaps the RDEIR downplays the major planning issues related to the proposed access and trails and effects on marine resources in response to the Alternative 1 applicants’ opposition to public coastal access on DPR. However, if so, this is no reason to suggest access, recreation and marine resources do not raise significant planning issues with Articles 2 and 3 of the Coastal Act.

#### **10.4.4 Coastal Act – Land Resources**

The proposed NPD and LCP policies are not consistent with the Coastal Act's prohibition on development and incompatible uses in ESHA. As evidenced by the RDEIR, the NPD would allow incompatible uses in ESHA that would displace or degrade habitat (e.g. Tomato Canada Creek Bridge, fuel management activities). To achieve compliance with Coastal Act Section 30240, the NPD and proposed LCP policies must prohibit development and uses in ESHA which are not dependent on the ESHA's resource.

The proposed NPD and LCP policies including Policies 2-24 and 2-27 allow conversion of prime agricultural lands. (RDEIR, 9.7-17.) Such conversion conflicts with the Coastal Act.

#### **10.4.5 Coastal Act – Development and the Balancing Provision**

The RDEIR at 10-5 misguidedly tries to assure its readers that the NPD and zoning amendments comply with Section 30250 of the Coastal Act when on their face they allow development outside of and not in close proximity to urban areas, lack adequate public services, and involve private services such as water and wastewater. Recognition of the 219 SBR legal lots does not change the fact that the lots are not developed and would be developed under the NPD in violation of Section 30250.

First, the County has prematurely invoked the balancing provision of Section 30007.5. There is not sufficient evidence to demonstrate that a substantial conflict arises. Second, if it is determined that a conflict between Coastal Act policies does exist, the Project must first be reduced in scale and scope to mitigate significant environmental impacts to the maximum extent feasible and to comply with policies if feasible. Development potential that remains must be transferred into the urban area pursuant to LCP Policy 2-13 to the extent feasible. If not all remaining grid lot development potential can be transferred into the urban area, whatever remains should be clustered to mitigate impacts to the maximum extent feasible. Such an alternative, i.e. reducing and clustering to the extent feasible, and partial TDR, would not require rezone of the whole property. Partial TDR plus build-out under the existing Ag II-100 and U (10 acre minimum) zoning may be an economically feasible alternative given the project economics, mooted the need for any rezone. Or, if some rezone is needed to achieve an economically feasible project, then only the cluster(s) of development would need to be rezoned and the remaining acreage of the Project site can be left in Ag II-100. In this way, depending on the final project configuration and location of development, there may be little or no rezone needed and thus little or no conflict between Sections 30250 and 30010, and the Project's policy conflicts may be eliminated.

#### **10.4.6 Policy 2-13 and the Coastal Act**

The RDEIR cites to historic actions the County has taken, all of which pre-date the current application and none of which discourage residential development of the Projects. No recent actions have discouraged residential development. For instance, the County's proposed TDR would not bind the owner to sell TDRs to the TDR bank if

funded and instead allows the owner to sell high priority TDR sending lots for development. The draft TDR Ordinance may actually encourage the owner not to enter lots into TDR because more money can be made by selling the lots (i.e. not just the development rights) for development. Therefore, in the context of the proposed Project and Alternative 1, the County is not discouraging development in any way including through creation of an effective TDR program.

The County's interpretation of Policy 2-13 on page 10-7 is extreme and does not comply with or further the requirements of Coastal Act Section 30250(a). Specifically, rather than discouraging development near Naples and prohibiting leapfrog development to the extent feasible, the County has determined that Policy 2-13 allows rezone of the entire Project and Alternative 1 site including all of the Naples lots even though the County's TDR Feasibility Study concludes TDR is partially feasible. (Solimar 2007.) Read alone or with Section 30250(a) from which it was derived, Policy 2-13 is not an all-or-nothing proposition allowing rezone unless TDR can transfer all potential development offsite. The intent of Policy 2-13 is to discourage development and maintain the current agricultural land use at Naples to the extent feasible through TDR. Therefore TDR should be implemented to the maximum extent feasible and only the minimum amount of the Project site needed to achieve an economically feasible alternative should be rezoned.

The County's drastic interpretation of Policy 2-13 and failure to ensure TDR transfers will occur when feasible (instead of lot development) fails to mitigate significant Land Use impacts to the maximum extent feasible through TDR. As a result, avoidable impacts and policy conflicts result from the proposed Projects.

## **10.6. CONSISTENCY WITH CLUP 2-13 AND OTHER RELATED LAND USE POLICIES**

### **10.6.1 CLUP Policy 2-13**

CLUP Policy 2-13 requires the County to undertake several actions as follows:

The existing town site of Naples is within a designated rural area and is remote from urban services. The County shall discourage residential development of existing lots. The County shall encourage and assist the property owner(s) in transferring development rights from the Naples town site to an appropriate site within a designated urban area which is suitable for residential development. If the County determines that transferring development rights is not feasible, the land use designation of AG-II-100 should be re-evaluated.

(LCP Policy 2-13.) The RDEIR notes that "Policy 2-13 requires the preparation of and implementation of a TDR program as a first step." (RDEIR, 10-12.) However, the RDEIR then finds that *rezoning the whole property* is consistent with Policy 2-13 and other policies even though substantial potential exists to transfer development from at

least some of the property. The finding that the MOU Project and Alternative 1 Project are consistent with Policy 2-13 is flawed because, despite the Solimar 2007 conclusion the TDR is feasible to a level of \$20 million to \$73 million, neither Project includes transferring development rights to the maximum extent feasible. See further discussion herein about Policy 2-13, and the feasibility of transferring development rights from the Naples town site to an appropriate urban area.

The RDEIR at 10-12 cites six factors that allegedly support a finding of consistency with Policy 2-13.

1. Increase the amount of land that is to be kept in agricultural use in perpetuity as compared to the present condition in which no agricultural easement exists.

Response: The Projects and NPD will result in a net loss of agricultural lands including a net loss of at least 67 acres of prime soils which will be converted to residential uses (20 acres DPR south of 101, at least 45 acres DPR north of 101 and 2 acres SBR). Other alternatives protect more agricultural land than the Projects (e.g. Alternatives 4 and 5).

2. Reduce the amount of land conversions from agriculture to residential use as compared to the potentially build out of the existing lots.

Response: This comparison uses the wrong baseline. If Alternative 1 and the MOU Project would convert less land than the Grid Alternative – a conclusion that is unsupported – that does not mean that Alternative 1 or the Project satisfied the requirements of Policy 2-13 because other feasible alternatives convert even less land (e.g. Alternatives 2, 4 and 5).

3. Incorporate measures to minimize potential conflicts between residential and agricultural uses;
4. Enhance agricultural production through capital improvements and professional management; and
5. Incorporate various measures to increase public coastal access and reduce potential impacts to resources.

Response: Any alternative can incorporate the same measures, so this does not make Alternative 1 or the MOU Project more consistent with Policy 2-13.

6. Incorporate development standards in accordance with the new NPD land use designation and implementing zoning ordinances.

Response: Any alternative can comply with the NPD.

The Projects violate Policy 2-13 because they do not include maximum feasible TDR to minimize (discourage) residential development at Naples outside the urban

boundary. The County's all-or-nothing interpretation and application of Policy 2-13 is flawed because it allows rezone of all of SBR and DPR when partial TDR is a feasible way to minimize residential development and rural agricultural land conversions. The County attempts to justify findings of consistency with various policies based on alleged compliance with Policy 2-13, but in doing so allows rezones of DPR and SBR for projects which are not most protective of significant coastal resources. The County merely compares the project to itself by finding that Alternative 1 and the MOU Project are consistent with the proposed NPD. This does not illustrate consistency with *existing* policies.

### **10.6.2 Policies that are Closely Linked to Policy 2-13**

#### ***CLUP Policy 1-2 and CLUP Policy 1-3***

CLUP Policy 1-2 requires that when policies of the CLUP overlap, the policy which is most protective of coastal resources takes precedence. Policy 2-13 is most protective of coastal resources if TDR is found to be feasible, because it shifts development away from the rural coastline into an urban area. Page 11-45 indicates if TDR is feasible, it could reduce the number of units and visual and biological impacts. TDR would achieve a higher degree of consistency with coastal and other land use policies. Even if only partial TDR is feasible, it is still part of the solution that is most protective of coastal resources. If TDR is not found to be feasible, other CLUP policies restricting conversion of agricultural lands appear to be more protective of coastal resources than Policy 2-13.

The County's LCP includes the Coastal Act as a guiding principle, including Section 30250(a) which directs future development into urban areas. (LCP Policy 1-1) Thus, the most protective reading is to implement effective TDR to the maximum extent feasible, transferring development from Naples to an urban area.

CLUP Policy 1-3 requires CLUP Policies to control over conflicting general plan policies. Policy 2-13 conflicts with numerous general plan policies relating to agricultural land protection in the coastal zone in that, if TDR is infeasible, it allows consideration of rezone of viable, rural agricultural land. However, Policy 2-13 allows consideration of rezone in the coastal zone only if TDR is infeasible. TDR has been determined to be partially feasible by the County's TDR consultants. The Projects do not comply with CLUP Policy 1-3 because they fail to explicitly include TDR to the extent feasible.

The County's application of Policy 2-13 leading to complete rezone despite partial TDR feasibility is not more protective of other alternatives including partial TDR and partial rezone. The RDEIR at 4-14 and 10-13 and -14 compares the impacts of the MOU Project and Alternative 1 to the Grid build-out when there are other alternatives more protective of coastal resources e.g. Alternatives 2 and 5 and reduced density alternatives. The proper comparison is not to the Grid Alternative but to whatever alternative best protects coastal resources.

### ***CLUP Policy 1-4***

The RDEIR notes that the determination that the MOU Project reasonably conforms to all LCP policies is based on consideration of the Project's consistency with Policy 2-13. As described in the RDEIR, Policy 2-13 allows rezone of the entire SBR Property if TDR is not 100% feasible (i.e. all potential development cannot be transferred offsite to an urban area). However, the County's all-or-nothing interpretation of Policy 2-13 does not implement Coastal Act section 30250(a) because it allows for rezoning the whole property when, through partial TDR, all of the property need not be rezoned to achieve an economically feasible alternative (i.e. partial TDR and partial SBR rezone). Since consistency with so many policies is based on this consideration of Policy 2-13 as interpreted in the RDEIR, it is critical that the interpretation of Policy 2-13 be accurate. However, given the finding of partial TDR feasibility and Section 30250(a)'s essential prohibition on leapfrog development, partial TDR must be implemented to the maximum extent feasible to prevent leapfrog development. The proposed Projects are not consistent with Policy 2-13 and conflict with various LCP and Comprehensive Plan policies.

CLUP Policy 1-4 prohibits the County from issuing a coastal development permit unless the development reasonably meets the standards set forth in all applicable land use plan policies. The RDEIR relies on the new NPD land use designation and ordinance to find consistency; however, as stated above, the RDEIR must analyze the Project's consistency with *existing* County policies. Even if the project is consistent with the NPD, it will still violate many applicable land use policies, as noted herein.

### ***CLUP Policy 2-12; Comprehensive Plan Land Use Element – Land Use Development Policies: Land Use Development Policy 2***

These policies provide that project density shall be reduced "if it is determined that such reduction is warranted by conditions specifically applicable to a site, such as topography, geologic or flood hazards, habitat areas, or steep slopes." The Project must therefore be reduced to accommodate various constraints, including viewshed, ESHA, geology and hydrology, cultural resources and water quality.

This RDEIR section concludes prematurely that TDR has limited feasibility. Only after the CEQA record is complete will the County have all the information on which to base a determination regarding TDR's feasibility. In fact, ongoing efforts by the County and City of Santa Barbara as discussed in Section 7.7 illustrate that TDR has momentum and may in fact be feasible as determined by the TDR consultant Solimar. Furthermore, until the County and the Coastal Commission determine the development potential of the site, it is premature to ascertain the extent that development rights can be transferred in compliance with Policy 2-13. (See TDR Alternative Section 11.7 below.)

This section also assumes that the overall density of the MOU Project or Alternative 1 would be lower than the Grid Alternative (development potential based on

the “existing pattern of legal lots on the property”). (RDEIR, 4-15.) This statement presupposes that the Coastal Commission would agree with the County’s preliminary conclusion that 114-125 units would be allowed under the Grid Alternative. In fact, the Commission may identify a smaller grid alternative based on development constraints. In addition, the MOU and Alternative 1 Projects may actually be denser than the Grid Alternative, if one considers the fact that the MOU Project includes 54 units plus up to 54 RSUs, for a total of 110 units, and the Alternative 1 Project includes 72 units plus up to 72 RSUs, for a total of 146 units. Accordingly, both of these projects could be similar to or denser than the Grid Alternative.

More importantly, the purpose of Policy 2 is not to compare a proposed project to a speculative alternative development plan, but rather to require a reduction in density based upon *existing constraints* such as topography, geologic or flood hazards, habitat areas, or steep slopes. The RDEIR must analyze whether a reduction in project density is required to achieve compliance with CLUP Policy 2. Given significant view impacts, biological resource impacts and public services impacts, a reduction is warranted.

*Alternative 1 Project: Rezone of agricultural land outside Naples town site is inconsistent with LUD policies*

Alternative 1 includes subdivisions in and rezones of agricultural lands outside of the Naples town site on DPR and the Option Property, where Policy 2-13 does not apply; therefore, such subdivisions may be inconsistent with Comprehensive Plan policies such as LUD Policy 2 and the Land Use Plan’s maximum densities. While the County may elect to rezone this land, such rezone would change the existing Land Use Plan density maximums and may not be consistent with Comprehensive Plan and LCP policies for agricultural land protection.

***Coastal Act Section 30250; LUD Policy 3; Land Use Element Regional Goal – Urbanization; Comprehensive Plan Land Use Element – Goleta Valley Area/Community Goals – Population & Land Use***

The RDEIR fails to adequately address the Project’s consistency with these policies, which all discourage urban sprawl and favor concentrated development within existing urban areas. The Coastal Act requires new urban development to be located contiguous with or in close proximity to existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in areas with adequate public services and where there will not be significant project specific or cumulative impacts on coastal resources. However, neither Project is located within the urban area or contiguous to it. The TDR Analysis concludes that it may be feasible to transfer some development to an urban area. Because neither the MOU nor the Alternative 1 Project include TDR to the maximum extent feasible, they are inconsistent with these policies. (See discussion regarding TDR Alternative Section 11.7 below.)

The Projects are also inconsistent with these policies because they result in significant impacts to coastal resources, including cumulative impacts. In addition, the

Project site does not have adequate public services. Although the RDEIR finds that there are some public services and some limited existing development (RDEIR, 3.3-10), it fails to note that the project site is a "Special Problems Area" for septic systems and lacks sewer. The site also lacks adequate fire protection services and solid waste disposal capacity for the life of the project. (See Section 9.15.) Requirements for private water supplies and private wastewater treatment plants are evidence that the area does not have adequate public services. Therefore the Project is not consistent with Coastal Act §30250 or related LCP and Comprehensive Plan goals and policies.

Coastal Act §30250 also requires that land divisions for agricultural uses outside existing developed areas (i.e., the equestrian center, agricultural support facility, and ACE-based estates on DPR south of 101) can only be permitted when 50% of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels. It is unclear if the Projects further fail this consistency test due to the percentage of surrounding usable parcels being developed. The RDEIR should address these requirements to ensure a complete policy consistency analysis.

The RDEIR at 4-15 notes that development under the MOU Project would be consistent with the maximum density allowed under the NPD, but since the NPD is driven by the MOU Project development plan, this comparison makes little sense.

Finally, the RDEIR should also be revised to eliminate the comparisons to the potential grid build-out of the existing legal lots. (RDEIR, 10-13 and -14.) The RDEIR must analyze the Project's consistency with existing policies and plans, not other speculative development proposals. Using the existing land use setting rather than Alternative 3 build-out of the grid, it is clear that the Projects violate these policies.

### ***Coastal Act Section 30242 and CLUP Policy 8-2***

These sections provide protections for agricultural lands. The RDEIR finds that "the project would implement Policy 2-13, which is more specific to Naples than Policy 8-2." (RDEIR, 10-17.) The RDEIR therefore focuses on the Project's alleged consistency with Policy 2-13. However, to the extent TDR may be limited under Policy 2-13, it is important for the RDEIR to also discuss consistency with Policy 8-2 and the Coastal Act.

In addition, the policy consistency analysis again uses the wrong baseline by comparing the MOU Project and the Alternative 1 Project to the Grid Alternative build-out. See comments above regarding the objections to such comparison in the context of a policy consistency analysis.

Because the Alternative 1 Project would convert prime farmland in the coastal zone (RDEIR, 9.7-5 and Figure 9.7-1), the RDEIR must analyze the Project's consistency with Coastal Act §30241. The RDEIR fails to include this analysis and must be revised accordingly.

Although Alternative 1 would preserve some prime farmland in ACEs, it would also convert prime farmland and other farmland. This alternative would result in a direct loss of at least 67 acres (45 - 75 acres DPR north of Highway 101, 20 acres DPR south, and 2 acres on SBR) of prime farmland. Alternative 1 would not “concentrate development consistent with section 30250,” as noted in the RDEIR. (RDEIR, 10-5.) Conversion would not “allow for another priority use under the Coastal Act” which is not currently allowed. (LCP Policy 8-2.) These policies may allow conversion to another priority use but not for residential development which will displace at least 67 acres of prime farmland and 271 acres overall. Alternative 1 is thus inconsistent with the above agricultural policies restricting conversion of prime agricultural.

## **6.4 POLICIES RELATED TO PUBLIC SERVICES**

### ***Coastal Act §30254***

The proposal to fund a new fire station outside the urban boundary (i.e. at Calle Real and Farren Road) in order to provide adequate fire protection services to this portion of the Gaviota Coast “would induce new development inconsistent with this division” and violate Coastal Act §30254. (RDEIR, Figure 9.15-2) A new fire station would remove a significant barrier to development on the Gaviota Coast. The Final EIR for the ARCO Golf Course found that creating any new demand for fire services on the Gaviota Coast was a Class I cumulative impact on public services and inconsistent with CLUP Policy 2-6. (ARCO Golf Course Final EIR, County of Santa Barbara (1993), p. 5.9-5.) Provision of such services would eliminate this impact and policy conflict for future development on the coast, and represent a significant growth-inducing impact inconsistent with the Coastal Act (e.g., Section 30250(a)).

### ***CLUP Policy 2-2 and Policy 2-3***

CLUP Policy 2-2 requires protection of the integrity of coastal groundwater basins. The RDEIR notes that during droughts, groundwater (and presumably surface water) could be affected if residents rely primarily on wells or the proposed Creek diversion. (RDEIR, 10-19.) The RDEIR completely ignores the safe hydrological and biological yields for the Dos Pueblos Creek diversions. For example, the RDEIR omits analysis of the hydrological effects of this diversion (during average years or droughts) alone, or in combination with well extractions, and there are no assurances diversions will not adversely affect the stream’s tenuous flows during the 8 month dry season (April 15 – November 31).

The RDEIR also fails to address the biological needs of federally listed species in the Creek. Until such assessment is undertaken, a finding that the Project protects the integrity of the groundwater basins cannot be made. A thorough evaluation of the impact of Creek water diversion and wells on the groundwater basins and surface water hydrology during droughts must be included. The RDEIR describes the Creek diversion as one of the two most important water sources for the Projects along with the SWP.

(RDEIR, 9.15-8.) The Water Supply Analysis (which is not included in the RDEIR) states that flows in Dos Pueblos Creek will not be affected yet fails to present a comprehensive water supply and demand analysis for the entire project site during droughts. As noted above, during dry to very dry years, it appears the supplies described in the Analysis are outstripped by the Alternative 1 site's existing and proposed domestic and agricultural demand.

Metering of creek diversions and wells is needed to protect coastal resources dependent on surface and groundwater. The RDEIR discussion on page 10-20 notes that water wells would be metered to maintain records of water extraction. The Water Supply Analysis states that the creek diversion line would be metered. However, no measures in the RDEIR require metering of wells or the diversion, and the Water Management Plan (Measure PS-12) is not in the RDEIR and deferred without performance standards. To maintain adequate records and ensure protection of groundwater basins potentially threatened by the creek diversion (as noted on page 10-19), metering of the Creek water diversion should also be required with the records provided annually to the County P&D. Such metering should be added as part of the Public Service (Section 9.15) water supply mitigation measures.

#### ***CLUP Policy 2-6; LUD Policy 4***

These policies require adequate public or private services and resources to serve the proposed development. The Project lacks adequate solid waste disposal capacity for its life. The County's Tajiguas Landfill Expansion Project approved in 2001 provides only 14 years of additional capacity.<sup>1</sup> Therefore since the project life substantially exceeds the life of the only landfill serving the project site, there is inadequate solid waste disposal capacity to serve the project for its life.

Inadequate fire protection services coupled with a lack of proposed new fire station and funding for new Fire Department staffing also render the projects inconsistent with LUD Policy 4 and CLUP Policy 2-6. (See comments under Section 9.15 above.) The Projects rely on paper water and the RDEIR fails to address the water supplies' shortcomings during droughts. A finding of adequate wastewater treatment services is also premature. A cumulative assessment of septic systems near Dos Pueblos Canyon and an analysis of the bluff's ability to absorb large volumes of reclaimed water during the rainy season must first be undertaken. High school capacity is also inadequate. Therefore, the Project lacks adequate services and is not demonstrably in compliance with CLUP Policy 2-6 or LUD Policy 4.

#### ***CLUP Policy 2-10***

This policy addresses annexations of rural areas to a sanitary district or extensions of sewer lines into rural areas. The RDEIR's discussion of the Project's consistency with CLUP Policy 2-10 focuses on water quality impacts of the Sewage Treatment Plants

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<sup>1</sup> See attached "August 10, 2006 email from Mark Tautrim, County Public Works Division to Brian Trautwein, EDC."

(STPs) versus septic systems. However, this policy is not about protecting water quality. It is explicitly about preventing extension or construction of urban services (i.e., sewers) into rural lands. The RDEIR notes that “reliance on a package STP could be regarded as an extension of urban services in the context of CLUP Policy 2-10 because the STPs would have the capacity to treat and dispose a large volume of wastewater (with the potential to expand beyond the present Project needs) and thus have the same effect as an extension of public services.” (RDEIR, 10-21; see also 9.3-28.) Given that the NPD allows further annexation of adjoining properties, this could result in sewer line extensions from the adjoining properties to SB Ranch’s package treatment plants. Policy 2-10 seeks to prohibit such extensions. Therefore the NPD’s allowance for annexations potentially reliant on expanded SB Ranch STPs appears to violate Policy 2-10.

Furthermore, the provision of STPs in a rural area does not avoid significant water quality impacts. These impacts remain as a result of: 1) failure of Mitigation Measures WQ-2 and PS-4 to ensure that all Alternative 1 lots are served by STPs; 2) water quality impacts described on 9.15-18 and 10-56; and 3) discharges from STPs.

Proposed Policies 2-29 and 2-30 would allow new urban infrastructure to serve rural areas. These policies would be inconsistent with Policy 2-10. Moreover, it cannot be adequately demonstrated that the STPs will not impact groundwater quality, so the Project is inconsistent with Policy 2-30 cannot be approved.

The best way to achieve consistency with policies related to public services is to: 1) reduce the project density to mitigate significant environmental impacts and generate a smaller volume of wastewater; 2) eliminate the NPD permitted use of RSUs; 3) implement an *effective* TDR program to transfer development to an urban area served by existing public services and STPs to the maximum extent feasible; 4) cluster the remaining development necessary to achieve economic feasibility; and 5) treat all wastewater from SBR *and* DPR in a STP(s).

The RDEIR claims that the STP capacity would be “limited to the proposed development through recommended mitigation and conditions of approval.” (RDEIR 10-22.) However, Measure PS-4 does not include any such limitation and requires only that the STPs be “adequate to service the additional units.”

### ***CLUP Policy 2-11***

Policy 2-11 protects environmentally sensitive habitat areas (ESHA). Both Project configurations (MOU and Alternative 1) are inconsistent with this policy because they include displacement of ESHA, including native grasslands on the bluff lots, coastal bluff scrub at the staircase, riparian habitat at the bridge site in Tomate Canada Creek, riparian and aquatic habitat downstream from the creek water diversion, and rare raptor foraging habitat on the Coastal Terrace. The RDEIR notes that the Projects would be consistent with this policy because the agricultural facility was relocated to avoid native grasslands on Lot 57 and because of purportedly adequate wetland and native grassland

setbacks. However, there are not adequate ESHA buffers and elimination of the agricultural facility alone will not achieve compliance with CLUP Policy 2-11.

The Projects include developments in and next to ESHA including the Tomate Canada Bridge (RDEIR, 9.4-63 - 64) and intensification of the existing Dos Pueblos Creek water diversion; in addition, the proposed bluff-top lots' development envelopes' lack adequate buffers from native grasslands (Figure 9.4-1B), the Project will result in loss and fragmentation of the Coastal Terrace habitats, and potential filling of or inadequate setbacks from wetlands (RDEIR, Table 9.4-5). The access road to the central portion of the site poses indirect sedimentation impacts to oak woodland and willow riparian ESHAs. (RDEIR, 9.4-59.) The proposed beach access plan also unnecessarily impacts beach ESHA including the haul out and Naples Reef. These intrusions into and impacts to ESHA establish a clear inconsistency with Policy 2-11.

### ***Comprehensive Plan Area / Community Goals for Goleta Valley – Land Use***

The MOU and Alternative 1 Project fail to preserve the site's scenic views. For instance, scenic views at KOP-1A, KOP-5 and a variety of other viewing locations are not preserved. Views from the beach and ocean are not preserved. Views to and along the bluff are not preserved. The views of the hills and mountains are not preserved. The Project therefore violates this goal. Views along Highway 101 are not adequately preserved.

The RDEIR states that the Project is consistent with this goal because it includes dedicated public and private open space land. However, the Project will result in obvious (and unmitigated) residual impacts to this incredibly scenic area.

### ***Comprehensive Plan Area/Community Goals for the Goleta Valley – Environment***

The Projects are inconsistent with this goal because of the transportation pollution impacts associated with sprawl development.

## **10.8 POLICIES RELATED TO COASTAL BLUFFS AND PROTECTION STRUCTURES, OTHER PHYSICAL HAZARDS**

### ***CLUP Policies 3-1, 3-2, 3-3, 3-4, 3-6, 3-7, 3-8***

These policies provide protection for shoreline erosion and require adequate setbacks for development and infrastructure. The RDEIR lacks substantial evidence that the proposed bluff setback is adequate to avoid the 75-year bluff retreat. As noted in Section 9.2 (Geology, Geologic Hazards and Soils) and above, there is no evidence the bluff lots are set back adequately to ensure they will not become threatened within 75 years. The RDEIR fails to provide an accurate analysis of shoreline retreat and potential impacts related to the proposed Project. Specifically, the RDEIR should provide an updated analysis, including projections of potential sea level rise, to assess whether the Project provides adequate protection for the homes and ancillary structures (e.g., storm

drains and drop inlets). If the setbacks are not adequate, the Project's bluff lots may require seawalls, which would be inconsistent with these policies.

The staircase is a new, proposed above-ground structure within the 75-year bluff setback. This structure can be eliminated from the project by pursuing an alternative vertical access at Dos Pueblos Canyon, as specified in LCP Policy 7-18.

The staircase is in fact prohibited by Policy 3-3, because as a permanent structure on the sandy beach it might create the perceived need for future armoring, and instead of being "for public health and safety" the staircase would direct people to below the unstable bluff, creating a public safety impact described above.

The development will also include storm drains that will enter the bluff top drainages. (RDEIR, 10-25.) These storm drains threaten to increase bluff erosion and should be directed away from the bluff. No analysis of the potential impacts of these outlets on the geological stability of the bluffs is provided in the RDEIR.

Bluff-top irrigation and discharges from the STP in Lot 97 may increase erosion of the bluffs. (Norris, 2007; Keller, 2007; 2008)

### ***CLUP Policy 3-10***

This policy requires a minimum 50-foot setback from potentially active, historically active, or active faults. The RDEIR notes that the County considers the More Ranch Fault(s) to be active. (RDEIR, 9.2-4, citing the County of Santa Barbara's Seismic and Safety Element, 1991.) However, the RDEIR fails to analyze the impacts of this fault on the proposed Projects. As stated above, the RDEIR must map the Project in relation to the More Ranch Fault and analyze consistency with this policy.

### ***CLUP Policies 3-11 and 3-12; Comprehensive Plan Land Use Element Flood Hazard Area Policies 1 and 2***

These policies deal with flooding and flood control protection. As noted in Section 9.3, the RDEIR fails to map flood hazards onsite. It also fails to discuss flood hazards for the existing homes and legal non-conforming structures on and near the Project site which could be affected by runoff. The RDEIR also fails to analyze whether existing parcels are constrained by flood hazards, and whether such parcels possess development rights that can be transferred to inland areas nonetheless. An accurate assessment of policy consistency is impossible to make without this information.

Finally, the mitigation for this potential flooding impact in Section 9.3 defers preparation of a plan to identify potential impacts and allegedly to deal with the issue. Until and unless said plan is available and adequate for the County to make findings of consistency, the RDEIR should find the Projects inconsistent with these policies.

## **10.9 POLICIES RELATED TO GRADING, DRAINAGE, WATER QUALITY, AND FLOOD HAZARDS**

### ***Coastal Act Section 30231, Hillside and Watershed Protection Policy 7, CLUP Policy 3-19 and CLUP Policy 9-14***

As noted in Section 9.4, all wetlands have not been delineated for purposes of the RDEIR. Previously delineated wetlands have been improperly deleted from the RDEIR following a dry season. The Projects would potentially fill wetlands and degrade wetlands and water quality in violation of Coastal Act §30231. The Coastal Act requires that biological productivity and water quality necessary to support optimum levels of marine organisms be maintained and where feasible restored. The Project involves fill and/or degradation of wetlands such as those at the Tomate Canada Bridge that the RDEIR finds cannot or will not be avoided, according to RDEIR Section 9.4 (Biological Resources). Filling, covering and inadequately buffering wetlands results in reduced biological productivity of those coastal wetlands, and degrades and eliminates the water quantity and quality in those wetlands.

The Project's reliance on coastal zone well water and Dos Pueblos Creek water diversions (which will be linked to serve the entire Project) also threatens coastal zone resources, including water quality and biological productivity. The diversions threaten to reduce flows, and impair water quality and biological productivity in Dos Pueblos Creek. The presence of anadromous steelhead in Dos Pueblos Creek is one example of a coastal resource potentially adversely affected by this water diversion system.

The Project's reliance on septic systems and / or dry wells (i.e., the Alternative 1 Project's planned use of septic systems for DPR South of Hwy. 101 and for Lot DP-11, and the MOU Project's proposed use of septic systems or drywells for the 16 inland lots) further threatens water quality and biological productivity in the Coastal Zone.

Mitigation WQ-2 allows for even more septic systems for the Alternative 1 Project than described in the Alternative 1 Project Description. The RDEIR states on page 9.15-18 that "impacts [from septic systems] to surface water and ocean water quality are also possible, due to the migration of contaminated groundwater to surface streams and to the ocean particularly after rain events and during periods of high groundwater." During periods of soil saturation or under adverse soil / geological conditions, septic systems do not function because untreated wastewater is conveyed through the water in or above the saturated soil and is not filtered adequately by the soil. During such groundwater and soil conditions, untreated wastewater can flow from septic tanks and drywells essentially freely into surface waters and / or groundwater. This violates LCP Policy 2-2, Policy 3-19, Hillside and Watershed Protection Policy 7 and Coastal Act Section 30231, the latter three of which flatly prohibit any water quality degradation.

Furthermore, the RWQCB and County EHS are opposed to any septic systems or drywells on SBR due to water pollution and public health concerns associated with the

area's geology and soils. (See attached "November 21, 2003 EHS letter to Roger Briggs, Regional Water Quality Control Board (RWQCB)" and "December 17, 2003 letter from RWQCB to Paul Jenzen, County EHS;" EHS 2008.) Figures 9.2-2 and 9.2-3 depict similar geological and soil conditions on SBR and DPR, suggesting the RWQCB's and EHS' concerns apply to both ranches. Finally, the RDEIR does not consider the combined effect of the existing legal non-conforming structures' septic systems on water quality.

Urban runoff will also degrade water quality, according to Section 9.3 of the RDEIR. Therefore, the project violates Policy 9-14, Policy 3-19, and Coastal Act §30231.

### ***Coastal Act §30230***

The RDEIR fails to analyze compliance with Section 30230 of the Coastal Act. The water supply sources, including creek diversions and wells, may indirectly threaten biological productivity in coastal waters by dewatering streams and wetlands. Increased sedimentation and polluted runoff may threaten Naples Reef and coastal waters. Wastewater or reclaimed water discharges and irrigation may adversely affect water quality especially during the rainy season. (RDEIR, 9.15-18 and 10-56.) These activities could violate Section 30230 and must be evaluated in the RDEIR.

### ***CLUP Policy 3-13, Hillside and Watershed Protection Policies 1 and 2 and Community Goals for the Goleta Valley – Land Use***

The proposed Tomate Canada Creek Bridge fails to minimize cut and fill operations. As noted in Section 9.4 above, this bridge can be excluded from the Projects' designs to avoid the bridge's alteration of the natural terrain and impacts to wetlands, water quality, and ESHA.

### ***CLUP Policy 3-15***

This policy states that clearing of land should be avoided during the rainy season. The Projects allow grading during the rainy season (Mitigation Geol-2b) including grading within 50 feet of creeks, and therefore conflict with this policy.

### ***Comprehensive Plan Area / Community Goals for the Goleta Valley – Land Use***

This goal restricts new development in hazardous areas, including active earthquake faults. Given the discussion in Section 9.3 (Geology, Geological Hazards and Soils), the North More Ranch Fault is located onsite, recognized as active by the County's Seismic Safety Element, but not clearly mapped or apparently avoided by new development. The Alternative 1 Project in particular includes several development envelopes located adjacent to the tops of active landslides as discussed further in Section 9.2.

Both Projects are also inconsistent with these policies because they would fill certain drainages and potential wetlands south of Highway 101, altering important natural landforms, and would remove native vegetation including rare native bunch grasslands and coastal scrub.

### ***Comprehensive Plan Area / Community Goals for the Goleta Valley – Land Use***

The Comprehensive Plan protects watersheds from degradation, yet Table 9.3-2 of the RDEIR notes that watersheds will be substantially paved onsite. Various watersheds in the project area will be paved between 5% and 30%. (RDEIR, 9.3-26.) Such paving appears to conflict with this Comprehensive Plan Land Use Goal for watershed protection. (RDEIR, 10-31.)

Flood Hazard Area Policies are intended to “avoid exposing new developments to flood hazards and reduce the need for future flood control protective works and resulting alteration of stream and wetland environments by regulating development within the 100-year flood plain,” according to page A-22 of the Policy Advisories Attachment to the County’s June 18, 2004 Determination of Incompleteness letter to the applicant.<sup>2</sup>

Development within flood plains should be “drastically limited.” (RDEIR, 10-29.) The RDEIR finds the Alternative 1 Project consistent with this policy, despite the fact that several of the existing DPR lots appear constrained by flood plains. (Figure 8.2-1.) The RDEIR does not map flood plains or otherwise define existing flood constraints or hazards associated with drainages on DPR, including Dos Pueblos Creek and the unnamed tributary below the Dos Pueblos Dam. Analysis of policy consistency is needed because if lots are constrained by flood hazard area policies, then they may not have the presumed development potential reflected in the DPR project component.

## **10.10 POLICIES RELATED TO VISUAL RESOURCES/AESTHETICS**

The analysis for consistency with Visual Resources Policies Section 10.10 excludes the residential second units (RSUs) described in the NPD as an allowed use in place of one guest house or studio per lot. The up to 72 residential second units allowed as a permitted use in the new NPD zone district under Alternative 1 and up to 54 RSUs in the MOU Project are discussed in RDEIR Appendix G, Section 35-xxx.4 Permitted Uses subsections 4 and 7, and must be analyzed for consistency with Section 30251 of the Coastal Act and County’s Visual Resource protection policies. Similarly, any impacts from other adjoining lands (which could become part of the NPD) should be analyzed.

### ***Coastal Act §30251***

#### **10.10.1 Overall Change in Visual Character**

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<sup>2</sup> See attached “June 18, 2004 Policy Advisories Attachment to the County’s Determination of Incompleteness letter to the applicant.”

The analysis of the Project's consistency with Section 30251 uses the wrong baseline for comparison to find it is "potentially consistent." Instead of comparing the Project to the existing visual setting, the analysis finds that the Project "will be more protective of visual resources within the Coastal Zone by reducing the number of buildable lots *compared to the grid development.*" (RDEIR, 10-33, emphasis added.)

Similarly, the RDEIR finds that "*proposed* amendments to the CLUP and corresponding changes to the Comprehensive Plan expressly provide for re-designation of agricultural land to accommodate a higher residential lot density," and therefore the Class I visual resources impact in Section 9.9 "does not necessarily pre-ordain policy inconsistency." (RDEIR, 10-32; emphasis added.) Section 30251 requires analysis of changes to the *existing* "scenic and visual qualities of coastal areas," protection of *existing* "views to and along the ocean and scenic coastal areas," and minimizing the alteration of [*existing*] landforms." Comparing the Project to the future worst case scenario rather than the existing environmental setting is an improper application of Coastal Act Section 30251.

View policy conflicts can likely be avoided through various means such as Alternative 2, Alternative 5 and reduced density alternatives.

The visual resources policy consistency analysis cannot rely on Policy 2-13's conditional allowance for consideration of a rezone to justify consistency. First Policy 2-13 is not being applied correctly as described in the RDEIR. Partial transfer of potential development from SBR's grid lots is feasible. (Solimar 2007) Therefore Policy 2-13 does not allow consideration of a rezone to the extent TDR is feasible. Instead, only a portion if any of the Naples town site need be rezoned to achieve an economically feasible alternative. Thus, Alternative 1 and the MOU Project which involve rezoning all of SBR/DPR and SBR respectively are not consistent with Policy 2-13.

Second, as stated above, the reliance on alleged consistency with Policy 2-13 results in use of an improper baseline for comparison.

Third, the analysis in the RDEIR relies on presumed development potential for DPR as follows:

A similar but smaller reduction in development potential would occur in the Coastal Zone on the DPR property, where the development potential would be shifted from south of Highway 101 to 10 lots on DPR property north of the highway, well outside the Coastal Zone. The net effect is a reduction in the intensity of potential development for both the SBR and DPR properties. (RDEIR, 10-33.)

No analysis of the development potential of the smaller, floodplain-constrained DPR lots to be transferred and expanded north of the highway has been made, and the CCC has not confirmed the development potential of the SBR grid lots to be merged, so the conclusion that the Project reduces development potential is not supported. In addition, the size and

intensity of homes and developments that could be accommodated on the larger Project lots is much greater than could be accommodated on many of the smaller, constrained grid lots.

Considering the overall change in the visual character compared to the existing (not future worst case scenario) conditions pursuant to Coastal Act Section 30251, the Project is not “visually compatible with the character of surrounding areas,” and does not “restore and enhance” visual quality. It degrades and impairs, rather than protects, views of the ocean and coast, and does not minimize the alteration of the existing natural terrain. Several alternatives in the RDEIR would further minimize alteration of the terrain and better protect scenic coastal views (e.g. reduced density alternatives coupled with clustering (Alternative 5) and full implementation of TDR.

#### *MOU Project and Alternative 1 Project*

##### *Proposed CLUP Policy 2-26*

The RDEIR fails to analyze consistency of the proposed LCP Policies with the Coastal Act. Proposed CLUP Policy 2-26 is inconsistent with Coastal Act Section 30251, because the proposed policy allows development that is incompatible with the character of the surrounding area. Section 30251 requires visual compatibility with the surrounding area. To ensure compliance with the Coastal Act, proposed CLUP Policy 2-26 should require visual compatibility with and maintenance of the existing rural character. The proposed NPD’s Visual Development Standards also lack requirements for new structures to be compatible with the surrounding environment to ensure consistency with Section 30251.

#### *MOU Project*

The MOU Project cannot be found consistent with Section 30251 of the Coastal Act because the MOU Project development would be visually incompatible with the character of the existing surrounding area and would not protect existing scenic views. Specifically, scenic views from KOPs 1A, 1B, 2, 4, 5, 6B, 7, 8A and 8B all illustrate that scenic views are not protected and that the MOU Project is not visually compatible with the character of the surrounding area. As one example, KOP 1B has 14 homes (not including guest houses / RSUs) visible on the hill, and five are above the skyline in violation of existing County policies (CLUP Policy 4-3 and VRP-2). The massing, ridgeline alteration and skyline intrusions from KOP-1B are not proposed to be mitigated by any measure in the RDEIR and result in visual incompatibility with the surrounding area (i.e., inconsistent with Section 30251).

The RDEIR notes that “the placement of eight residences on the western sloped area north of Highway 101 would be visually incompatible with the character of the surrounding area.” (RDEIR, 4-34.) Based on a review of the photo-simulations in RDEIR Section 3.9, forty-two (42), different estates plus their guest houses/RSUs would be visible just from the KOPs analyzed. Thirty-one of these compounds would be visible

in the hills north of Highway 101 when viewed from the highway and Coastal Trail. The visibility of these estates will adversely affect the scenic and visual qualities of this important coastal area and are clearly inconsistent with Coastal Act §30251.

As noted in the RDEIR, the Project would change the visual character of the Gaviota Coast. The RDEIR finds this change to be significant and not mitigable (Class I). (RDEIR, 9-32.) However, the RDEIR does not find a policy inconsistency because the report compares the impacts of the proposed Project to potential grid development. As noted above, the Projects must be analyzed for policy consistency based on proposed changes to the existing physical setting. The Projects would clearly degrade the current scenic qualities of the region and cannot be found consistent with state or local visual resource protection policies.

The RDEIR also relies on language proposed for the new NPD that requires that:

Development within the Naples Planned Development shall be sited so as to minimize its visibility from prominent public viewing areas and shall incorporate design features to screen or otherwise blend the development into its natural setting. (Proposed "LCP Policy 2-26.")

While such language may look good on paper, the fact remains that the proposed Project will be highly visible from important public viewing locations (Highway 101, Coastal Trail, railroad tracks and the ocean), will not be subordinate to the rural and agrarian character of the land, and will not blend into the natural setting.

The RDEIR finds that additional mitigation measures beyond those recommended in Section 3.9 involving "resiting, redesigning, or otherwise reducing the visibility of proposed structures," would be necessary to achieve policy consistency. (RDEIR, 4-34: Conclusion.) However, the RDEIR does not sufficiently describe the measures or analyze the feasibility or effectiveness of such mitigation measures in Section 3.9 or 4.0 (*Id.*) Notably, these measures only affect 6 of the 42 visible lots. These measures also only address views from KOP 5 and only do so partially, do not ensure compatibility and do not ensure that all structures would not intrude into the skyline. No timing or monitoring requirements are included. Therefore the RDEIR cannot find the MOU Project even "potentially" consistent with Section 30251.

#### *Alternative 1 Project*

The Alternative 1 Project proposes 10 homes that would be visible in the scenic hillside from KOP 1B, the proposed Coastal Trail. These homes will be visible along a much longer reach of this trail than the single point depicted in the RDEIR. At least four of these estates will intrude into the skyline from the trail at KOP 1B (Lots 107A, 107B, 134 and 135). The RDEIR offers no mitigation for this impact. Discussion on page 10-38 notes that it is infeasible to mitigate these impacts and the result is a policy conflict that cannot be avoided. The massing of homes, ridgeline concentration of homes, and

intrusion into skylines from KOP-1B renders the Alternative 1 Project incompatible with the character of the surrounding area.

Intrusions into the skyline at KOPs 2 and 6 are also unmitigated. Intrusions at KOP-5 are not fully mitigated by any mitigation measures in Section 9.9 (Visual Resources) or by vague references to additional mitigation measures in Section 10.10. In total, 29 estates and their guest houses (or RSUs) would be visible from public viewing locations analyzed in the RDEIR. Contrary to the RDEIR's conclusion on 10-38, structures on 11 different lots (not 7) intrude into the skyline based on the KOP analysis. (KOP 1A: Lots 119 and 122; KOP 1B: Lots 107A, 107B, 134 and 135; KOP 2: Lot 193; KOP 5: Lots 48 and 215; KOP 6B: Lots 188 and 195.) 19 estate homes and their guest houses (or RSUs) would be visible from Highway 101 and the Coastal Trail looking north at the Alternative 1 Project. As a result, the RDEIR concludes:

The Alternative 1 design will result in the development of residences along the hillsides visible to the north of Highway 101, and the general appearance of this residential component of the development *will not be compatible with the agricultural character of the adjacent lands.*

(RDEIR, 10-36; emphasis added.) Similarly, the overall appearance would have “a residential development character in contrast to the adjacent orchards and agricultural lands.” (RDEIR, 10-37.)

The Alternative 1 Project's policy consistency analysis uses the wrong baseline. It inappropriately compares the Alternative 1 to future build-out under the Grid Alternative to reach a conclusion of potential policy consistency. However, Section 30251 requires protection of *existing* scenic qualities and compatibility with the *existing* character of the surrounding area. Using the existing surrounding area and existing scenic qualities as the baseline, Alternative 1 does not protect those qualities and is not compatible with the area. It alters natural landforms including ridgelines, and damages qualities including views of the islands, ocean / horizon, and mountains, and is inconsistent with Coastal Act §30251.

Finally, in order to determine compatibility with the visual character of the surrounding area, the RDEIR should include an analysis of house sizes in the area for comparison to the MOU and Alternative 1 Projects.

The Projects also violate coastal policies and Coastal Act §30251 because they fail to protect views to and along the shoreline, particularly including scenic views of the coastal bluff and coastline from the well-used Naples Reef and near shore marine environment. From the Reef and near-shore waters, public viewers can gaze “to and along the ocean and scenic coastal areas.” This area has is used by a variety of commercial and recreational boaters and other recreational users including surfers, charters, day-fishing and whale watching. (RDEIR, 9.9-37.)

The RDEIR includes Figure 9.9-7, which illustrates that ocean users in large areas of the near shore environment will have their scenic coastal views altered. However, as noted in comments on Sections 9.9 and 3.9, Figure 9.9-7 of the RDEIR analysis under-represents this impact because it assumes "typical blufftop development" is 200 - 500 feet inland from the bluff-top. Page 9.9-38 notes, "The model assumed that each home site would be setback from the bluff approximately 200 to 500 feet (as shown in the Alternative 1 plans) ...." In reality, the applicants' plans show some of the bluff-top estates set back approximately 110 feet from the bluff-top. (RDEIR, Figure 8.3-1C.) The estates will therefore be considerably more visible from the ocean than the analysis indicates and than Figure 9.9-7 illustrates because the analysis and figure rely on a faulty assumption.

Given this faulty analysis and inaccurate evidence in the RDEIR, the RDEIR's conclusion that the Project is consistent with Coastal Act §30251 is incorrect. "Views to and along the ocean and scenic coastal areas," including views from Naples Reef and near shore waters, will not be protected. The Project will not be "visually compatible with the character of the surrounding areas" and is inconsistent with Coastal Act §30251.

The discussion of consistency with Section 30251 notes that:

Several of these lots are constrained by their small size or proximity to other lots. These include Lots 107A, 107B, and 134. In other cases building locations could be adjusted by moving the structures down slope so that their upper extent would not be below the skyline (Lots 135, 193, 188 and 195). This latter solution, however, would require more grading and would place residences and development envelopes closer to stream bottoms and areas of native vegetation. The presence of other resources and the pattern of existing lots represent constraints that impede full and strict compliance with this policy.

(RDEIR, 10-39.) Thus Alternative 1 is inconsistent with Coastal Act section 30251. The RDEIR fails to consider eliminating lots to achieve mandated compliance with the Coastal Act.

### **CLUP Policy 4-3; Comprehensive Plan Land Use Element Visual Resources Policy 2**

#### *MOU Project*

The RDEIR again states that "several" single family residences would be visible from Highway 101 (RDEIR, 10-35). In fact, the MOU Project would result in 31 homes being visible in the hills as viewed from various KOPs looking north from Highway 101 and the Coastal Trail. 11 more would be visible looking south toward the ocean from public KOPs. 14 estates intrude into the skyline when viewed from KOPs. Depending on the effectiveness of the proposed KOP-5 mitigation / redesign generally described on page 4-38 (but not analyzed in Section 3.9 or elsewhere in the RDEIR), intrusions by 4 of

these 14 estates would be reduced (Lots 47, 48, 52A and 52B), but all or most of the 14 estates would still intrude above the skyline from the KOPs.

Page 3.9-20 of the RDEIR also notes that the “structures would contrast with the surrounding landscape.” This statement supports a finding of a policy conflict regarding compatibility with the existing surrounding character of the area.

Policy 4-3 and VRP 2 require structures to be compatible with the character of the *existing* surrounding natural environment. The RDEIR finds that the MOU Project if modified would be consistent with policy. However the analysis uses the wrong baseline for comparison. Instead of assessing whether the Project would be compatible with the *existing* character of the surrounding natural environment, the RDEIR finds that the Project would be less incompatible and “more protective” of visual resources than the “potential grid build-out.” (RDEIR 4-36.) Using the existing character of the surrounding natural environment as the correct baseline, the MOU Project is inconsistent with VRP 2 and LCP Policy 4-3.

Similarly, the analysis on pages 4-36 and -37 uses the wrong baseline for comparison. The analysis compares the height, scale and design of structures to what might be allowed in other zone districts (i.e., AG-II and RR zones). This analysis nevertheless concludes that the MOU Project “would remain visually incompatible with the character of the surrounding areas.” Vague mitigation measures referenced in the policy consistency analysis only address lots viewed from KOP 5, do not avoid skyline intrusions, and do not achieve compatibility with the existing surrounding natural environment.

KOP 1B views violate CLUP Policy 4-3 and Visual Resources Policy 2. As noted above, massing and skyline intrusion is visible from KOP 1B, where approximately half of the 14 estates visible intrude into the skyline. Even with modifications vaguely proposed for estates visible from KOP 5, many of these estates are not specifically proposed to be mitigated by any measure in the RDEIR (e.g., lot relocation or elimination). This residual impact supports a finding that the MOU Project violates CLUP Policy 4-3 and VRP Policy 2.

In addition, the staircase intrudes into the skyline as viewed from KOP 7A. Up to 14 other MOU Project estate structures north of Highway 101 (potentially several fewer depending on feasibility and effectiveness of lot reduction and relocation to address KOP 5 views) would intrude into the skyline. Estates would also block the skyline looking south from the public trail (KOP 1A) and from the railroad tracks and Highway 101 to the ocean and islands. The RDEIR misapplies Policy 4-3 and VRP 2 in finding the MOU Project consistent because it would not “intrude *substantially* into the skyline.” (RDEIR, 4-39; emphasis added.) These MOU Project 1 skyline intrusions violate Policy 4-3 and VRP Policy 2.

*Alternative 1*

The Alternative 1 Project also violates these policies due to substantial massing and skyline intrusion. Despite changes from the MOU Project to create the Alternative 1 layout, approximately 8 estates will still intrude into the skyline north of Highway 101. In total, 11 lots have structures that intrude into the skyline as shown in the RDEIR's KOP analysis. The RDEIR notes on page 10-38 that changes to bring all structures beneath the skyline when publicly viewed are infeasible or would run into other constraints, making full compliance with these policies infeasible. Neither massing nor skyline intrusion are substantially reduced.

Even with changes to reduce skyline intrusion from KOP 5, Lots 119 and 122 intrude into the skyline from KOP 1A. Lots 107A, 107B, 134 and 135 intrude into the skyline from KOP 1B. From KOP 2, Lot 193 intrudes. The mitigations proposed do not require elimination, reduction or relocation of lots to avoid these intrusions, and the Alternative 1 Project is, like the MOU Project, inconsistent with visual resources policies CLUP 4-3 and VRP 2.

Mitigations to avoid or lessen the physical extent of skyline intrusion and massing from KOP 5 are not presented or analyzed in Section 9.9 (Visual Resources) or 10.10. Mitigation Vis-1 does not avoid skyline intrusions, or require lot reduction or other measures to lessen view impacts from KOP 5 in order to provide assurances consistency will be attained. The RDEIR concludes that such measures are infeasible. (RDEIR, 10-38.) The RDEIR also does not address structures that intrude into the skyline from other KOPs. Therefore, the RDEIR conclusion on page 10-38 is flawed. Skyline intrusions persist, the structures would not be compatible with the character of the existing surrounding area and natural environment, and visually important natural landforms such as ridgelines are not protected. The Alternative 1 Project is inconsistent with CLUP Policy 4-3 and VRP 2.

#### ***CLUP Policy 4-8***

CLUP Policy 4-8 requires the County to request that CalTrans designate Highway 101 from Winchester Canyon to Gaviota as a state Scenic Highway. The County has not yet fulfilled this policy and is not in compliance. The proposed Projects will likely render the section of Highway 101 through and near the project sites ineligible for Scenic Highway designation. The RDEIR must analyze whether the Projects may preclude compliance with CLUP Policy 4-8 by rendering Highway 101 through and near the project areas ineligible for Scenic Highway status.

This Project represents a great opportunity for the County to finally fulfill this 24 year old policy by requesting that the state designate this section of Highway 101 as Scenic. Moreover, given that County policy requires the County to request designation, the RDEIR should note a potential inconsistency with Policy 4-8 because the County is not making this request of CalTrans in the context of this Project.

#### ***Comp Plan Area / Community Goals for the Goleta Valley – Environment***

The County's goal of preserving open space for its scenic and aesthetic value is undermined by the proposed Project. Both the MOU and Alternative 1 Projects fail to explicitly include TDR to the maximum extent feasible, which would preserve more open space. Instead, both Projects convert open space to residential uses. The Projects are thus inconsistent with this goal. (RDEIR, 4-40 and 10-39.)

### ***Coastal Act Section 30253***

The RDEIR fails to analyze consistency with Coastal Act §30253. The construction of three wastewater treatment plants and new urban development in a rural area would violate this policy by increasing energy consumption and vehicle miles traveled.

### ***LCP View Corridor Overlay Designation Policies 4-9 through 4-11 are Omitted***

The LCP states that Policies 4-9, 4-10 and 4-11 apply to areas "where there are views from Highway #101 to the ocean." Such highway segments are supposed to be mapped View Corridor Overlay. The NPS Study notes that "the County has, in all areas where there are views from U.S. Highway 101 to the ocean, established a View Corridor Overlay designation in the coastal zoning ordinance and local coastal plan." (See attached Study, p. 37) Given the views to the ocean from Highway 101 through the project sites, these policies should be applied to the Project. However, these policies are not included in RDEIR Sections 3.9, 9.9, 4.10 or 10.10, and the Project is not analyzed for consistency with the LCP View Corridor Overlay Designation policies.

Policy 4-9 requires that broad views from Highway 101 south to the ocean not be obstructed. It also requires clustering to the maximum extent feasible to accomplish this objective. The RDEIR includes only one KOP looking from Highway 101 south to the ocean. This inadequacy inhibits a complete policy consistency analysis. Regardless, the Project does not cluster units to preserve views to the ocean, and tends to obstruct ocean views. Alternative 2, and to some extent the Clustered Development Alternative and TDR in general, do comply with this policy direction. Notably, they are identified in this letter as components of the proper Environmentally Superior Alternative.

Policy 4-10 requires that landscaping shall not impede public views. The Project's landscaping, proposed as a mitigation to screen the extensive amount of new development on both sides of Highway 101 would impede public views, including ocean views.

Policy 4-11 limits buildings to 15 feet high above grade, unless taller buildings facilitate clustering to preserve ocean views. The proposed Project height limit is 25 feet, and the Project is not clustered, in violation of this policy.

## **4.11 POLICIES RELATED TO HOUSING**

### ***CLUP Policies 5-5 and 5-6***

The Projects are inconsistent with these policies because they do not require a range of housing types and prices. TDR into an urban area would result in a greater range of housing types and would therefore better achieve consistency with these policies.

The RDEIR does not include a full analysis of the Project's consistency with the County Housing Element policies adopted within the past year. Our analysis of the Project's consistency with the new Housing Element policies is provided at the end of Section 6.0.

## **10.12 POLICIES RELATED TO ACCESS AND RECREATION**

### *Coastal Act §30210*

The RDEIR analysis should better reflect the Coastal Act and LCP requirement that access and recreation be consistent with protection of natural resources. Currently, the trail and staircase are located through various ESHAs. Alternatives to provide access while avoiding the ESHAs are not considered in the RDEIR.

#### *Coastal Trail and Vertical Access Alternative*

LCP Policy 1-2 requires that when policies of the LCP overlap, i.e. for biological resources and access, the policy most protective of coastal resources controls.

The Projects should locate the Coastal Trail as close to the coast and bluff as feasible while still avoiding ESHA to the maximum extent feasible. This recommendation is consistent with the location for the Coastal Trail shown on the County Comprehensive Plan Parks, Recreation and Trails (PRT) Map and Policy 7-25. (Figures 9.10-1 and 3.10-1.) This location would place the Coastal Trail through the planned bluff top development envelopes. Development envelopes should be shifted north and inland to open up a public access trail corridor between any remaining coastal bluff lot estates and the bluff edge. This may require relocation of bluff lots inland would also provide consistency with policies intended to mitigate agricultural, biological, visual, cultural and contaminated soils impacts.

The Coastal Trail route along the bluff (south of the railroad tracks) should be pedestrian-only to minimize grading impacts. Pursuant to Comprehensive Plan Land Use Element Parks and Recreation Policy 1, a second parallel route could be provided for bicyclists and equestrians along existing Langtry and Dos Pueblos Canyon Roads (where the Projects currently propose the Coastal Trail). This branch of the Coastal Trail would make use of the existing bridge across Dos Pueblos Creek. The pedestrian and bicycle/equestrian branches would connect at both the DP Canyon vertical access and at the currently proposed trailhead, and could continue west to Las Varas Ranch via the bluff (pedestrian only) and closer to Highway 101 (bicyclists and equestrians). (See attached "Map of Proposed Coastal Trail.")

This alternative Coastal Trail route may also enable vertical access at Dos Pueblos Canyon, consistent with Policy 7-18. As noted in the 2006 DEIR, DPR has “many of the attributes of a preferred public access site, partly due to greater distance from the critical areas of Naples Reef, as compared to the proposed access point.” (2006 DEIR, 6-58.) The beach at Dos Pueblos Canyon is the only sandy beach i.e. not bluff-backed beach on the entire Alternative 1 site, and is already subject to private recreational uses. There is already a road and parking areas near the beach at Dos Pueblos Canyon. Access could likely avoid ESHA at Dos Pueblos Canyon where overall access impacts appear substantially reduced. Utilizing Dos Pueblos Canyon avoids the staircase proposed at SBR. This alternative would better avoid the seal haul out, Naples Reef impacts, Coastal Bluff Scrub impacts, geological impacts, view impacts and policy conflicts related to the proposed staircase.

### ***Private and Public Equestrian Uses***

In order to protect sensitive coastal resources, no equestrian or bicycle use should be allowed on the beach.

### ***CLUP Policies 9-25 and Policy 9-33, and CLUP Text 212-213***

County coastal policies require that marine mammal rookeries and Naples Reef shall not be disturbed by recreation or other uses. These policies support location of vertical access at Dos Pueblos Canyon instead of SBR. The current staircase access with parking appears inconsistent with these policies. The Dos Pueblos Canyon location has ready amenities including water, road access and areas for parking.

### ***CLUP Policy 7-4***

Policy 7-4 requires preparation of a carrying capacity study to ensure that human use of coastal recreational facilities at “habitat areas” does not exceed the natural resource’s ability to withstand that use. No such study is included or proposed. The RDEIR fails to analyze consistency with this policy.

### ***CLUP Policy 7-2***

This policy requires vertical coastal access easements unless access would result in adverse impacts. There is more than enough data, including information in the RDEIR, to support a finding of adverse impacts from vertical access where it is currently proposed for this project. (See e.g. Impact Bio-6.) Vertical access at Dos Pueblos Canyon would reduce these impacts, as discussed below.

### ***CLUP Policy 7-3***

Policy 7-3 requires granting of lateral access easements along the shoreline. The proposed Coastal Trail is a half mile or more inland along an existing paved road. The proposed Projects do not involve dedication of all the beach seaward of the coastal bluffs,

and the beach does not provide access at high tides. A bluff-top pedestrian trail weaving around or through the drainages would comply with this policy.

***Policy 7-6 and Policy 7-13***

The proposed access plan includes substantial alteration of the natural terrain compared to an alternative access plan utilizing vertical access at Dos Pueblos Canyon.

***CLUP Policy 7-18***

Policy 7-18 *requires* acquisition of an access easement by a public agency at Dos Pueblos Canyon. This policy also encourages acquisition of areas to provide picnic tables, bike racks, and a restroom at Dos Pueblos. The summary of this policy in the RDEIR excludes important site-specific language pertinent to the Alternative 1 Project. Specifically, CLUP Policy 7-18 requires vertical access at Dos Pueblos Canyon, not at SBR nearer to the haul out and Naples Reef, which is where the current proposed staircase is located.

Proposed Policy 2-31 would allow a coastal bluff staircase to serve recreation in the NPD. Such a staircase would be inconsistent with LCP policies for bluff and ESHA protection. Policy 2-31's allowance for a bluff staircase structure is also inconsistent with Policy 7-18 because access at DP Canyon avoids and better protects important coastal resources while providing access at the LCP-designated location: DP Canyon.

***CLUP Policy 7-19***

The current proposed staircase would put the public to the immediate west of the protected seal haul out area. This location is unacceptable, especially when the County's PRT maps show the trail along the bluff, and Policy 7-18 requires that vertical access be taken from Dos Pueblos Canyon. In fact, since Policy 7-19 recommends that access should be by boat only, since Coastal Act §30240 prohibits incompatible uses in ESHA, and since the proposed staircase would result in ESHA, visual and erosion impacts, it should be abandoned in this location.

***Coastal Act §30212***

The Coastal Act also requires public access from the nearest public roadway to the shoreline except where that access would compromise public safety, and other factors. It has been demonstrated that at high tide, there is no beach left at Naples Reef (where the current stairway is proposed), and that there are significant hazards from cliff erosion to persons walking below them. (Testimony of Christina McGinnis, 12-10-07 RDEIR Meeting.)

This section of the Coastal Act also requires that fragile coastal resources be protected (e.g., Naples Reef, Naples Beach and the seal haul out). Furthermore, Dos

Pueblos offers the closest and easiest access from public roads, including an existing paved road. Therefore, the access must be relocated.

### ***Coastal Act §30214***

Coastal Act §30214 states that the policies of the Act shall be implemented in a manner which recognizes the need to regulate time, place and manner of public access policies to account for site-specific resource constraints. It is clear that there are numerous constraints from both a biological and a health and safety perspective that affect recreational use in this sensitive area.

### ***Coastal Act Sections 30221 and 30223***

The Coastal Act requires protection of ocean front land for recreational use unless future demand for recreational lands that could be accommodated onsite is already adequately provided in the area. The beach at Dos Pueblos Canyon (i.e. Lot DP-19) is suitable and ideal for public recreation given existing vehicle access and sandy beach. It should be set aside for public access and recreation if DPR is involved in the project (i.e. Alternative 1).

### ***Coastal Act §30240(b)***

The construction of the bluff lots causes a significant impact to the adjacent recreational area planned as part of the project. Development adjacent to parks and recreation areas must not significantly degrade these areas pursuant to Section 30240(b) of the Coastal Act. The bluff lots development next to the recreational area may conflict with Section 30240(b). This impact was not analyzed by the RDEIR.

Each of these policies and Coastal Act sections must be clearly analyzed in the RDEIR. The document currently fails to provide an adequate analysis of these issues. The document must provide the public and decision-makers with the complete policy language, not selected sections to suit the analysis and conclusions in the RDEIR to support the proposed project.

### **Comprehensive Plan Land Use Element Parks and Recreation Policy 4**

The Alternative 1 Project site is located adjacent to the National Forest and Gato Trail. Gato Trail is visible in RDEIR Figure 9.10-1 northwest of DPR. To comply with recreation and trail policies a connector from the Coastal Trail to the Forest and Gato Trail should be constructed through DPR. The existing Condor Point Trail is also near DPR, providing another opportunity to connect the Coastal Trail to Camino Cielo via the National Forest and DPR. (See attached "Map of Los Padres National Forest Gato Trail and Condor Point Trails.")

## **10.13 POLICIES RELATED TO AGRICULTURE**

### ***Comp Plan Area / Community Goals for the Goleta Valley – Land Use***

See comments above regarding the potential infeasibility of canceling the Williamson Act contracts and creating an agricultural conservation easement. Since it appears that these actions cannot be taken, the proposed Alternative 1 will violate County policies requiring the preservation of agricultural lands. Not only will Alternative 1 convert Williamson Act contracted lands, but Alternative 1 would convert at least 67 acres of prime agricultural lands (at least 45 acres on DPR north of 101, 20 on DPR south of 101 and 2 on SBR). (RDEIR, 9.7-5.) Other sections of the RDEIR suggest this impact may be closer to 100 acres.

### ***Comprehensive Plan Agricultural Element Goal II and Policies II.C and II.D***

The proposed conversion of highly productive farmland violates Ag Element Goal II and Ag Element Policy II.D. The discussion for both the MOU Project and the Alternative 1 Project on page 4-51 includes reference to “conversion of highly productive agricultural lands to non-agricultural uses” as an adverse urban influence. The Alternative 1 Project’s conversion of substantial prime agricultural lands is one adverse urban influence the Goal was adopted to prevent. The Projects convert rather than increase “the net acreage of prime agricultural lands.” (RDEIR, 4-51.) Therefore, the MOU Project and Alternative 1 are not consistent with Goal II.

As an example, the RDEIR notes that the recreational facilities will be set back from agricultural operations. However this misses the point: the recreational facilities are proposed within and would displace and convert agricultural lands to a non-agricultural use.

Other adverse urban influences on agriculture support a finding that the Projects are not consistent with the Ag Element. Disturbance by traffic and pets, trespassing and vandalism, theft, nuisances and health threats including pesticides and dust, urban runoff and land use conflicts also indicate conflicts with the Ag Element.

#### ***Policy 2-13 does not Forgive Inconsistencies with Agricultural Protection Policies***

The analysis on page 4-51 suggests CLUP Policy 2-13 overrides Comprehensive Plan Agricultural Element Goal II and related policies. First, the RDEIR’s all-or-nothing application of Policy 2-13 facilitates rezone of agricultural land even though partial TDR can feasibly avoid the need to rezone all or some of the areas of SBR and DPR grid lots. Second, this analysis compares the Projects to build-out under the Grid Alternative instead of to existing conditions.

Rather than resolving land use conflicts, the Project creates land use conflicts where none currently exist. Only by reducing the Project, clustering development and implementing TDR to the extent feasible can the Project’s new land use conflicts be prevented or minimized.

Third, since Alternative 1 expands the project beyond the town site and further out of the coastal zone, Policy 2-13 does not apply to the Option Property or DPR north of Highway 101. The Agricultural Element does apply in these inland areas. The subdivision and conversion of prime agricultural land is not consistent with the Agricultural Element.

### ***Comprehensive Plan Agricultural Element Policy III.A***

Urban development in agricultural lands when infill is available violates Agricultural Element Policy III.A. This policy discourages any urban development into active agriculture outside of urban limits if infill is available. Infill development is not only available, but it is being pursued (e.g., Santa Barbara County Housing Element, Santa Barbara City, Goleta General Plan), and should be considered for TDR before any development is allowed at Naples. Moreover, the City of Santa Barbara is offering infill areas as receiver sites for transfer of development rights from Naples. (See attached "March 28, 2006 Santa Barbara City Council Naples TDR Briefing and August 22, 2006 Santa Barbara City Council Naples TDR Hearing VHS Tape"). The Project can only comply with this policy by explicitly including TDR (i.e., partial TDR) to the maximum extent feasible.

The RDEIR claims that the proposed conversion of agricultural lands is being undertaken in parallel with a program to transfer development from Naples to urban receiver sites. (RDEIR, 4-52.) However, TDR is not included in the MOU or Alternative 1 Project Descriptions.

### ***Coastal Act §30243***

The RDEIR fails to analyze whether the wastewater treatment plants' discharges are consistent with Section 30243 of the Coastal Act. The three wastewater treatment plants could violate this provision by decreasing the quality of the soil (e.g., through sludge, sewage spills, or reclaimed water discharges / irrigation), thereby decreasing the productivity of the soil. In addition, reclaimed sewer water irrigation is proposed in agricultural lands (including private pastures and open space areas), and could potentially threaten soil quality.

The Project's water supply may be unreliable. During droughts, domestic uses will take precedence over agricultural uses. This could threaten prime soils and agricultural operations especially during droughts when agricultural demand is higher.

## **10.14 POLICIES RELATED TO ENVIRONMENTALLY SENSITIVE HABITATS**

### ***Coastal Act §30240 and CLUP 9-1***

The Coastal Act mandates the protection of ESHAs and parks and recreation areas in the coastal zone through avoidance of uses incompatible with ESHAs and provision of adequate buffers.

#### *Dos Pueblos Creek*

The proposed diversion of water from Dos Pueblos Creek is inconsistent with ESHA protection requirements and yet is not analyzed as a source of potential policy conflict. Dos Pueblos Creek is designated as environmentally sensitive and identified in the Comprehensive Plan Conservation Element as one of the few best remaining examples of natural creeks. (Conservation Element, p. 149.) The same page of the Conservation Element notes that Dos Pueblos Creek and several other streams deserve “greater protection than that afforded to those [creeks] simply classified as delicate habitats.” The proposed water diversion from this Creek is located in the inland area but is linked to development in the coastal zone and would affect flow and downstream habitats in the coastal zone.

#### *Tomate Canada Creek*

The proposed Tomate Canada Creek Bridge, native grassland removal in the coastal bluff-top lots, potential wetland fills and development near wetlands south of Hwy 101, removal of water from a riparian ESHA (Dos Pueblos Creek) and loss of Coastal Terrace grasslands also represent inconsistent uses in ESHA. These activities would adversely affect wetlands, the Tomate Canada Creek, native grasslands, coastal bluff scrub, and would eliminate excellent foraging habitat for raptors and special-status species on the Coastal Terrace. In addition, red-legged frogs are known to inhabit Tomate Canada. (See attached letter from Morgan Ball; RDEIR, Table 9.4-4.)

The WWTP in Lot 188 would be located in Tomate Canada Creek, apparently for gravity flow purposes. The stream contains wetland and riparian vegetation, contained water during the public site visit in July 2006, and supports special-status species including Santa Barbara Honeysuckle. The stream qualifies as ESHA, so the construction of the wastewater treatment plant without an adequate buffer could violate the Coastal Act. The Act also limits development in areas adjacent to ESHA. The treatment plant would therefore violate the Act if it is built in a sensitive area or next to one where it would adversely affect nearby ESHA.

#### *Coastal Terrace*

The Coastal Terrace supports various special-status raptors, bats and other mammals identified in Table 9.4-4, supporting inclusion of the Terrace as ESHA. In addition, the County’s Land Use Plan Section 3.9.4 states that “specialized wildlife habitats which are vital to a species survival, i.e., white-tailed kite habitat, butterfly trees” warrant the Habitat Area (ESHA) overlay designation. White-tailed kite habitat vital to species survival includes the areas in which it feeds and nests.

Correspondence from White-tailed kite experts Mark Holmgren and Morgan Ball to Coastal Commission biologist Dr. John Dixon regarding the adjacent ARCO Dos Pueblos golf course project in 2002 illustrates that White-tailed kites cannot nest in an area without sufficient adjacent foraging habitat. According to Holmgren and Ball, various structural elements are required to protect breeding white-tailed kites. One of these encompasses the Coastal Terrace: "foraging areas within and beyond a territory boundary." (See Attached "November 20, 2002 and June 6, 2002 Correspondence from White-tailed kite experts Mark Holmgren and Morgan Ball to Coastal Commission biologist Dr. John Dixon regarding the ARCO Dos Pueblos golf course project.")

Foraging habitats are vital to support kites (and/or other special-status species) and are ESHA. Holmgren and Ball theorize based on past experience (e.g., in Carpinteria) that development of foraging habitat south of Highway 101 forces white-tailed kites to cross the highway, resulting in substantial mortality.

While additional raptor surveys are required to establish the environmental baseline setting, the Coastal Terrace's excellent but easily degraded foraging habitat and habitat for special-status species described in the RDEIR likely qualify as ESHA based on the Terrace's support of special-status species. (See attached "September 26, 2006 letter from Morgan Ball to Tom Figg, Santa Barbara County.")

Moreover, footnote 8 on page 71 of the May 31, 2002, CCC staff report for the ARCO Dos Pueblos golf course project adjacent to Santa Barbara Ranch notes that sites are unlikely to be selected by kites for nesting without sufficient foraging habitat and prey nearby. (See attached "May 31, 2002 California Coastal Commission Staff Report on Hearing on Changed Circumstances and Proposed Amendments Arco Dos Pueblos Golf Links.") Foraging habitat is necessary for the survival of White-tailed kites and for White-tailed kite nesting and breeding. Therefore, pursuant to the LCP, CZO and Coastal Act, the important White-tailed kite foraging habitat of the Project site's Coastal Terrace grasslands is ESHA and must be preserved to comply with Coastal Act Section 30240.

The Coastal Terrace currently supports at least one pair of White-tailed kites south of Highway 101. A pair was observed by staff from the SCPBRG on 1-8-08 perching in fence posts and foraging within the area near Lots 41 – 43 and 69 – 71. (Personal observation, EDC biologist Brian Trautwein, 1-8-08.)

The Coastal Terrace also contains at least one apparent Turkey Vulture roost – a specialized wildlife habitat necessary for the species' survival. (See attached "August 30, 2006 EDC Photograph of potentially roosting turkey vultures.")

The Coastal Terrace supports many special-status species listed in Table 9.4-4. The RDEIR also notes the Coastal Terrace's environmental sensitivity:

For the project area south of Highway 101, east-west wildlife movements along the narrow coastal terrace between the project area and the open spaces to the east

and west are important in supporting wildlife populations and should be preserved to the maximum extent feasible.”

Page 3.4-70 of the RDEIR lists numerous impacts, including mortality, to wildlife and special-status species that would occur within the development on the Coastal Terrace and the foothill grasslands. The Alternative and MOU Project designs directly destroy 194 and 138 acres of grassland habitat respectively (Impact Bio-1), much of which occurs within the Coastal Terrace. The discussion on page 3.4-54, 3.4-70 and 9.4-57 provides evidence of the Projects’ inconsistency with Coastal Act Section 30240 and the LCP.

#### *Coastal Bluff Scrub, Chaparral and Coastal Scrub Habitats*

The RDEIR identifies the presence of scrub and chaparral habitats. (See e.g. RDEIR pp. 9.4-9, -15 and -16; Table, 9.4-1; and Figures 9.4-1C and 1D.) These habitats all support species of special status. (Tables 9.4-3 and 9.4-4.) However the policy consistency analysis does not discuss the Project’s consistency with Section 30240 or other relevant coastal policies and Comp Plan policies with regards to impacts to these sensitive habitats. The RDEIR does not consider these habitats to be of special status. (RDEIR Section 9.4.4.2.2.) However, these habitats are ranked by the Department of Fish and Game’s Natural Diversity Data Base as rare habitats. (See attached “Vegetation Classification and Mapping Program List of California Vegetation Alliances October 22, 2007; California Natural Diversity Database State and Global Ranks for Coastal Scrub and Chaparral.”)

The RDEIR notes a potential for degradation of oak woodland and willow riparian woodland in the tributary to Dos Pueblos Creek. Specifically, the RDEIR finds that sedimentation may adversely affect these special-status habitats. (Impacts Bio-3 and Bio-4.) The policy consistency analysis excludes reference to these ESHA impacts which may conflict with Section 30240 of the Coastal Act.

#### *Pipeline Routes*

The pipelines associated with the water and wastewater treatment plants, including sewage lift stations which are not described in the RDEIR, would connect all homes to these plants and could traverse and impact ESHAs and adjacent areas. Some or all pipelines may have been constructed; regardless, they are part of this SB Ranch MOU Project and Alternative 1 and must be analyzed for consistency with Coastal Act §30240.

#### **Comprehensive Plan Area / Community Goals for the Goleta Valley – Environment**

Significant wildlife areas should be identified and protected by appropriate regulations. Any development within such areas should be at sufficiently low density so as to not be detrimental to wildlife. Those areas characterized by endangered, rare, or diminishing species should be preserved. (Santa Barbara County Comprehensive Plan, p. 115.)

Alternative 1 and the MOU Project both remove significant habitat for wildlife, including rare and diminishing species, on the Coastal Terrace. The RDEIR identifies this terrace as having great value. For example, the terrace's "annual and native grasslands" support "high densities of prey (insects and small mammals)" and "provide important foraging habitat for a number of raptor species, particularly where associated with roosting / nesting sites in close proximity to grasslands." (RDEIR, 9.4-19; also see Table 9.4-4 and Impact Bio-11.)

The RDEIR also identifies numerous special-status species that are known to, or are expected to rely on, the Coastal Terrace including the State Species of Concern (CSC) and California Fish and Game Code-designated "fully protected" White-tailed kite, Northern Harrier (CSC), Long-billed curlew (CSC), California horned lark (CSC), San Diego black-tailed jack rabbit (CSC), Sharp-shinned hawk (CSC), American badger (CSC) and various CSC bat species. Other special-status species have a moderate potential to occur in this Coastal Terrace, including Swainson's hawk and Burrowing owl. Proper surveys for burrowing owls and other raptors have not occurred.

The Coastal Terrace is easily damaged by human activities and should be evaluated and protected as ESHA given its role and special nature in the area's ecosystem (i.e., open lands for foraging to support nearby nest sites, open flat terrace for wildlife movement). Table 9.4-4 notes that the special-status species relying on the Coastal Terrace are threatened by project-related habitat fragmentation. Minor realignment of access driveways south of the RR tracks would not reduce the impacts to this habitat. The Project's fragmentation and elimination of much of the Coastal Terrace as foraging habitat south of Highway 101 illustrates the Project's inconsistency with this Comprehensive Plan Goal.

### ***CLUP Policy 9-9***

As noted above, the RDEIR has not delineated all wetlands for the RDEIR and has deleted wetlands delineated by SAIC in 2005 and photographed by Holland in 2003. The MOU Project and Alternative 1 would fail to avoid coastal wetlands and maintain minimum 100-foot buffers around wetlands, and would thus be inconsistent with Policy 9-9. The statement on page 10-56, that the Projects are consistent with the policy because they maintain 100-foot buffers, is inaccurate because in fact some wetlands have not been delineated, some have been improperly deleted from consideration and still others appear within 100 feet of development, i.e. wetlands delineated by SAIC in the coastal bluff top drainages and north of the access drive to Lot 63 (in Lot 66).

The RDEIR cannot claim avoidance and adequate buffers absent actually delineating the wetlands to support this claim. The Coastal Act does not allow this type of development in and adjacent to wetlands. (See discussion below, regarding Coastal Act §30233.) The RDEIR also notes that wetlands will be covered for the unnecessary Tomato Canada Bridge. Destruction of these wetlands clearly violates Policy 9-9.

The RDEIR misapplies Policy 9-9 by claiming that “[T]his buffer requirement does not apply to minor structures such as fences and public access drives.” (RDEIR, 4-55.) However Policy 9-9 and the Coastal Act require adequate protection of wetlands including minimum 100-foot buffers for all development including grading, fences and access drives.

In addition the CCC’s Guidance for wetland projects recommends a much larger buffer than 100 feet for projects of this nature. (See attached “California Coastal Commission Procedural Guidance for the Review of Wetland Projects in California’s Coastal Zone, June 15, 1994,” pp. 115-16.)

### ***Coastal Act § 30233***

The RDEIR fails to analyze the Project’s consistency with Section 30233 of the Coastal Act, which prohibits the fill of coastal wetlands for residential uses. (*Bolsa Chica Land Trust v. California Coastal Commission* (1999) 71 Cal.App.4th 493, 510 [83 Cal.Rptr.2d 850]; *Kirkorowicz v. California Coastal Commission* (2000) 83 Cal.App.4th 980 [100 Cal.Rptr.2d 124].)

### ***CLUP Policies 9-11 and 9-14***

The RDEIR notes that reclaimed water from the STPs may seep into wetlands and the ocean. (RDEIR, 10-56.) However, the issue of potential wastewater discharges from the proposed water treatment plant was not addressed in the RDEIR. Comments by Keller 2006 and Revell 2006 both identify potential water pollution from seepage. It is unclear where STP discharges would go, and what impacts they may have especially in winter when soils may be saturated. The RDEIR must address this issue and describe any discharges, probable paths the discharges will take during dry and saturated i.e. winter soil conditions, and water quality impacts and other impacts, e.g. geological or hydrological impacts such as liquefaction and bluff stability, etc.

Additionally, given the lack of an adequate wetland baseline setting, it is unclear whether the wetlands now identified in the large reclaimed sewage water pasture irrigation areas (i.e., Lot 97) or elsewhere in the Coastal Terrace would be affected by the discharges, for example by increasing their size, changing the soil or water chemistry/quality, affecting their ability to absorb floodwaters or affecting their wildlife values.

Reducing the number of units and the size of units, and eliminating the NPD allowed use of RSUs would reduce STP discharges and associated impacts and policy conflicts.

Additionally, runoff from the bridge and roads threatens water quality in Tomate Canada Creek and the Coastal Terrace drainages. Deleting the bridge and eliminating, relocating and/or clustering bluff lots further north than currently proposed would help

reduce the impacts on these coastal drainages moving towards compliance with Policy 9-14.

***CLUP Policy 9-16a***

The RDEIR states that “Grazing and other agricultural uses would be permitted only within the designated Agricultural Conservation Easement (ACE) areas. These areas will identify and exclude grazing from riparian corridors and other wetlands.” (RDEIR, 10-57.) However, this provision is not defined as part of the Project, and is not discussed in Section 9.4 (Biological Resources) or other sections of the RDEIR’s Impact and Mitigation Section. If the prohibition is not included in the Project Description or required as a mitigation measure, then it is unenforceable and cannot be relied upon to ensure consistency with coastal policy.

In addition, there must be an adequate setback from coastal wetlands and other ESHA to ensure that adjacent grazing does not harm the water quality or biological resources of the wetlands to ensure consistency with coastal policy. The RDEIR must include the ACE contract language (or draft) to give the public a chance to understand and comment on the proposed Project and its consistency with applicable laws and policies. There are no provisions in the draft ACE (attached) for avoiding or protecting wetlands from grazing so the Projects violate Policy 9-16a.

The RDEIR and OSHMP recognize that grazing would continue in lots containing wetlands and placed into ACEs. (RDEIR Appendix G, OSHMP, 15.) As an example, the wetland in Lot 66 should not be in a PACE or subject to any grazing. All wetlands and other ESHA including Dos Pueblos Creek and tributaries and native grasslands in Lot 57 should be placed in the OSCE rather than the ACE to ensure protection commensurate with the Coastal Act and LCP requirements.

***CLUP Policy 9-18***

The MOU Project and Alternative 1 directly remove and fail to protect native grasslands in violation of CLUP Policy 9-18. The RDEIR incorrectly concludes that the Project complies with Policy 9-18 because the agricultural support facility was moved. On the contrary, the RDEIR still identifies loss of .22 acres of native grassland. (RDEIR, 9.4-82.) Development envelopes on bluff Lots 63, 91 and 93 still encroach into native grasslands and / or leave no buffers and are not sited or designed to protect native grasslands. (RDEIR, Figure 9.4-1B.) Therefore, the Projects violate Policy 9-18. This discussion also applies to the native grassland recommendation on page 166 of the Conservation Element. (See attached “Santa Barbara County General Plan Conservation Element Native Grassland Protection Provisions.”) These general plan provisions were omitted from the RDEIR.

The RDEIR claims native grasslands would be afforded 100-foot buffers from grazing areas in PACEs. However, no such restriction exists in the Project Description, draft ACE or mitigation measures.

***Policies 9-19 and 9-20***

The RDEIR incorrectly notes that no vernal pool species have been identified in the area of proposed development. (RDEIR 10-58) The vernal pool fairy shrimp was observed on the railroad right of way within the Project site as described by the RDEIR consultant during the January 2, 2008, Planning Commission RDEIR briefing.

While the RDEIR states that no vernal pool species have been identified near the development, as described in the RDEIR, seasonal water bodies on the Coastal Terrace retain ponded water for long enough to support western toad breeding. In addition, some of these ponds also contain California clam shrimp, "a freshwater crustacean found in natural vernal pool and man-made seasonal pools." (RDEIR, 9.4-20.)

Future homeowners associations may wish to control mosquitoes in wetlands or the reservoir due to West Nile Virus or other pathogens. Increasing the setbacks between homes and wetlands and drainages would reduce this impact.

***CLUP Policies 9-26 through 9-29***

The RDEIR fails to include CLUP policies 9-26, 9-27, 9-28 and 9-29, which require the protection of rare White-tailed kites and their habitats.

The attached May 31, 2002, CCC Staff Report for the ARCO Dos Pueblos Golf Course Project clearly states that these policies apply to the entirety of the County's coastal zone. "The certified Coastal Zoning Ordinance is specifically titled: Development Standards for White-Tailed Kite **Habitats** – indicating that it applies to all kite habitats.... Even if the LCP contained no policies specifically protective of the White-tailed Kite and its habitat, the definition of ESHA set forth in the LCP, together with applicable ESHA policies and provisions, including LUP Policy 2-11, would apply to the kite as a designated sensitive species." (See attached "CCC Arco Dos Pueblos Golf Links Staff Report excerpt.") Therefore, these policies also apply to the Santa Barbara Ranch MOU Project and Alternative 1. The RDEIR must be revised to analyze the Projects' consistency with these policies.

Policy 9-29 and CZO Section 35-97.14(4) require that "the maximum feasible area shall be retained in grassland to provide feeding area for the kites." The proposed MOU Project and Alternative 1 Project fail to retain the maximum feasible area of grassland for kite foraging. Instead, the MOU Project and Alternative 1 Project concentrate development in the grassland foraging habitat of White-tailed kites in violation of Policy 9-29 and the CZO.

In addition, as noted above, evidence shows that White-tailed kite foraging habitat is ESHA and at least the portions of the Coastal Terrace supporting special-status species likely qualify as ESHA and must be avoided pursuant to Coastal Act §30240.

***CLUP Policies 9-31, 9-32 and 9-33 and CLUP text pp. 212 – 213***

See comments above regarding RDEIR Section 9.10. A seasonal closure may help protect beach ESHA but may be deemed infeasible. Therefore, an alternative access plan including vertical access at DP Canyon pursuant to LCP Policy 7-18, an east-west pedestrian trail on the bluff where several bluff-top estates are currently planned, and a parallel segment of the Coastal Trail (following existing roads) for equestrians and bicyclists is necessary to protect ESHA. This alternative access plan would also reduce environmental impacts such as view degradation and erosion and comply with local and state policies for the Coastal Trail, access and recreation.

***CLUP Policy 9-37***

This policy requires 100-foot development setbacks for major streams in rural areas. The STP in Lot 188 and the Tomate Canada Bridge are developments with inadequate buffers to Tomate Canada. The STP appears on the creek bank. (Figure 2-3.2.) See comment above regarding the need for a minimum 100-foot setback for Tomate Canada Canyon Creek.

The Coastal Terrace drainages south of then railroad tracks are not afforded fifty foot setbacks from the development envelopes in Lots 39, 63, 66, 91, 93, 119 and 122. These drainages contain wetlands identified by Holland 2003 and delineated by SAIC 2005, but these wetlands were deleted by URS and not considered wetlands or mapped in this RDEIR. These wetlands must be afforded a minimum of 100 foot setbacks from the landscape and development envelopes to ensure adequate protection and consistency with the LCP and Coastal Act. (See attached "California Coastal Commission Procedural Guidance for the Review of Wetland Projects in California's Coastal Zone, June 15, 1994," pp. 115-16.)

In addition, Mitigation Geol-2 appears to allow grading (a form of development) within 50 feet of creeks. This measure's consistency with CLUP Policy 9-37 should be analyzed in the RDEIR.

***CLUP Policies 9-38 to 9-41***

The RDEIR claims that even if the eastern most access proposed off Calle Real were made a primary access instead of an emergency access as planned, there would still need to be secondary access (i.e. the Tomate Canada Bridge). (RDEIR, 4-62.) However, the Alternative 1 and MOU Project lots in the northeastern and north-central portion of the Projects total less than 25 each and would each only require one access (i.e. the existing Lot 132 access road and the road up from the west end of Calle Real at the eastern project edge north of Highway 101). Therefore, the bridge planned through ESHA and over wetlands in Tomate Canada Creek is not a necessary element of the Project and can be avoided to comply with coastal policies for creek, wetland and ESHA protection.

Policy 9-39 addresses projects with dams or other structures in creeks that might block fish migration. This policy requires the installation of steelhead passage facilities in Dos Pueblos Creek where the existing water diversion acts as a barrier to migration.

### ***Coastal Act §30236***

Section 30236 of the Coastal Act prohibits major alterations of streams. Substantial alterations of streams may only be allowed for necessary flood control, water supply and fish and wildlife habitat improvement projects. This section of the Act applies to the Tomate Canada Bridge and potentially to the water diversions in creeks, such as Dos Pueblos Creek, that may serve the Projects. The Project Description indicates that other sources of water are adequate to serve this project; therefore, diversions from the Creek to serve coastal portions of the Projects would violate the Act. However, Section 30236 of the Coastal Act was excluded from consideration in the RDEIR and from the policy consistency analysis.

## **10.15 POLICIES RELATED TO ARCHAEOLOGICAL RESOURCES**

### ***CLUP Policy 10-1, 10-2, 10-3***

The Alternative 1 Project is inconsistent with Policies 10-1, 10-2 and 10-3, because two significant archaeological sites, villages which gave rise to the name “Dos Pueblos,” would be directly impacted. (RDEIR, 9.11-24 and -25.) Furthermore, the baseline has not been adequately documented, and surveys are deferred. Specifically, it appears that inadequate surveys were done for DPR. In addition, Phase II surveys are deferred until Land Use Permits are considered (i.e., after public review of the CEQA project). Phase I and II surveys are necessary to accurately establish the baseline for environmental review. Phase III surveys may also be needed to help establish the baseline.

In addition, the RDEIR fails to include an analysis or consideration of ways to avoid the Project’s impacts to cultural resources. Instead, the mitigation is essentially to try to avoid resources if uncovered during construction when avoidance may no longer be an option. However some of these resources are known and direct impacts are identified. All efforts at avoidance, such as lot eliminations or relocations, must be employed before less effective mitigations are considered. If after all feasible mitigation and avoidance measures are considered impacts would still remain, TDR should be considered. (See detailed discussion in Section 9.11.)

### ***CLUP Policy 10-5***

This policy requires consultation with Native Americans when development proposals may impact significant archaeological or cultural sites. As noted during the DEIR and RDEIR hearings, the Chumash Coastal band, which would be directly affected by these Projects, was not consulted and information regarding the cultural resources

baseline and impacts from the ongoing SB-18 consultation has not been included in the RDEIR.

## **DISCUSSION OF COMPREHENSIVE PLAN POLICIES AND RECOMMENDATIONS; THE RDEIR FAILS TO CONSIDER SEVERAL APPLICABLE COUNTY POLICIES**

The RDEIR overlooks several additional County policies that apply to the Project. The RDEIR must be revised and re-circulated to address these important policies.

### ***Conservation Element (CE)***

#### *Water Resources*

Diversion of water from Dos Pueblos Creek would reduce downstream groundwater recharge and would therefore conflict with the CE recommendation that streams be regulated to ensure that the recharge capability of the channels is not impaired. (CE, 71.)

The Conservation Element also encourages the County to study land development in areas relying on septic tanks to assess the impact of alternate densities on water quality. (CE, 71.) Given the geo-hydrological constraints to wastewater discharges at Naples, the County should consider a reduced density alternative in order to minimize the water quality impacts of septic systems and STPs.

#### *Ecological Systems*

Development of the Naples area would be inconsistent with the CE's recommendation for 100-foot stream buffer zones. Development of storm drains, creek water diversions, wastewater treatment plants and discharges within 100 feet of streams may also violate this CE recommendation. (CE, 111.)

The CE notes that the south coast intertidal zone between Point Conception and Ellwood is relatively undisturbed and has a diversity of habitats available for study. Development and occupation of the proposed Project at Naples, including the residential and public access facilities, would create more foot traffic on the beach. As a result, beach-goers would likely collect, disturb and kill more organisms in the intertidal zone, which is a problem discussed in the CE and which should be addressed in the RDEIR. (CE, 122.)

Runoff and pollution from bluff top development and increased foot traffic and recreation on the beach could alter the biological makeup of coastal rocky points. The CE recommends that "the biological makeup of all rocky points should be maintained to ensure [their] protection." (CE, 126.)

The development of Naples will convert rocky shores into recreational areas instead of being maintained for scientific use as the CE strongly recommends. Since the CE also recommends that recreational use be limited, development of the area and substantially increased use of the beach would conflict with the CE. (CE, 127.)

The CE notes that the South Coast Intertidal Zone between Point Conception and Ellwood is biologically significant because it is relatively undisturbed, has a diversity of habitats available to study, and is of great interest to biogeographers. The CE recommends designating some areas for scientific investigation only, and allowing only light recreational use in other areas. Development of this area would have a negative effect on the traits that make the zone important and arguably violates the intent and recommendations of the CE. (CE, 127-128.)

The CE recommends that the Naples Reef – “the best reef in the South Coast area” – and the adjacent intertidal area be maintained primarily as a scientific research and educational area because of its unusual biological character. (CE, 123, 130.) It is clear that the proposed development of Naples would not maintain this area primarily for science and education. It is also clear that development would increase recreational use and water pollution, both of which will threaten the Reef. Degradation of the ecological character of the Naples Reef would be counter to the CE’s recommendations. (CE, 129-130.)

According to the CE, Dos Pueblos Creek “is widely regarded as one of the local streams which has suffered the least human impact.” (CE, 151.) Furthermore, it deserves “greater protection than that afforded to those simply classified as delicate habitats.” (CE, 149.) Since Dos Pueblos Creek runs throughout the proposed Project site and is identified as a water source for the Project, the Project potentially conflicts with the CE recommendations for preserving this Creek as a study area and protecting it from human activities and development.

#### *Archaeological Resources*

Since the Project area, especially the DPR, is archaeologically significant, the County must follow the pertinent recommendations of the Comprehensive Plan. For instance, archaeological sites and buffers should be included in the Project’s parks and open spaces to avoid damage. (CE, 254.) If the Project might impact archaeological sites and the applicants fail to implement any of these recommendations, development would conflict with the CE. Alternative 1 increases these impacts and related policy conflicts. Alternative 2 avoids the cultural sites. Through clustering, Alternative 5 may substantially lessen impacts. TDR is another way to avoid sensitive areas and, if feasible, is required pursuant to the LCP and these CE recommendations.

#### *Groundwater Resources*

Policy 2.1 of the Groundwater Resources Section of the CE requires the County to protect groundwater quality where quality is acceptable, and discourages the degradation

of quality below acceptable levels. Development at Naples is expected to increase groundwater pollution by increasing discharges of treated wastewater, septic effluent and urban runoff. (RDEIR, 9.15-18 and 10-56.) Therefore, development of the Naples area would conflict with this provision because it would lead to groundwater degradation. This degradation could be exacerbated by the Creek diversions and depletion of groundwater via well extraction.

RDEIR, 3.3-10 notes that the groundwater tapped by the three project wells south of the UPRR tracks is of moderate to poor quality. Action 2.1.2 requires the County to encourage reduction of salt and other pollutants from all sources, through cooperative voluntary efforts and through direct action where feasible. Development of the Naples area, including the water treatment plant, the wastewater treatment plant discharges and runoff, is expected to increase the salt content and amount of pollutant loading. The County plans to impose standard storm water BMPs to address runoff (i.e., Mitigation WQ-1b). However, this measure does not address pollution from septic systems or STPs.

The proposed reliance on septic systems in a County designated "Special Problems Area" for septic disposal is further grounds for mandating additional measures to protect groundwater. The constraints to septic systems are described on pages 3.3-25 – 3.3-28 and in Table 9.2-1. Furthermore, the RDEIR identifies the Naples Reef as ecologically significant, yet notes the potential for ocean water pollution from septic systems on DPR. (RDEIR, 9.15-18.) Additional conditions should further limit septic systems rather than allow more septic systems as the Alternative 1 Project's Mitigation WQ-2 does. The groundwater quality south of the UPRR tracks is already moderate to poor. Therefore, special conditions beyond the County's inadequate standard BMPs should be required. The California Coastal Commission's Special Conditions on the Bay View project illustrate minimum water quality protections necessary to protect ground and surface waters. (See attached "March 5, 2003 Bay View project California Coastal Commission Staff Report - Special Condition 9.")

These same concerns apply to STP discharges.

Action 3.3.2 requires the County to "conserve waters to the extent feasible through the exercise of the County's discretionary land use planning and permitting decisions." The RDEIR must analyze the Project's consistency with this requirement. The proposed water duty factor of 1.13 AFY/unit is three times higher than the water duty factor for single family homes in Goleta. (January 2, 2008, Planning Commission RDEIR Briefing.)

Policy 3.5 provides that "the County shall not allow, through its land use permitting decisions, any basin to become seriously overdrafted on a prolonged basis." This restriction includes overdraft which causes substantial effects on riparian habitats or other ESHAs. The County must determine whether Santa Barbara Ranch's planned water supplies will cause an overdraft or significant effects on habitats relying on groundwater or surface water before it can approve the project.

Policy 3.6 prohibits the County from approving projects that would lead to substantial over-commitment of a groundwater basin. The RDEIR must analyze consistency with this policy.

Pursuant to Policy 3.7, the County must ensure that all new urban development maximizes the use of effective and appropriate natural and engineered recharge measures within the project design. Such measures must be designed to minimize environmental impacts, including impacts to groundwater quality. Failure to do so would violate this policy. Using treated wastewater for irrigation may help comply if it avoids water quality impacts.

Reducing the development's density by combining lots and deleting development envelopes and the NPD's RSUs would help fulfill these CE policies. Ultimately, an effective TDR program would also achieve consistency with these policies.

### ***Open Space Element (OSE)***

The Comprehensive Plan OSE states that lands with unique natural assets or unique recreational opportunities should remain available for visual or actual public access and enjoyment, instead of private development. (OSE, 19.) Since the coastal bluff and the viewshed of Naples as seen from Highway 101 are located in an area with unique natural assets, they should remain available for visual enjoyment (i.e., as open space). Alternative 2, Alternative 5 and TDR would help comply with this general plan provision; the MOU Project and Alternative 1 do not.

Recreational use in these areas of the South Coast "should be very light, if it is to be permitted at all." (OSE, 53 – 54.) The planned recreational facilities would increase the intensity of use of this area contrary to the intent of this provision.

The OSE supports the preservation of as much open space as possible along the South Coast shoreline, and cites many reasons to do so, including geological instability and presence of archaeological resources. (OSE, 54.) TDR, reduced densities, Alternative 5 and/or Alternative 2 would help fulfill this goal.

The OSE also addresses protecting open space around the Dos Pueblos Reservoir. "Development in the foothills would also have to contend with the potentially active San Jose Fault and the need to protect the Dos Pueblos Creek reservoir watershed." (OSE, 57.) Alternative 1 and the MOU Project both include extensive foothill development on both sides of the Dos Pueblos Reservoir and are inconsistent with the intent and language of the OSE.

View impacts are reasons to preserve open space in the southern portions of DPR and SBR. (OSE, 15.) Alternatives that transfer or shift development from the constrained viewshed north and south of Highway 101 to urban areas and / or to more inland areas where visual, archaeological, biological and hydro-geological constraints are lesser would help achieve consistency with the OSE.

Therefore, according to the general plan, the Naples area and especially the coastal terrace would be more suitable for open space than urban development. Reduced density alternatives, TDR and alternatives that cluster development and move development into less constrained areas of SBR and DPR would provide consistency with the OSE.

### *Amended Housing Element (HE)*

As stated above, the RDEIR fails to fully analyze consistency with the Housing Element, as amended. The RDEIR only considers Housing Element Policy 1.2. Many other Housing Element policies and goals were not considered or analyzed.

#### *Goal 1*

Goal 1 requires the County to “[p]romote the development of new housing with a diversity of types, sizes, tenures, densities, and locations in the necessary quantities to meet the needs of all economic segments of the community.”

Other than one employee duplex and one guest house or RSU per lot owner allowed in the NPD, the Projects do not provide any types of housing other than multi-million dollar estates, though some in-lieu fees would be required. The size range is limited to large homes. No rentals are proposed. Therefore, the proposed Projects would not provide a variety of housing types that address the full range of housing needs.

Transferring development to the urban area would help comply with these Goals because receiver sites are likely to be built with an affordable housing component as recognized in the TDR Feasibility Study. (Solimar 2007.) TDR would also likely result in more on-the-ground affordable housing being built or more in-lieu fees based on a greater number of market rate homes resulting from a TDR transfer ratio of > 1:1.

#### *Policy 1-9*

Policy 1-9 requires the County to “promote moderate to higher density residential or mixed use development on infill sites within the urban boundaries of the county to encourage efficient use of land and existing infrastructure.”

The Project conflicts with this goal because it does not promote in-fill development. The Project exemplifies urban sprawl, which this goal was adopted to prevent. Development outside of urban boundaries is an inefficient use of land and existing infrastructure. Therefore the Projects are inconsistent with this Housing Element Goal. TDR – initially determined by the County to be economically feasible (to an extent) – would help achieve compliance with this policy.

Action 1 under Policy 1-9 requires the County, when updating the Land Use Element, the Coastal Land Use Plan or community plans, to “promote residential in-fill

within the urban boundaries of the county prior to expanding residential development into rural areas.”

The County is amending the Coastal Land Use Plan for the MOU Project and Alternative 1. The County is also re-designating land use designations of the Land Use Element for the Projects. Therefore, the County is bound by Action 1 to implement TDR to the maximum extent feasible and not merely make TDR optional for the landowner. This action requires the County to ensure establishment of a TDR bank and adoption of a TDR ordinance.

#### *Goal 5*

Goal 5 requires that the County “[p]romote efficient use of land and well-designed, energy efficient housing units in keeping with the character of surrounding neighborhoods.” Policy 5-1 requires the County to encourage new development that is compatible “*with surrounding structures and their setting* in an effort to maintain or enhance harmony and balance in the community.” (*Emphasis added.*) However, as discussed further in Sections 9.6 and 10.0 above, the project is not consistent or compatible with the character of existing surrounding neighborhoods, structures or their currently rural setting. Furthermore, the home sizes are so large they undermine energy efficiency. Location of the development in the rural area miles from services requires extensive commuting (i.e., for work, shopping, social activities and buying gas), counter to Goal 5’s requirement for energy efficiency. The Project is inconsistent with Policy 5-1 and Goal 5. Again, TDR achieves consistency with this Goal while the Project does not.

#### *Policy 5-5*

Policy 5-5 requires the County to encourage development within existing urban boundaries and to preserve and/or protect rural land uses outside the urban boundary. While reduced density and clustering alternatives move towards compliance, only TDR achieves consistency with this policy’s intent and requirements.

#### *Goal 7*

Goal 7 requires the County to form strong collaborative relationships with the public and all providers of housing and assist these collaborators in all feasible ways with the process of accessing and/or developing affordable housing. The County has initiated TDR Working Group meetings with the applicant, community groups and the City of Santa Barbara, Goleta and Carpinteria. Goleta City, Santa Barbara City and the County are all considering TDR policies and implementation mechanisms. Continuing this process and establishing an effective inter-jurisdictional TDR Program will comply with this policy because TDR to the urban area results in construction of more affordable housing than either the MOU Project or Alternative 1. Given the >1:1 TDR Transfer Ratio, TDR will result in greater in-lieu fees and or on-the-ground affordable housing units than the Projects will.

### *Policy 9.1*

Policy 9.1 requires the County to actively pursue funds to assist the development of affordable homes. TDR will result in a greater number of market rate homes (due to the Transfer Ratio > 1:1) and as a result will also result in greater number of affordable units (and /or in-lieu fees) than the Project. County pursuit of funding for a TDR bank will achieve compliance with this policy because it will enable TDR to occur, resulting in greater affordable housing resources being created. To comply, the County should try to tap into state and federal dollars to facilitate a TDR Program that would provide more housing (due to the high transfer ratio), and thus provide more affordable housing (and/or in-lieu fees) and a greater variety of housing types in the urban area. Moreover, the County can use its own powers to facilitate TDR, which in turn may facilitate provision of more affordable housing (and/or in-lieu fees) than the MOU Project or Alternative 1.

### *Policy 9.4*

Policy 9.4 requires that “[t]he County shall make the provision of affordable and/or special needs housing a priority when considering the future use or sale of County lands.” The TDR Study identified one County-owned site as a potential receiver site, where it would be built with market rate and affordable houses. The County is planning for the future use of this site (including 4400 Cathedral Oaks Road and the “County Campus” to the south). Utilizing the site as a TDR receiver site would facilitate the provision of affordable homes, and comply with Policy 9.4.

## ***Energy Element***

### *Goal 3 and Related Policies*

Goal 3, Policy 3-1 and Policy 3-9 require the County to provide land use and transportation programs that reduce dependency on automobiles, enhance opportunities for alternative transportation, and coordinate high density residential developments with mass transit service and existing or proposed bikeways. Locating development outside of the urban area will increase dependency on automobiles and will not provide opportunities for alternative transportation. TDR would facilitate use of alternative transportation and mass transit and provide opportunities to reduce dependency on automobiles by locating development within urban areas with greater access to such features.

### *Goal 4*

Goal 4 requires the County to increase the efficiency of water and resource use. Development of the Naples area would conflict with this Goal because bluff lots must pump wastewater uphill to the treatment plant, decreasing the efficiency of water use, distribution, and treatment. Reducing the number of units, eliminating the allowance for RSUs and/or locating all lots uphill from the proposed package treatment plants (e.g., Alternative 2) would minimize energy use and/or increase efficiency in compliance with

this Goal. Locating all or some lots in the urban area through TDR would achieve further compliance with this general plan goal.

### ***Circulation Element***

The section of Highway 101 through and adjacent to the project appears to meet the definition of rural expressway in the Circulation Element. A rural expressway is defined in the Circulation Element as a four lane arterial highway with at least partial control of access which may or may not be divided or have grade separations at intersections. Highway 101 in the rural project area has at-grade on-ramps, off-ramps and intersections (i.e. .25 mile east of SBR and DP Canyon Road / Langtry Road southbound on and off ramps). It is a four lane arterial highway. It has at least partial control of access and it is divided. Therefore, operation of this section of Highway 101 should comply with policies that apply to rural expressways. The policy maximum for a rural expressway is 33,000 trips per day. Highway 101 is already operating at a level of 38,000 trips per day at the Project site; therefore, the addition of traffic generated by the Projects should be considered inconsistent with the Circulation Element. See Section 9.12.

### ***Scenic Highways Element (SHE)***

According to the SHE, State Highway 101 is eligible as a "County Scenic Highway" throughout its entire length in Santa Barbara. This is important to the proposed Projects because Highway 101 runs through the SBR and DPR sites. According to the SHE, the County should "enhance and preserve the valuable scenic resources" located along Highway 101, and ensure appropriate zoning so that development along the highway corridor does not conflict with the scenic objectives of the SHE, especially along rural portions of scenic corridors.

For private development projects, the County is directed to "require conditions suitable for maintenance or enhancement of the scenic qualities of the corridor." The County is encouraged to purchase development rights along scenic corridors, implement Williamson Act "Open Space Preserves" for areas along scenic routes, and prohibit development in scenic corridors. The Projects violate the SHE, but TDR and siting development outside the view corridors from Highway 101 would achieve consistency with the SHE.



## LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

October 10, 2008

Chairman Salud Carbajal  
Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, CA 93101

**Re: Santa Barbara Ranch Project & Project Alternatives**

Dear Chairman Carbajal & Honorable Supervisors,

This letter is submitted by the Environmental Defense Center on behalf of the Santa Barbara Chapter of the Surfrider Foundation and by the Law Office of Marc Chytilo on behalf of the Naples Coalition.

The County Planning Commission has recommended that your Board certify the Santa Barbara Ranch Project (Project) Environmental Impact Report (EIR). We object to that recommendation for a number of reasons, and we believe that the EIR should be revised and recirculated according to the California Environmental Quality Act (CEQA).<sup>1</sup> This letter will address issues related to the EIR Alternatives analysis and why that analysis is deficient under the law.<sup>2</sup>

### **Reasonable Range of Alternatives**

CEQA Guidelines section 15126.6 states that an EIR must describe a reasonable range of alternatives to a proposed project. Alternatives must feasibly attain most (but not all) project objectives and must avoid or substantially lessen any significant effects of the proposed project.

The Santa Barbara Ranch proposed Final EIR unreasonably restricts the range of alternatives considered, because the Project Objectives have been applied too narrowly. For example, the Final EIR continues to place inappropriate emphasis on resolving litigation between the County<sup>3</sup> and the Project applicant, and on what Project

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<sup>1</sup> CEQA Statutes § 21092.1; CEQA Guidelines § 15088.5(a)(3).

<sup>2</sup> Other bases for recirculation and additional CEQA inadequacies are discussed in a separate letter.

<sup>3</sup> The litigation threat is consistently exaggerated by the Applicant. There is only one pending case between the Applicant and the County and it involves permitting for septic systems, an issue no longer under dispute. See Exhibit 1.

configurations might be acceptable to the applicant. Policies designed to protect public resources are given brief consideration and then discarded. Alternatives that are more protective of public resources are considered infeasible and/or arbitrarily rejected as unable to fulfill the applicant's economic objectives and thus resolve the applicant's threatened litigation. Resolving the applicant's threatened litigation is not an overarching public benefit justifying the narrow, nearly exclusive focus on that objective.

### **Feasibility of Project Alternatives**

A project cannot be approved where feasible alternatives exist that would substantially reduce the environmental impacts of the Project.<sup>4</sup>

Specifically, CEQA requires some consideration of economic feasibility of alternatives that are otherwise feasible and reduce or avoid the proposed project's significant impacts – selection or rejection of alternatives must be based on substantial evidence in the record.<sup>5</sup> There is no substantial evidence in this proposed Final EIR or the record to indicate that Alternatives 2, 4 or 5, or some combination of the above, are infeasible, on economic or other grounds. Rather, the EIR relies on general statements about the applicant's wishes and desired economic return. Evidence attached to this letter indicates that a smaller alternative – including an alternative that avoids the significant cumulative (and direct project<sup>6</sup>) impacts of development on the coastal bluff – is feasible and would provide the applicant with a reasonable return on his investment.<sup>7</sup> The EIR is inadequate due to its failure to include sufficient detail concerning the feasibility of alternatives.

Additionally, Santa Barbara Ranch recently acquired an option to buy the Dos Pueblos Ranch (DPR) lands where most of the Project's inland development would occur. This makes alternatives that do not include DPR feasible, and would avoid significant impacts such as those to cultural resources on DPR south of Highway 101. Under CEQA, this constitutes significant new information disclosing a feasible project alternative that clearly would lessen the environmental impacts of the project, for which recirculation of the EIR is required.<sup>8</sup>

A fifty acre coastal parcel in the midst of Dos Pueblos Ranch has recently been put on the market for sale.<sup>9</sup> This also offers an alternative site for development that could avoid significant impacts, as the lands are not used for agricultural production and do not appear to provide native grassland habitat.

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<sup>4</sup> Public Resources Code § 21002.

<sup>5</sup> *Citizens for Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167 [243 Cal.Rptr. 39].

<sup>6</sup> While the EIR acknowledges a cumulative impact from development on the highly sensitive coastal marine terrace lands, we believe it mischaracterized the Project's direct impacts to this resource as well.

<sup>7</sup> John Ellis, "SBR Feasibility Report" (2008) [attached hereto as Exhibit 2].

<sup>8</sup> CEQA Guidelines § 15088.5(a)(3); *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4<sup>th</sup> 1112, 1129-1130.

<sup>9</sup> Kerry Mormann & Assoc.; The Dos Pueblos Orchid Ranch (Oct. 5, 2008).

## **Comparison of Alternatives & the Environmentally Superior Alternative**

The Final EIR fails to include an adequate comparison of impacts amongst the various alternatives. Alternative 1 is consistently described as superior, based on purported benefits and inappropriate project objectives. However, the Final EIR glosses over the fact that Alternative 1 will result in more impacts to sensitive and protected resources than the MOU or other Alternatives. For example, compared to Alternative 1, alternatives that are limited to Santa Barbara Ranch, including Alternative 4, would:

- a) avoid archaeological impacts on DPR south lots;
- b) reduce the conversion of prime soils from 56.2 acres to less than 1 acre;
- c) minimize the size of the proposed Naples Townsite (NTS) district and related growth inducing effects;
- d) avoid the rezone of agricultural land outside the Official Map area;
- e) lessen the loss of sensitive grassland habitat; and
- g) reduce anticipated water consumption, wastewater generation, energy demand, demand for public services, trash generation, air pollution, runoff, grading and habitat fragmentation.

Alternative 1 is clearly not the environmentally superior Project configuration.

In addition, Alternative 1 causes a number of inconsistencies with applicable policies in the Local Coastal Plan and General Plan, including those concerning agriculture, visual resources, cultural resources, recreational resources and land use. These constitute significant impacts. The Coastal Commission has urged consideration of alternatives as a means to avoid policy conflicts, including clustering of homes. Clustering is identified as an alternative, and may well be the environmentally superior alternative, but was summarily rejected and thus the EIR improperly rejected its consideration as a feasible alternative.

The Final EIR also improperly restricts the use of DPR in the description of Alternative 1. The attached DPR participation letter<sup>10</sup> sets forth conditions that restrict the County from mitigating environmental impacts and from complying with policies. DPR is a co-applicant for the Alternative 1 Project, and an applicant may not tie the County's hands with regards to its duty to avoid and mitigate impacts under CEQA.

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<sup>10</sup> DPR Participation Letter (June 16, 2008) [attached hereto as Exhibit 3].

Click on "Bookmarks" for a Table of Contents of all Documents included.

October 10, 2008

Chairman Salud Carbajal, Santa Barbara County Board of Supervisors re: Alternatives

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## Conclusion

The County has impermissibly<sup>11</sup> allowed the project applicant (including DPR) to dictate the range of feasible alternatives. There is evidence that a smaller Project alternative with substantially lessened environmental impacts is feasible. A finding that Alternative 1 (or some configuration of Alternative 1) is environmentally superior cannot be supported by evidence in the record. The EIR is defective and should be revised and recirculated.

Thank you for your time and attention. Please contact us with any questions.

Sincerely,

Nathan G. Alley  
Staff Attorney  
Environmental Defense Center

Marc Chytilo  
Law Office of Marc Chytilo

cc: California Coastal Commission  
Naples Coalition  
Surfrider Foundation

Exhibit 1: Complaint, Naples Property Owners v. County of Santa Barbara

Exhibit 2: Ellis Letter (October 8, 2008)

Exhibit 3: DPR Participation Letter (June 16, 2008)

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<sup>11</sup> *Preservation Action Council v. City of San Jose* (2006) 141 Cal. App. 4th 1336, 1355; *Uphold our Heritage v. Town of Woodside* (2007) 147 Cal. App. 4th 587, 602.



## LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

October 10, 2008

Chairman Salud Carbajal  
Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, CA 93101

**Re: Santa Barbara Ranch Project Public Access Policy Issues**

Dear Chairman Carbajal & Honorable Supervisors,

This letter is submitted by the Environmental Defense Center on behalf of the Santa Barbara Chapter of the Surfrider Foundation and by the Law Office of Marc Chytilo on behalf of the Naples Coalition.

The Santa Barbara Project fails to provide access consistent with the LCP and Coastal Act and cannot be approved as currently planned. Inclusion of a pedestrian Coastal Trail segment along the bluff to complement the multi-use trail along Highway 101, and appropriate vertical access consistent with the site's constraints will resolve policy conflicts related to public access.

The County must take all necessary steps to defend the public's right of access to and along the shoreline through such means as legal action to acquire easements to beaches and access corridors for which prescriptive rights exist and accepting offers of dedication.<sup>1</sup>

### **Coastal Trail – Pedestrian Bluff-top Trail**

Coastal access and connection to the California Coastal Trail is normally required for any major coastal project and must be required for the Santa Barbara Ranch Project. The Coastal Act and LCP access provisions require the Project to provide suitable vertical access and horizontal access along the shoreline.

The Coastal Trail location is guided by criteria for siting.<sup>2</sup> One criterion is that "the Coastal Trail should be within sight, sound, or at least the scent of the sea." Another is that "the trail must be located and designed with a healthy regard for the protection of natural habitats, cultural and archaeological features, private property rights, neighborhoods, and agricultural operations along the way."

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<sup>1</sup> LCP Policy 7-1

<sup>2</sup> The Coastal Trail background is at <http://www.californiacoastaltrail.info/cms/pages/main/index.html> and is attached to this letter.

The County is required to ensure the applicants grant a lateral easement “along the shoreline” which is “adequate to allow for lateral access during periods of high tide.”<sup>3</sup> At Naples, a lateral easement which allows access along the shoreline at high-tide can only be located on the bluff-top. The area below the bluff is unsafe and impassable during high-tides, and along Highway 101 is not “along the shoreline.”

State coastal policy is to locate the Coastal Trail as close to the ocean and coastal bluff as possible while avoiding sensitive habitats. The County Parks, Recreation and Trails Map depicts the Coastal Trail as close to the bluff as possible.<sup>4</sup>

In contradiction with these policies, the applicant has refused to offer horizontal trail access along the coastal bluff, instead offering trails along Highway 101.

Santa Barbara Ranch (SBR) claims Dos Pueblos Ranch’s (DPR) unwillingness to allow the western end of the Coastal Trail on DPR property to cross DP-19, and cultural resources on Lot 12, prevent the Coastal Trail from going across the bluff-top. SBR claims hikers would try to use the railroad trestle. EDC, Surfrider and the Naples Coalition proposed a safe bluff-top trail that avoids sensitive resources.<sup>5</sup>

The pedestrian branch of the Coastal Trail should run the entire length of the bluff-top with the potential to connect to DPR and then Las Varas on the west and Makar on the east. The LCP locates a vertical access (see below) in Dos Pueblos Canyon, and if acquired, the bluff-top Coastal Trail could connect to Dos Pueblos Canyon as part of the network.

The developer’s “Freeway trail” should be retained as a surfaced multi-purpose trail (for bikes, strollers, horses, etc), but is patently not “along the shoreline,” is inappropriate as a Coastal Trail and is not “within sight, sound, or at least the scent of the sea.” A parallel pedestrian trail along the SBR bluff from Makar to DP Canyon would comply with trail siting policies, would provide an enhanced recreational experience, and would be sensitive of cultural and biological resources and homes<sup>6</sup>.

### **Vertical Access to the Beach should be provided in Dos Pueblos Canyon**

The proposed beach access plan does not identify a specific beach access point. Access should be provided at Dos Pueblos Canyon, or if DPR drops out of the Project, at a suitable proximate offsite location(s) (e.g. Makar, Las Varas) before findings of consistency with the LCP can be made.

For all development between the mean high-tide and the first public road, granting of an easement to allow access to the mean high-tide line is mandatory unless:

- (a) another more suitable proximate location exists and is proposed by the land use plan;
- (b) access would result in unmitigable impacts to habitat areas designated on the land use plan;
- (c) access is inconsistent with military security, public safety or would harm

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<sup>3</sup> LCP Policy 7-3.

<sup>4</sup> FEIR Figure 3.10-1.

<sup>5</sup> See attached Alternative Trail Plans.

<sup>6</sup> Homes should be shifted north to accommodate the Bluff-top Pedestrian Trail.

agriculture; or (d) the parcel is too narrow to allow vertical access without affecting the owner's privacy.<sup>7</sup> The Coastal Act contains similar requirements.<sup>8</sup>

SBR offered a blocky staircase that was ill-suited for the site and was unanimously rejected by your Planning Commission. The location was near the seal haul-out area and subject to proposed spring and summer closures, was visually intrusive and grossly incompatible with the area. Access to Naples Reef is discouraged except by way of boat,<sup>9</sup> so the staircase would have compromised County policy. In its decision, the Planning Commission noted that other proposed nearby residential development on either side (Makar and Las Varas) include vertical access, and so required Osgood to set aside in lieu funds to be held until those other projects are processed. Just days before the hearing, this requirement of in-lieu funding was removed from the MMRP (see Attachment F-6 to the supplemental staff report, p. 3).

The absence of coastal access is a red flag for the Coastal Commission. Community groups do not support the staircase structure, but there should be vertical access provided in Dos Pueblos Canyon where there is existing infrastructure and room for a new vertical access trail with east and west extensions along the bluff. Dos Pueblos Canyon is identified in the LCP as a location to be acquired for public access to the beach.<sup>10</sup> Dos Pueblos Canyon has paved access, parking, water and considerable space for recreational uses. The Beach at DP Canyon is the only wide, non bluff-backed sandy beach along DPR and SBR. Due to its location, DP Canyon access does not require a staircase and is safer than SBR Beach access.

The DEIR notes that DP Canyon "has many of the attributes of a preferred public access site, partly due to greater distance from the critical area of Naples Reef, as compared to the proposed access point."<sup>11</sup> DP Canyon access lessens impacts to the marine mammal haul-out, Naples Reef, coastal bluff scrub ESHA, coastal views and bluff stability. Access at DP Canyon better fulfills local<sup>12</sup> and state coastal policies.<sup>13</sup>

DPR has stated that public access at DP Canyon a deal-breaker. DPR withdrew the beachfront lot – DP-19 – from the project in an unabashed effort of thwarting the LCP's public access policy. The County should condition DPR's benefits on providing this singly important public benefit.

Removal of the obtrusive beach access structure from the Alt. 1B Project protects sensitive coastal resources including the seal haul out, beach and reef, but creates

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<sup>7</sup> LCP Policy 7-2.

<sup>8</sup> Coastal Act § 30212: "(a) Public access from the nearest public roadway to the shoreline land along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection [of] fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected..."

<sup>9</sup> LCP Policy 7-19.

<sup>10</sup> LCP Policy 7-18, Implementing Action (a)(2).

<sup>11</sup> DEIR at 6-58.

<sup>12</sup> LCP Policies 9-25, 9-33 and CLUP Text at 212 – 213 requiring protection for marine mammal rookeries.

<sup>13</sup> Coastal Act Sections 30210 and 30212 (protect natural resource areas from recreational overuse), 30214 (regulate time and manner of use due to site-specific constraints), 30253 (geological hazards).

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conflicts with applicable public access policies including Coastal Act § 30212 and LCP Policy 7-2.

In order to avoid this pitfall, the Board should follow the directive in LCP Policy 7-18 (a) and (b), and acquire an easement for public access and day use facilities at Dos Pueblos Canyon. Relying on unsecured access at Makar or Las Varas is inappropriate and may be growth inducing, as discussed in our letter on CEQA (10/10/08).

Otherwise, due to the policy conflicts, the Board cannot make the required finding under LCP Policy 1-4, that the Project is consistent with all applicable policies.

Further, these conflicts – created by the PC's new action to delete the public access trail – constitute significant new impacts<sup>14</sup> that require recirculation of the EIR pursuant to CEQA Guidelines § 15088.5 (a) (1).

## Conclusion

The Santa Barbara Ranch Project public access plan fails to follow the shoreline, lacks identified vertical access, violates various policies and causes. Alternative access plans which involve intelligently sited vertical beach access and a bluff-top pedestrian trail parallel to the planned multi-use trail along Highway 101 will balance human use and resource protection and comply with public access policies.

Thank you for your time and consideration. Please contact us with any questions.

Sincerely,

Brian Trautwein  
Environmental Analyst  
Environmental Defense Center

Marc Chytilo  
Law Office of Marc Chytilo

Cc: California Coastal Commission  
Naples Coalition  
Surfrider Foundation

Attachments: Map

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<sup>14</sup> CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936

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**Elihu Gevirtz, AICP**  
236 Salida del Sol, Santa Barbara, CA 93109  
805-965-2861 [elihuz@cox.net](mailto:elihuz@cox.net)

### **Career Summary**

Elihu Gevirtz has worked as a professional biologist and land use planner in southern and central California since 1989. His experience in the public and private sectors over these past 19 years includes development of public policy regarding land preservation, land development, and transportation. His work has focused on the study and evaluation of biological resources, and has also included other environmental resources such as cultural and groundwater resources. Mr. Gevirtz has designed neighborhoods and has spearheaded the permitting and entitlement process to get them approved. Mr. Gevirtz has conducted biological surveys for plants and wildlife, prepared habitat restoration plans, and monitored construction to protect endangered species. He has written numerous CEQA documents and reports of various kinds, reviewed and evaluated potential environmental impacts and policy consistency of numerous public and private projects. Mr. Gevirtz has published biological studies, land management plans, and habitat restoration plans. He has also made numerous presentations to boards and committees, and has participated in and directed public workshops.

### **Education**

Bachelor of Arts in Environmental Studies, Minor in Botany  
University of California Santa Barbara, California. 1988.

### **Certifications**

American Institute of Certified Planners, #020037. Since 2005.

- 2008 –**            **The Office of Elihu Gevirtz, AICP**  
*Principal, Biologist, Land Use Planner*
  
- 2000 – 2007**    **Condor Environmental Planning Services, Inc.**  
*President, Biologist, Land Use Planner*
  
- 1990 – 2000**    **Santa Barbara County Planning and Development Department**  
*Land Use Planner and Biologist*
  
- 1989 – 1990**    **ERCE**  
*Environmental Impact Analyst*
  
- 1988 – 1989**    **UCSB Department of Biological Sciences**  
*Herbarium Associate*
  
- 1981 – 1988**    *Farmer, small business owner, student*

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October 8, 2008

Marc Chytilo  
LAW OFFICE OF MARC CHYTILO  
P.O. Box 92233  
Santa Barbara, CA 93190

**RE: Santa Barbara Ranch**

Dear Marc,

Pursuant to your request, I have reviewed a number of the documents associated with the Santa Barbara Ranch (SBR) Project, including the Project Description, Conditions of Approval, and Mitigation and Reporting Plan (MMRP), the Board of Supervisors Agenda Letter for the September 23, 2008 hearing, Attachment F-6 (Revisions to Attachments A through C, published on October 7, 2008), the Development Agreements, and others. The following comments focus on the adequacy of the conditions of approval and mitigation measures to protect environmental resources.

To begin, I have been a professional land use planner working in Santa Barbara County for nearly twenty years, and have developed some understanding of the applicable policies and past practices of the County in its review of development applications and General Plan updates. My CV is attached. I believe that this is one of the most complicated land use permitting processes ever undertaken by the County. The sheer number of entitlements involved, the integration of General Plan and Local Coastal Plan amendments, zoning ordinance amendments, various actions subject to the Map Act, including a subdivision, various mergers and lot line adjustments, and the highly unusual action of processing Coastal Development Permits (CDPs) and Land Use Permits (LUPs) at the same time as processing General Plan and Zoning Ordinance Amendments make this project highly complex and deserving of careful review and analysis. Furthermore, the CEQA-required mitigation measures and the permits for infrastructure and housing must all be integrated.

I also understand that the original Project Description for Alternative 1 was substantially modified in late May with the introduction of Alt. 1B, but the

environmental review process was not amended to consider how those changes affected the feasibility of both alternatives and mitigation measures, policy consistency, and what would be the best project configuration for this site.

I understand further that the proposed Project Description and approval documents before the Board of Supervisors were revised just yesterday. Further, the proposed amendment of the MOU allowing separation of the inland and coastal portions of the Project substantially complicates the adequacy of the conditioning and mitigation process due to the interrelated nature of several inland and coastal components of the project. Other elements of the Project Description, conditioning and mitigation have also changed recently.

In my opinion, these changes are significant, and warrant additional review and consideration of their implications. The absence of adequate review of these recent changes, combined with the CDPs and LUPs processed at the same time as the General Plan and Zoning Amendments could create problems for the County that would be revealed in the future, as future entitlements conflict with land use policies and infrastructure development.

The following issues are organized by resource or topic.

### **Aesthetics**

- I. **Mitigation Measure SBR-59** that requires design review and approval should be modified so that it also applies to retaining walls six feet or taller above proposed final grade. This is necessary to protect public views.

### **Agriculture**

- I. **Land Use Condition 2c on page 16 of Attachment F-6** should be revised so that the condition can truly be enforced. It should be revised as follows beginning roughly in the middle of the paragraph: "In addition, the CC&Rs shall expressly provide financing to underwrite the cost of maintaining common infrastructure and managing farm/grazing operations to sustain the Property's agricultural viability. ~~Alternatively,~~ Operations and enforcement of the PACE ~~may~~ shall be accomplished through creation of a Community Facilities District (or equivalent) as provided in Condition..."

Note that this will require an amendment to the Development Agreements which, if I understand them correctly, presently prohibit the formation of such districts.

## Biological Resources

1. **Mitigation Measure SBR-5** should be revised as follows:

Graded surfaces shall be reseeded with non-invasive species within four weeks....

2. **Mitigation Measure SBR-35** should be modified to include requiring temporary orange construction fencing of seasonal wetlands as well as placement of sandbags to prevent sediment from entering the wetlands during construction.
3. **Mitigation Measure SBR-43** should have the following text added, or a new mitigation measure with the following text should be added and required as a condition of approval:

**The OSHMP** should include a component that addresses and plans for maintaining habitat continuity from the mountains to the coast so that wildlife are able to move freely from north to south. Such a wildlife movement corridor should certainly utilize and incorporate Dos Pueblos Creek, and should also incorporate a variety of upland habitats including woodland, grassland and scrub vegetation. Agricultural land used for livestock grazing could serve this purpose. A similar corridor should be established that preserves the ability of wildlife to move from east to west across at least one section of the property such as the coastal terrace that connects to adjoining open lands.

4. **The OSHMP** should incorporate a Naples Reef Docent Program in order to protect the harbor seal population and the haul-out, and other sensitive resources at Naples Reef. The Program should be created by the applicant and implemented by the Home Owner's Association.

The program should provide a physical presence of at least one person at or observing the beach and/or its access points on days from one hour before sunrise to one hour after sunset. One or more docents should provide friendly and educational information about the seals and the importance of keeping people and pets away from the seals, particularly during the pupping period of each year. Such a program could be

modeled after similar programs at the Carpinteria Bluffs and Coal Oil Point.

5. **The OSHMP** should include provisions for long-term monitoring of Dos Pueblos Creek for water quantity, water quality, and non-native species, and methods for responding to significant adverse changes to baseline conditions with corrective actions.
6. **The OSHMP** should be subject to public review and comment, and all reasonable comments received should be considered and, if appropriate, incorporated into the final OSHMP approved by the Department.

### Cultural Resources

1. **Mitigation Measures SBR-62 and -63** appear to be comprehensive and detailed, but the potential for significant impacts remains. The historic village site of Mikiw is so significant in the Chumash history at the time of European contact that it should be avoided entirely.

### Fire Protection

1. The EIR incorrectly concludes that the developer's contribution toward construction of a fire station in western Goleta that is in the planning stages but not fully funded, adequately mitigates the impact to public infrastructure. The project would generate an increase in demand for fire protection services by 160 to 250 people. This increased demand would be put upon a station that is already serving 8,000 more people than the standard suggests is safe. Furthermore, the current response time from the nearest closest fire station to the project site is more than ten minutes, when the standard acceptable response time is four minutes.

This constitutes a significant impact that is not mitigated to the fullest extent feasible. If the project were to be approved as currently worded, the project would be inconsistent with LCP Policy 2-6 which requires adequate public services. This policy states that lack of available public or private services or resources constitutes grounds for denial of the project. In order to achieve consistency, it would be necessary for the

station to be constructed and fully operational prior to occupancy of the first residence of the project.

## Hazards and Hazardous Materials

- I. **Mitigation Measures SBR -45 through -48** should be amended to include a biologist to monitor well abandonment any time there is a reasonable potential for a spill of oil or other contaminant during the abandonment process. The biologist should be able to identify and handle sensitive species known to occur in the area and (ideally) be experienced with responding to oil spills.

## Landslides

- I. **Mitigation Measure SBR-7** states that there will be a forthcoming geologic study pertaining to landslides and soil conditions, and that the study will provide mitigations for proper grading, foundations, structure sites, and access roads. It also states that it will determine the extent of any landslide deposits or unstable soils on each lot to be developed. This appears to constitute a delay of analysis that needs to occur prior to approval if it would substantially affect the development potential and Tract Map design.

In *Sundstrom v. County of Mendocino* (1988) the court concluded that the deferral of analysis to a future study that would determine if there are potentially significant effects is an inappropriate delegation of an agency's CEQA duties. If there is a possibility that entire lots are not buildable, then the study should be conducted prior to certification of the EIR and project approval.

## Recreation

- I. **Condition D.6.b.** The easement for the Coastal Trail should not only be offered to the County. The project should be conditioned so that it is required to be constructed as part of the project. It is commonly accepted that the coastal trail will be completed in segments, and in fact people currently use and enjoy segments such as the segment between El Capitan and Refugio State Parks. Therefore, it would be unfortunate

to delay construction of this segment for an indeterminate amount of time, particularly as construction costs increase.

The last sentence of **Condition of Approval 6b** should be amended as follows:

The coastal access and public recreation improvements shown in Exhibit 15 shall be designed and constructed by the applicant. Construction shall include permanent signage along the trail(s) indicating that they are open to the public in perpetuity. Said improvements shall be completed prior to Final Building Inspection of the first residence to be constructed in the Coastal Zone.

2. **Condition E.5.c.** should be amended as follows:

...and (ii) construct those portions of coastal access improvements (e.g. trail, public parking, restrooms and wildlife pavilion) that comprise ~~useable~~ sections of the Coastal/De Anza Trail ~~(or payment of in-lieu fees as provided in Condition No. D.6.a), as determined by PD with the concurrence of the Board.~~

3. **Mitigation Measure SBR-59 (Vertical Beach Access)**

presently proposes to construct vertical beach access on the adjacent property (Las Varas Ranch). Dedication of the easement on Las Varas Ranch and construction of the vertical beach access trail should be recorded as soon as possible so that the public is ensured of public access to the beach in perpetuity. That beach access must be open to the public on a 24/7 basis to meet Coastal Act goals of maximum public access. Therefore, this mitigation measure and condition of approval should be modified as follows:

~~To facilitate vertical access at Las Varas, and in exchange for providing a coastal trail segment on Dos Pueblos Ranch, along the south side of Hwy 101, the applicant has been offered a Development Agreement to vest its project.~~

An easement over the vertical access trail on Las Varas Ranch in a location approved by the County Parks Department, required as a Condition of Approval of the Santa Barbara Ranch Tract Map and associated cases, shall be granted to Santa Barbara County for general

public access to the beach in perpetuity on a 24/7 basis prior to or concomitant with recordation of the Tract Map of the Coastal Zone portion of the SBR project. Further, the trail shall be constructed and signed to identify it as a public trail prior to the final building inspection of the first house constructed in the Coastal Zone.

4. **CLUP Policy 7-2 Consistency** can only be found if the above wording is added as Conditions of Approval. Without adoption of this language, the project would be inconsistent with CLUP Policy 7-2.
5. **CLUP Policy 7-4 Consistency.** The Preliminary Consistency Determination states that this policy is not applicable, on the basis that it is a “general policy, not specific to the Gaviota coast or the Project site.” This conclusion is entirely incorrect. This policy, like most of the policies in the CLUP, applies to all projects in the County’s jurisdiction. Contrary to the argument presented in Attachment F-6, CLUP policies are not required to be specific to the Gaviota coast or to the project site to be applicable.

The significance of Naples Reef is noted as an important Habitat Area in the LCP and in the SBR project documentation. Given the existing numbers of surfers and other recreational visitors at this site and the anticipated increase in numbers of visitors to the beach and to the reef itself, an environmental carrying capacity study is required by this policy.

6. **Coastal Act Section 30214: (a).** The public should be given an opportunity to review and comment on the OSHMP, and reasonable comments and suggestions should be incorporated into the OSHMP prior to its approval by the Department.

## Development Agreements

- I. **Ordinance Section 5.** should be amended as follows:  
The owners of Dos Pueblos Ranch shall be entitled to apply for a Development Agreement... subject to, and contingent upon, the following: (i) the County receiving ~~written consent~~ a recorded easement from the owners of Dos Pueblos Ranch with respect to the creek restoration activities that occur on Dos Pueblos Ranch...

## Bifurcation of Coastal and Inland Permit Applications

- I. **Project Description Item A.3.b(ix)** (pp 11 and 12 of Attachment F-6) includes a statement at the top of page 12 saying that "Case No. 08CDP-00000-00080 encompasses all utilities, road and service connections within the Coastal Zone that serve inland portions of the Project." Because the inland and coastal projects are tied together by virtue of these essential infrastructure elements, processing of the coastal and inland portions of the project must continue together, rather than being bifurcated.

Furthermore, the condition regarding the Private Agriculture Conservation Easement (PACE) described in item 'c' on page 16 of Attachment F-6 requires recordation of the easement prior to final approval of any development on SBR south of Hwy 101. This is another significant reason why bifurcation of the coastal and inland portions of the projects should not be bifurcated. The two must be processed simultaneously.

### Conclusion

In conclusion, I believe that a number of the Conditions of Approval and Mitigation Measures are inadequate and that the Development Agreements and some of the Policy Consistency Analysis are flawed. It would be in the public interest to modify the project as described above and to provide more time to evaluate the recently changed project description, and to make adjustments where necessary prior to any approvals of portions of the project.

Sincerely,

Elihu Gevirtz, AICP

### 3.16, 9.16 Global Climate Change

The addition of a Global Climate Change (GCC) section to the FEIR is on a surface level encouraging, since it indicates the need to evaluate proposed development projects' effects on GCC. Unfortunately, this section contains far too little thinking about how GCC impacts communities, ecosystems, food production and distribution, etc. It is not the job of developers to focus on solutions to these issues (though their participation would of course be welcome). Planners, elected officials, political bodies, active, involved citizens must take the lead in limiting greenhouse gas (GHG) emissions. Section 3.16's and 9.16's conclusions regarding the MOU and Alt. 1 Project's impacts on GHG emissions are, as currently written, short-sighted.

These sections rightly acknowledges the work of the International Panel on Climate Change on GCC, as well as the initiatives that the California Attorney General's and the Governor's offices have set in motion to help reduce the present and future effects of GCC in California. Therefore, it is discouraging to read in both 3.16 and 9.16 that "Long-term changes in agricultural productivity and long-term ecological changes that may force some species to extinction, or lead to changes in distribution of other species, are examples of consequences which may be very important but would not pose significant constraints or impacts to individual projects." It is exactly this kind of thinking – long-term effects should not restrict short-term activities – that is in no small part responsible for cumulative climate change worldwide. If GCC teaches us anything, it should be that "business as usual" is no longer (if indeed it ever was) a practical way to address the problems of global warming and climate change.

Similarly, it is disheartening to note that the FEIR – neither in this section nor anywhere else – contains no discussion of the effects of post oil-peak production on projects, even though our economy, means of distribution, transportation, and all but the tiniest fraction of our food production systems are entirely dependent on the availability of cheap fuel. Global demand for oil is rapidly outstripping current available supplies, and will likely continue to do so for the foreseeable future.

Preparing for a post oil-peak future is arguably one of the most important tasks facing planners. Central to this task is the preservation of local food production sources. Southern Santa Barbara County is remarkably rich in its diversity of species, habitats, topography, soils, and microclimates. The land's east-west geography and mild Mediterranean climate create growing conditions favorable to a wide range of crops. Our marine environment produces a rich variety of resources as well. Much of the food we need can be grown or harvested relatively close to home. But we can't grow on land that's been paved over or harvest from polluted waters.

Arable land is the most basic tool of energy capture for human consumption. Topsoil, without which most plants cannot survive, takes hundreds – some experts argue thousands – of years to form *under ideal conditions*. Its presence in the land is essential to our ability to feed, clothe, and shelter ourselves. Yet since the 1950s, one-third of the world's farmable soil has been lost to erosion. The American Farmland Trust estimates that two acres of farmland is lost to development every minute of every day. Historically there are numerous examples of civilizations disappearing because they failed to protect their farmland. In other words, no farms, no food, no civilization.

Section 3.16's and 9.16's extremely narrow focus on GCC's effects on sea level changes and how changes in rainfall and snowpack will affect water supplies is insufficient to the larger task of sensible planning. For example, as USC marine ecologist David Hutchins said in a recent article, "It's all a good start that people get worried about melting ice and rising sea levels... But we're

now driving a comprehensive change in the way Earth's ecosystem works – and some of these changes don't bode well for its future.” (Hutchins’ research findings, supported by the National Science Foundation, appeared in the December 20<sup>th</sup> issue of the *Marine Ecology Progress Series*, a leading journal in the field.)

A more thorough approach to the projects’ effects on GCC should consider how protection of local resources – farmland and fisheries – can help reduce the effects of global warming in Santa Barbara County by:

- Protecting valuable farmland and topsoil that are essential to local agriculture;
- Shortening the distance between where food is produced and where it is consumed, which will save oil, water, and other resources;
- Protecting the diversity of species that land and marine ecosystems depend on for maximum balance and health. Humans are only as rich as the diversity that surrounds them.

And instead of focusing only on paint colors, use of natural light, vehicle emissions, on-demand water heaters, and high-efficiency washing machines – all of which are good and necessary design elements – Sections 3.16 and 9.16 must also grapple with much broader questions, such as:

- In a post oil-peak world, how will southern Santa Barbara County compensate for the loss of farmland and fisheries caused by this project?
- Using current systems of production and distribution, how many calories of oil are required to produce one calorie of food? What are the total GHG emissions from these current systems?
- How would protecting all prime and sub-prime agricultural lands for present and future farming in the project area help reduce GHG emissions? How would these reduced emissions compare to GHG emissions from current food production and distribution systems?
- How will the project’s proposal to develop prime agricultural land affect southern Santa Barbara County’s food security, now and in the future?
- How will the project’s inevitable pollution of the Naples reef, kelp ecosystems, and intertidal wetland affect local fish stocks and food supply – present and future?

Without including a serious discussion of the role that local food production plays in the reduction of GHG emissions, Sections 3.16 and 9.16 are inadequate and should be re-written.



LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

October 8, 2008

Chairman Salud Carbajal  
Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, CA 93101

**Re: Santa Barbara Ranch Project & Findings Related To Grasslands**

Dear Chairman Carbajal & Honorable Supervisors,

This letter is submitted by the Environmental Defense Center on behalf of the Santa Barbara Chapter of the Surfrider Foundation and by the Law Office of Marc Chytilo on behalf of the Naples Coalition.

The County Planning Commission has recommended that your Board certify the Santa Barbara Ranch Project (Project) Environmental Impact Report (EIR). We object to that recommendation for a number of reasons, and we believe that the EIR should be revised and recirculated according to the California Environmental Quality Act (CEQA). This letter addresses issues related to native grassland and why the Project EIR is deficient as to its analysis of biological resources.

Specifically, grassland surveys relied on in the EIR do not follow scientifically acceptable protocol. Therefore, analyses of the baseline, impacts and policy consistency are flawed, and CEQA Findings and findings of consistency with Coastal Plan policies cannot be made.

#### **Native Grassland Surveys Do Not Conform To Scientifically Acceptable Methods**

The EIR and in turn the CEQA and Project Findings rely on an arbitrarily narrow concept of native grassland that does not agree with the County's official definition of native grassland, and on a grassland survey which does not adhere to scientifically acceptable protocols. Under the County's official definition, "native grassland" is any area of 0.25 acres or more in which "native grassland species" constitute 10% or more of the relative vegetated ground cover.<sup>1</sup> According to County Guidelines, the County's definition of native grassland follows the California Department of Fish and Game

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<sup>1</sup> County CEQA Thresholds and Guidelines Manual at 6-8 and 6-9.

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(CDFG) definition of native grassland.<sup>2</sup> CDFG has strongly objected to how the Santa Barbara Ranch EIR applies the native grassland definition, and to the EIR's mapping of native grasslands as overly narrow and unsupportable.<sup>3</sup>

*Native Grassland Surveys were not undertaken during Appropriate Seasons*

County Guidelines specify that plant surveys must occur at the proper time of year to identify species.<sup>4</sup> When surveys for native grassland species are taken at times of the year when many of the native grassland species are not present, are not identifiable, or are still small, the native grassland baseline is flawed.<sup>5</sup>

Native grassland surveys undertaken for the EIR excluded summer surveys, when certain native grassland species become detectable and flourish.<sup>6</sup> Native grassland species that become pronounced in the summer were not identified during spring surveys or were identified but still comprised smaller percentages of aerial cover than they might if surveyed at the appropriate time. For example, SAIC failed to identify the percent cover of native species, including fasciculated tarplant (*Hemizonia fasciculata*,<sup>7</sup> *Deinandra fasciculata*<sup>8</sup>), that only become dominant after spring.<sup>9</sup>

There is no scientific basis for limiting native grassland surveys and transects to the spring. Evidence in the record unilaterally demonstrates that the EIR's native grassland surveys did not follow proper scientific protocol because the surveys were not timed to coincide with certain native grassland species' lifecycles.<sup>10</sup> There is no substantial evidence to support an argument that limiting native grassland surveys to spring is a scientifically acceptable protocol. The limited timing of native grassland surveys was arbitrary and lead to a significant underestimation of the EIR's native grassland baseline and impact analysis.

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<sup>2</sup> Id. at 6-9.

<sup>3</sup> CDFG January 22 2008.

<sup>4</sup> "Field surveys should be scheduled to coincide with known flowering periods, and or during periods of known phenological development that are necessary to identify plants of concern." County CEQA Thresholds and Guidelines Manual Biological Resources Guidelines Technical Background Document, B. Biological Survey Guidelines, September 1994, pages B-2 through B-5.

<sup>5</sup> CNPS August 25 2008 at 2.

<sup>6</sup> David Magney Environmental Consulting January 23, 2008 at 16; Dr. E.L. Painter July 17, 2008 at 11; CNPS August 25, 2008 at 2.

<sup>7</sup> Keil, D.J. 1993. *Hemizonia*. In J.C. Hickman (editor). *The Jepson Manual, Higher Plants of California*. University of California Press, Berkeley, CA.

<sup>8</sup> Baldwin, B.G. and J.L. Strother. *Deinandra*. 2006. Volume 21 in *Flora of North America* Editorial Committee (editors). 1993+. *Flora of North America North of Mexico*. 12+ vols. New York and Oxford.

<sup>9</sup> David Magney Environmental Consulting January 23 2008 at 16; Dr. E.L. Painter July 17, 2008 at 11; CNPS August 25, 2008 at 2.

<sup>10</sup>Id.

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*The EIR employs an Arbitrary Definition of Native Grassland Species*

The plain language in the County's official definition is "an area where native grassland species comprise 10% or more of the total relative cover,"<sup>11</sup> yet the EIR arbitrarily excludes most native grassland species from the relative cover calculations. Evidence in the record illustrates that various native grassland species occurring on Santa Barbara Ranch were not included in the calculation of native grassland species percent cover.<sup>12</sup> No substantial evidence supports the County's decision to arbitrarily exclude the majority of native grassland species.

*Fasciculated Tarplant is a Native Grassland Species*

Fasciculated tarplant was arbitrarily excluded from the pool of native grassland species surveyed because it grows in disturbed areas.<sup>13</sup> The record includes unsupported statements that fasciculated tarplant is not a native grassland species because it is a "weed" and grows in disturbed areas. However, all evidence in the record, including all major botanical reference documents for this region, indicates that this species is a native grassland species and not a weed.<sup>14</sup> In addition, the EIR recognizes species that are at times disturbance-followers, including purple needlegrass (*Nassella pulchra*<sup>15</sup>), as "native grassland species."<sup>16</sup> Even the applicant's biologist V.L. Holland defined "weeds" as species "introduced by human activities to areas outside their natural range that aggressively invade stands of undisturbed native vegetation."<sup>17</sup> Fasciculated tarplant is a native species and is therefore not a "weed" pursuant to the definition in Dr. Holland's book and other biological definitions.<sup>18</sup> The County's exclusion of fasciculated tarplant from consideration as a native grassland species on the basis it sometimes grows in disturbed areas is arbitrary, capricious and inconsistent with applicable authority.

Fasciculated tarplant is not included on the California Invasive Plant Council (CalIPC) lists in the 2006<sup>19</sup> or 2007 California Invasive Plant Inventories.<sup>20</sup>

According to all the major botanical reference documents for this region of California, fasciculated tarplant grows in a variety of habitats but its primary habitat is native grassland.<sup>21</sup> Species considered "native grassland species" in the EIR also grow in

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<sup>11</sup> County CEQA Thresholds and Guidelines Manual at 6-8 and 6-9.

<sup>12</sup> CDFG January 22, 2008 at 2; David Magney Environmental Consulting January 23, 2008 at 13 - 15; Dr. E.L. Painter July 17, 2008 at 7 - 10; CNPS August 25, 2008 at 1 - 2.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Barkworth, M.E. 1993. *Nassella*. In J.C. Hickman (editor), *The Jepson Manual, Higher Plants of California*. University of California Press, Berkeley, CA.

<sup>16</sup> Dr. E.L. Painter, personal communication to Brian Trautwein August 13, 2008 and September 9 2008.

<sup>17</sup> Dr. E.L. Painter July 17, 2008 at 9.

<sup>18</sup> Dr. E.L. Painter July 17, 2008 at 8.

<sup>19</sup> California Invasive Plant Council. 2006. California Invasive Plant Inventory. <http://www.cal-ipc.org>.

<sup>20</sup> California Invasive Plant Council. 2007. New Weeds Added to Cal-IPC Inventory, <http://www.cal-ipc.org>.

<sup>21</sup> Id.

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a variety of habitats including native grasslands.<sup>22</sup> The evidence in the record consistently demonstrates that, like native grassland species which were included in the native grassland surveys, fasciculated tarplant is a native grassland species that may also grow in disturbed areas, such as burned areas.<sup>23</sup> Even the primary native grass onsite – purple needlegrass grows in a variety of habitats, including both native grasslands and in disturbed areas.<sup>24</sup> Therefore, fasciculated tarplant cannot and should not be singled out and excluded from the EIR’s definition of “native grassland species” on the grounds that it is a “weed,” that it grows in disturbed areas or that it grows in other habitats.

When not arbitrarily excluded, fasciculated tarplant substantially increases the native grassland baseline because it is a dominant native grassland species. For example, Magney mapped areas of native grassland based on >50% percent cover of fasciculated tarplant.<sup>25</sup>

### **The Coastal Terrace Grassland/Prairie Is ESHA**

The Coastal Terrace grassland/prairie is an Environmentally Sensitive Habitat Area (ESHA) due to its support for a wide array of rare bird and wildlife species, and its susceptibility to degradation caused by development. The Coastal Act and by incorporation the County LCP define ESHA as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”<sup>26</sup> “Coastal Terrace prairie” is recognized by the CDFG as a rare community type with rankings of G.2 and S.2.1, which are the global and statewide rarity rankings used by CDFG.

*The Grassland supports Species which are Rare and is an Especially Valuable Habitat due to its Special Nature and Role in the Ecosystem*

Some ESHAs are mapped in the County’s Land Use Plan. However, the LCP acknowledges that the existence and location of all ESHAs may not be known or mapped.<sup>27</sup> There is “incomplete information on habitat areas.”<sup>28</sup>

The LCP further notes that “[ESHA] habitats which are found in the County’s coastal zone include: rare and endangered species habitats” as identified by CDFG, and a number of specific habitat types including wetlands, dunes, reefs and kelp beds.<sup>29</sup> The

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<sup>22</sup> Dr. E.L Painter personal communication to Brian Trautwein August 13, 2008 and September 9, 2008.

<sup>23</sup> Id.

<sup>24</sup> Id. confirming EIR “should not discount native grassland species such as tarplant on the basis they occur in habitats other than grasslands... if so they should not rely on *Nassella* to define native grasslands for the same reason.”

<sup>25</sup> David Magney Environmental Consulting October 2008.

<sup>26</sup> PRC Section 30107.5, LCP Policy 1-1 through incorporation of PRC Section 30240.

<sup>27</sup> LCP at 116.

<sup>28</sup> LCP at 120.

<sup>29</sup> LCP at 116.

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Coastal Terrace grassland/prairie supports over two dozen rare animal and bird species that play a special role in the ecosystem.<sup>30</sup>

The LCP lists "White-tailed Kite Habitat" as a specific type of ESHA in the County.<sup>31</sup> The FEIR notes that "The County of Santa Barbara (2002) classifies white-tailed kite foraging habitat as an environmentally sensitive habitat."<sup>32</sup> The FEIR further finds that white-tailed kites are a year-round resident breeder in the vicinity of the Project area, and that numerous juvenile and adult white-tailed kites, including adult pairs, have been observed on the Coastal Terrace within and adjacent to the project site.<sup>33</sup> The terrace is "White-tailed Kite Habitat" and thus fits the County's ESHA definition.<sup>34</sup>

The County LCP includes "policies for protecting these [ESHA] habitats."<sup>35</sup> LCP Policy 9-29 is a countywide<sup>36</sup> coastal policy that requires maximum preservation of grasslands as white-tailed kite feeding areas, indicating that the site's "white-tailed kite habitat" including "feeding area for the kites" is an ESHA.

The FEIR notes that the Coastal Terrace grassland/prairie "including the project area, is the broadest and most contiguous section of coastal terrace remaining as open space south of Highway 101 along the Goleta-Gaviota coastline."<sup>37</sup> The grassland provides "high quality foraging" habitat for raptors.<sup>38</sup> "[T]he coastal terrace portions of the project area south of Highway 101 may be disproportionately more important to raptors and other predators than similar habitats in the foothill and montane regions to the north."<sup>39</sup> The grasslands on the project site harbor 32 of the 79 rare species present onsite, including 19 of 43 rare bird species, 9 of which are special-status raptor species.<sup>40</sup>

The Coastal Terrace grassland/prairie is especially valuable for raptor foraging because it is relatively level.<sup>41</sup> The special-status raptors play a special role in the ecosystem by controlling rodent populations.

Because they are capable of supporting high densities of prey (insects and small mammals), annual and native grasslands in the project area provide important foraging habitat for a number of raptor species, particularly where associated with

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<sup>30</sup> FEIR Table 9.4-4.

<sup>31</sup> LCP at 120.

<sup>32</sup> FEIR Appendix C at C.2-23.

<sup>33</sup> Id.

<sup>34</sup> See also J. Nick Todd, Santa Cruz Predatory Bird Research Group Comments on RDEIR, May 5, 2008 at 3

<sup>35</sup> LCP at 120.

<sup>36</sup> As confirmed by CCC upon appeal of CDPs for adjacent ARCO Golf Course Project, CCC Staff Report May 31, 2002 at 86 – 87.

<sup>37</sup> FEIR at 9.4-72.

<sup>38</sup> FEIR at 9.4-70.

<sup>39</sup> FEIR at 9.4-72.

<sup>40</sup> FEIR Table 9.4-4

<sup>41</sup> FEIR at 9.4-72

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roosting/nesting sites in close proximity to grasslands, as is the case with eucalyptus windrows scattered throughout this area.<sup>42</sup>

The grassland habitat plays a special role in the ecosystem by supporting nesting raptors and special-status birds with foraging habitat and food to support successful nesting and breeding.

*The Coastal Terrace Grassland/Prairie is Easily Disturbed and Degraded by Human Activities and Developments*

The Coastal Terrace grassland/prairie is easily disturbed and degraded by human activities and developments, including the Project's proposed residential and equestrian center developments south of Highway 101. The County EIR consultant stated without supporting evidence that while the grassland supports special-status species including raptors, the grassland is subject to cattle grazing and already degraded and therefore cannot be easily disturbed or degraded by human activities and developments. However, despite the grazing, the FEIR notes that the grassland supports many special-status species that would be adversely affected or displaced by the development's impact on the grassland habitat.

Specifically, the FEIR finds that the project will contribute to a significant cumulative loss of coastal habitats.<sup>43</sup> Approximately 229 acres of grassland habitat will be eliminated by the development.<sup>44</sup> "On a long-term basis, the Alternative 1 would eliminate foraging habitat for raptors and other wildlife species within the building envelopes and roads."<sup>45</sup> The remaining grassland that will not be converted to residential uses will be degraded by adjacent human uses including light pollution, roads, pets, fire prevention mowing, and non-native plants.<sup>46</sup> "Singly and collectively, these impacts could significantly alter habitat use by raptors, badgers, bats and other special-status wildlife species."<sup>47</sup> The FEIR notes that most special-status grassland species will suffer from "Habitat loss and fragmentation."<sup>48</sup> Species would be forced to alter their use of grassland habitat and "certain species may disappear from habitats south of Highway 101 because patch sizes and habitat connections between natural habitats after project build-out may not be extensive enough to support them."<sup>49</sup>

Evidence in the record, including the FEIR, supports a finding that the grassland habitat is easily disturbed and degraded by human activities and developments. Furthermore, no evidence in the record supports the incorrect assertion that the grasslands are not easily disturbed or degraded by human uses and activities, particularly when the

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<sup>42</sup> FEIR at 9.4-19

<sup>43</sup> FEIR at 9.4-79 and 80

<sup>44</sup> Alt. 1B Confirming Analysis

<sup>45</sup> FEIR at 9.4-70

<sup>46</sup> FEIR at 9.4-71

<sup>47</sup> Id.

<sup>48</sup> FEIR Table 9.4-4

<sup>49</sup> FEIR at 9.4-73

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Project's principal effect on this habitat will be extensive grading and coverage with roads and structures. The Coastal Terrace grassland/prairie is ESHA due to its support for special-status species, due to the species' and habitats' special roles in the ecosystem, and because the grassland habitat is easily disturbed and degraded by human uses and activities such as the proposed project.

*Annual Grasslands may be considered ESHA*

The County designates annual grasslands ESHA even when grasslands do not meet the definition of native grasslands (for example, More Mesa). The Coastal Commission also considers "California Annual Grassland" potential ESHA due to its support for raptors.<sup>50</sup> In this case, due to the significance of the grasslands for special-status raptors and other wildlife species, the Naples Coastal Terrace is ESHA regardless of whether it is native grassland.

**Conclusion**

The Santa Barbara Ranch Project EIR's native grassland baseline was not determined using scientifically-accepted methods. Therefore the baseline lacks a foundation in substantial evidence and cannot be relied upon to support conclusions in the EIR or Findings to approve the Project. Absent substantial evidence supporting the County's EIR and Findings, the County must conduct new, scientifically-supported grassland surveys and mapping. The EIR should be revised and recirculated. Finally the County must reconfigure the Project to avoid ESHA, including native grasslands and the Coastal Terrace.

Thank you for your time and attention. Please contact us with any questions.

Sincerely,



Brian Trautwein  
Environmental Analyst  
Environmental Defense Center



Marc Chytilo  
Law Office of Marc Chytilo

cc: California Coastal Commission  
Naples Coalition  
Surfrider Foundation

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<sup>50</sup> Dr. John Dixon, Coastal Commission memo to Ventura Staff March 25 2003 at 19 - 20

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Attachments:

- Dr. Elizabeth L. Painter, Comments on FEIR, July 17, 2008.
- David Magney Environmental Consulting, Comments on RDEIR, January 23, 2008; Native Grassland Map and Comments on FEIR October 2008.
- CDFG, Comments on RDEIR, January 22, 2008.
- California Native Plant Society, Comments on FEIR, August 25, 2008.
- Coastal Commission Biologist Dr. John Dixon Memo to Ventura Staff re Designation of ESHA in Santa Monica Mountains, March 25, 2003.
- California Invasive Plant Council. 2006. California Invasive Plant Inventory.
- Santa Cruz Predatory Bird Research Group Comments on EIR, May 5, 2008.
- California Invasive Plant Council. 2007. New Weeds Added to Cal-IPC Inventory.

# California Invasive Plant Council

Protecting California's wildlands from invasive plants through research, restoration, and education.

[www.cal-ipc.org](http://www.cal-ipc.org)

Invasive plants are one of the most serious environmental issues facing California. They disrupt ecosystems by altering physical processes, displacing native plants, and degrading wildlife habitat. The California Invasive Plant Inventory is a vital resource for those working to protect the state's natural areas. The Inventory summarizes the impacts, potential for spread, and distribution of more than 200 non-native plants that invade wildlands in California. The Inventory represents the best available knowledge of the state's invasive plant experts. It is designed to prioritize plants for control at the state and local levels, to provide key information to those working in habitat restoration, to show areas where research is needed, to aid those preparing or commenting on environmental planning documents, and to educate public policy makers. Detailed assessments for each plant, with documented sources, are available online at [www.cal-ipc.org](http://www.cal-ipc.org).



**Pampasgrass** (*Cortaderia selloana*) displaces native plant communities in coastal habitats. (Photo by Bob Case, California Native Plant Society).

Front cover photo credits:

*Centaurea solstitialis* (yellow starthistle) left, and *Eichornia crassipes* (water hyacinth) bottom right, by Bob Case.

*Cynara cardunculus* (artichoke thistle) center right, by Jason and Jesse Giessow, Dendra, Inc.

*Delairea odorata* (Cape-ivy) top right, by Carolyn Martus, California Native Plant Society.



Cal-IPC

# CALIFORNIA Invasive Plant INVENTORY



Cal-IPC

Published by the  
California Invasive Plant Council

February 2006

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# CALIFORNIA Invasive Plant INVENTORY



Published by the  
California Invasive Plant Council

February 2006

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The California Invasive Plant Council (Cal-IPC) formed as a non-profit organization in 1992 to address the growing ecological and economic impacts caused by invasive plants in California's wildlands. We promote research, restoration, and education in pursuit of this goal. Formerly known as the California Exotic Pest Plant Council, Cal-IPC is a member-driven organization with land managers, researchers, policy makers, and concerned citizens working together to protect the state's natural areas from invasive plants. For more information, visit our website at [www.cal-ipc.org](http://www.cal-ipc.org).

## PROVIDING INPUT FOR FUTURE REVISIONS

If you have additional information to add to a plant assessment, please submit it to [info@cal-ipc.org](mailto:info@cal-ipc.org). The Inventory Review Committee will meet periodically to consider additions and modifications to the Inventory.

## ACKNOWLEDGMENTS

We gratefully acknowledge the effort of all those who volunteered their time to write plant assessment forms, provide comments on assessments, or add observations to fill gaps in information. Too many people contributed information for us to list them individually, but each assessment contains the name of its author and those who provided information on that species. In particular, we thank those who helped develop the criteria, including John Hall of The Nature Conservancy in Arizona, Ann Howald of Garcia and Associates, and Maria Ryan of University of Nevada Cooperative Extension. We also wish to thank Kristin Dzurella of UC Davis and John Knapp of the Catalina Island Conservancy for their contributions of time and data.

## RECOMMENDED CITATION

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Designed by Melanie Haage

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# Introduction

Invasive plants damage ecosystems around the world. They displace native species, change plant community structure, and reduce the value of habitat for wildlife.<sup>1</sup> Invasive plants may disrupt physical ecosystem processes, such as fire regimes, sedimentation and erosion, light availability, and nutrient cycling. In aquatic ecosystems, invasive plants clog lakes, streams, and waterways, reducing oxygen levels for fish and degrading habitat for waterbirds. The impact is especially severe in California, with its rich diversity of natural resources.

The California Invasive Plant Inventory categorizes non-native invasive plants that threaten the state's wildlands. Categorization is based on an assessment of the ecological impacts of each plant. The Inventory represents the best available knowledge of invasive plant experts in the state. However, it has no regulatory authority, and should be used with full understanding of the limitations described later in this Introduction.

California is home to 4,200 native plant species, and is recognized internationally as a "biodiversity hotspot." Approximately 1,800 non-native plants also grow in the wild in the state. A small number of these, approximately 200, are the ones that this Inventory considers invasive. Improved understanding of their impacts will help those working to protect California's treasured biodiversity.

## The Inventory

The Inventory categorizes plants as High, Moderate, or Limited, reflecting the level of each species' negative ecological impact in California. Other factors, such as economic impact or difficulty of management, are not included in this assessment.

It is important to note that every species listed in Table 1 is invasive, regardless of its overall rating, and should be of concern to land managers. Although the impact of each plant varies regionally, its rating represents cumulative impacts statewide. Therefore, a plant whose statewide impacts are categorized as Limited may have more severe impacts in a particu-



*In the past 15 years, approximately \$15 million has been spent statewide to control Arundo donax (giant reed) in California. (Photo by David Chang, Santa Barbara County Agricultural Commissioner's office)*

lar region. Conversely, a plant categorized as having a High cumulative impact across California may have very little impact in some regions.

Members of the Inventory Review Committee, Cal-IPC staff, and volunteers drafted assessments for each plant based on the formal criteria system described below. The committee solicited information from land managers across the state to complement the available literature. Assessments were released for public review before the committee finalized them. All plant assessments that form the basis for this summary document are available at [www.cal-ipc.org](http://www.cal-ipc.org). The final list includes 39 High species, 65 Moderate species, and 89 Limited species. Additional information, including updated observations, will be added to the Cal-IPC website periodically, with revisions tracked and dated.

## Definitions

The Inventory categorizes "invasive non-native plants that threaten wildlands" according to the definitions below. Plants were evaluated only if they invade

## Figure 1. The Criteria System

### Section 1. Ecological Impact

- 1.1 Impact on abiotic ecosystem processes (e.g. hydrology, fire, nutrient cycling)
- 1.2 Impact on native plant community composition, structure, and interactions
- 1.3 Impact on higher trophic levels, including vertebrates and invertebrates
- 1.4 Impact on genetic integrity of native species (i.e. potential for hybridization)

### Section 2. Invasive Potential

- 2.1 Ability to establish without anthropogenic or natural disturbance
- 2.2 Local rate of spread with no management
- 2.3 Recent trend in total area infested within state
- 2.4 Innate reproductive potential (based on multiple characteristics)
- 2.5 Potential for human-caused dispersal
- 2.6 Potential for natural long-distance (>1 km) dispersal
- 2.7 Other regions invaded worldwide that are similar to California

### Section 3. Distribution

- 3.1 Ecological amplitude (ecological types invaded in California)
- 3.2 Ecological intensity (highest extent of infestation in any one ecological type)

### Documentation Levels

Assessed as highest level of documentation for each criterion.

- 4 = Reviewed scientific publications
- 3 = Other published material (reports or other non-peer-reviewed documents)
- 2 = Observational (unpublished information confirmed by a professional in the field)
- 1 = Anecdotal (unconfirmed information)
- 0 = No information

Complete description of criteria system and detailed plant assessments available at [www.cal-ipc.org](http://www.cal-ipc.org).



Dense mats formed by aquatic plants such as water hyacinth (*Eichhornia crassipes*) reduce habitat for waterfowl and fish. (Photo by Bob Case, California Native Plant Society)

California wildlands with native habitat values. The Inventory does not include plants found solely in areas of human-caused disturbance such as roadsides and cultivated agricultural fields.

- **Wildlands** are public and private lands that support native ecosystems, including some working landscapes such as grazed rangeland and active timberland.
- **Non-native** plants are species introduced to California after European contact and as a direct or indirect result of human activity.
- **Invasive non-native plants that threaten wildlands** are plants that 1) are not native to, yet can spread into, wildland ecosystems, and that also 2) displace native species, hybridize with native species, alter biological communities, or alter ecosystem processes.

### Criteria for Listing

The California Invasive Plant Inventory updates the 1999 "Exotic Pest Plants of Greatest Ecological Concern in California."<sup>2</sup> Cal-IPC's Inventory Review Committee met regularly between 2002 and 2005 to review 238 non-native species with known or suspected impacts in California wildlands. These assessments are based on the "Criteria for Categorizing Invasive Non-Native Plants that Threaten Wildlands"<sup>3</sup> which were developed in collaboration with the Southwestern Vegetation Management Association in Arizona ([www.swvma.org](http://www.swvma.org)) and the University of Nevada Cooperative Extension ([www.unce.unr.edu](http://www.unce.unr.edu)).

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edu) so that ratings could be applied across political boundaries and adjusted for regional variation. The goals of the criteria system and the Inventory are to:

- Provide a uniform methodology for categorizing non-native invasive plants that threaten wildlands;
- Provide a clear explanation of the process used to evaluate and categorize plants;
- Provide flexibility so the criteria can be adapted to the particular needs of different regions and states;
- Encourage contributions of data and documentation on evaluated species;
- Educate policy makers, land managers, and the public about the biology, ecological impacts, and distribution of invasive non-native plants.

The criteria system generates a plant's overall rating based on an evaluation of 13 criteria, which are divided into three sections assessing Ecological Impacts, Invasive Potential, and Ecological Distribution (Fig. 1). Evaluators assign a score of A (severe) to D (no impact) for each criterion, with U indicating unknown. The scoring scheme is arranged in a tiered format, with individual criteria contributing to section scores that in turn generate an overall rating for the plant.

Detailed plant assessment forms list the rationale and applicable references used to arrive at each criterion's score. The level of documentation for each question is also rated, and translated into a numerical score for averaging (Fig. 1). The documentation score presented in the tables is a numeric average of the documentation levels for all 13 criteria.

### Inventory Categories

Each plant in Table 1 has received an overall rating of High, Moderate or Limited based on evaluation using the criteria system. The meaning of these overall ratings is described below. In addition to the overall ratings, specific combinations of section scores that indicate significant potential for invading new ecosystems triggers an Alert designation so that land managers may watch for range expansions. Table 3 lists plants categorized as Evaluated But Not Listed because either we lack sufficient information to assign a rating or the available information indicates that the species does not have significant impacts at the present time.

- **High** – These species have severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal and establishment. Most are widely distributed ecologically.
- **Moderate** – These species have substantial and apparent—but generally not severe—ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal, though establishment is generally dependent upon ecological disturbance. Ecological amplitude and distribution may range from limited to widespread.
- **Limited** – These species are invasive but their ecological impacts are minor on a statewide level or there was not enough information to justify a higher score. Their reproductive biology and other attributes result in low to moderate rates of invasiveness. Ecological amplitude and distribution are generally limited, but these species may be locally persistent and problematic.

### Reading the Tables

The core of the Inventory is Table 1, which lists those plants we have categorized as invasive plants that threaten California wildlands.. The types of information contained in Table 1 is described below.



When *Bromus tectorum* (downy brome or cheatgrass) replaces native perennial grasses, the frequency of wildfires shortens from 60-100 years to 3-5 years. (Photo by Joe DiTomaso, UC Davis)

**Figure 2. Jepson Geographic Regions**

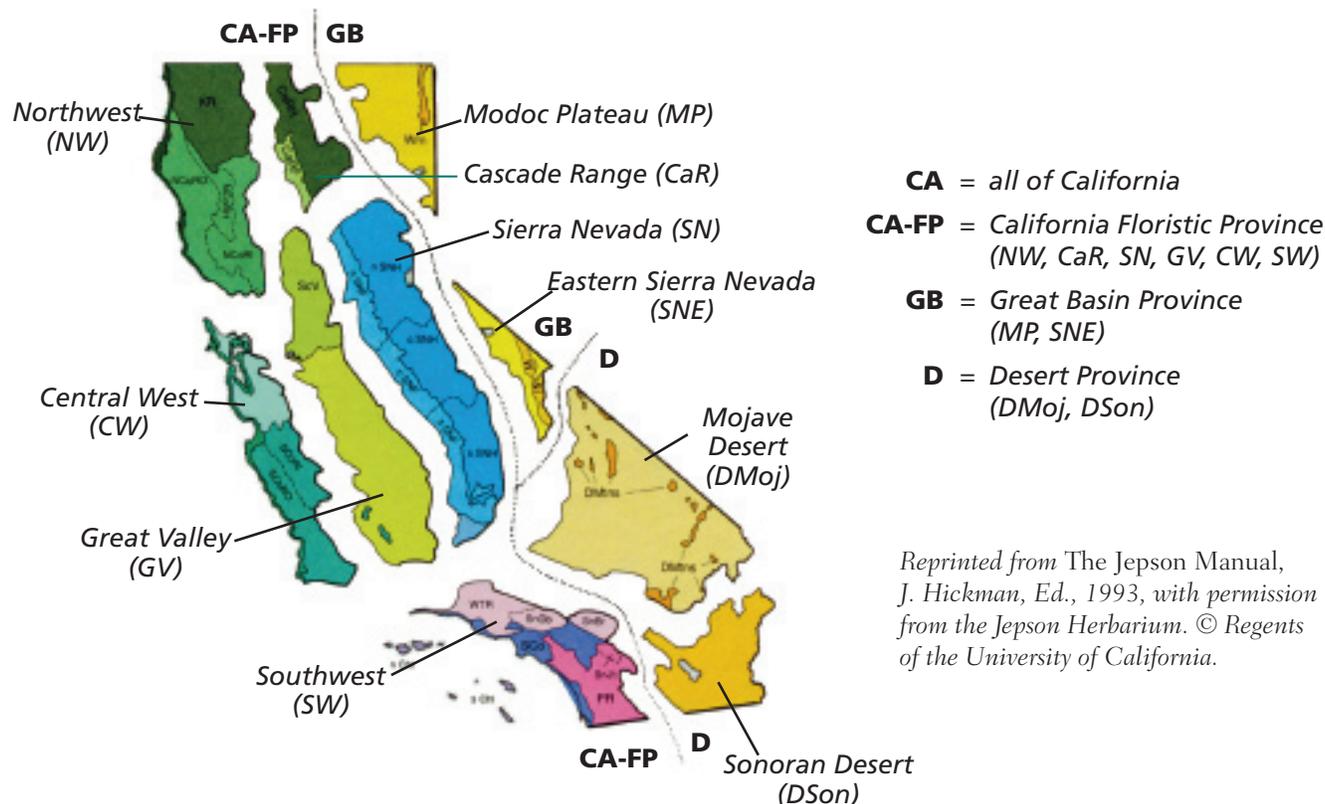


Table 2 contains four plants that are native to specific regions of California but have become invasive in other regions of the state to which humans have moved them. Table 3 lists those plant species that were evaluated but did not meet the threshold for listing. Finally, Table 4 contains plants that were nominated for review but dismissed without a formal assessment because either they do not invade wildlands (except for isolated instances) or the Inventory Review Committee lacked adequate information to answer the criteria questions.

Table 1 summarizes rating information for all plant species categorized as invasive by this Inventory. The columns contain the following information:

- A diamond (◆) in the first column designates an Alert status for that species.
- Scientific nomenclature for most species follows *The Jepson Manual*.<sup>4</sup>
- For each species, the first common name is based on the Weed Science Society of America,<sup>5</sup> followed by other names commonly used in California. (Appendix 4 provides an index of common names.)
- The overall rating for the plant (High, Moderate,

or Limited) is listed next. (Because Table 1 is organized alphabetically, we have included a listing organized by rating level in Appendix 1.)

- Section scores are shown for Ecological Impact, Invasive Potential, and Distribution. These can typically be interpreted as A=high, B=moderate, C=limited, D=none, U=unknown.
- Documentation Level presents the average level of the references used to evaluate that species, from 0 (no information) to 4 (all information based on peer-reviewed scientific publications).
- Ecological Types Invaded and Other Comments provides additional information of interest. The classification of ecological types is adapted from a system developed by the California Department of Fish and Game.<sup>6</sup> (Appendix 3 provides detailed examples of ecological types.)
- Regions Invaded are based on floristic regions described in *The Jepson Manual*<sup>4</sup> (Fig. 2) and indicate heavily impacted areas. This information is incomplete for many species, so regions listed in this column should be considered the minimum area invaded.



*Cirsium vulgare* (bull thistle) is spreading at high elevations, such as in Yosemite National Park. (Photo by Bob Case, California Native Plant Society)

### Uses and Limitations

The California Invasive Plant Inventory serves as a scientific and educational report. It is designed to prioritize plants for control, to provide information to those working on habitat restoration, to show areas where research is needed, to aid those who prepare or comment on environmental planning documents, and to educate public policy makers. Plants that lack published information may be good starting points for student research projects.

The Inventory cannot address, and is not intended to address, the range of geographic variation in California, nor the inherently regional nature of invasive species impacts. While we have noted where each plant is invasive, only the cumulative statewide impacts of the species have been considered in the evaluation. The impact of these plants in specific geographic regions or habitats within California may be greater or lesser than their statewide rating indicates. Management actions for a species should be considered on a local and site-specific basis, as the

inventory does not attempt to suggest management needs for specific sites or regions. The criteria system was designed to be adapted at multiple scales, and local groups are encouraged to use the criteria for rating plants in their particular area.

### REFERENCES

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*Lepidium latifolium* (perennial pepperweed or tall whitetop) concentrates salt in marsh soils, threatening several rare plant species. (Photo by Bob Case)

**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California**

Alert	Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
	<i>Acacia melanoxylon</i>	black acacia, blackwood acacia	Limited	C	C	B	2.7	Coniferous forest, chaparral, woodland, riparian. Impacts low in most areas.	NW, CW, SW
	<i>Acroptilon repens</i>	Russian knapweed	Moderate	B	B	B	3.2	Scrub, grasslands, riparian, pinyon-juniper woodland, forest. Severe impacts in other western states. Spreading in many areas of CA.	CA-FP, GB
	<i>Aegilops triuncialis</i>	barb goatgrass	High	A	A	B	3.6	Grassland, oak woodland. Spreading in NW and Central Valley.	CaR, CW, SN, GV
	<i>Ageratina adenophora</i>	croftonweed, eupatorium	Moderate	B	B	B	2.8	Coastal canyons, scrub, slopes. Very invasive in Australia, limited information and distribution in CA.	CW, SW
	<i>Agrostis avenacea</i>	Pacific bentgrass	Limited	C	C	C	2.4	Vernal pools, coastal prairie, meadows, grasslands. Impacts are low in most areas.	NW, SN, GV, CW, SW
	<i>Agrostis stolonifera</i>	creeping bentgrass	Limited	C	B	C	1.9	Wetlands, riparian; grown for domestic forage. Limited distribution and impacts unknown.	NW, SN, GV, CW, SW
	<i>Ailanthus altissima</i>	tree-of-heaven	Moderate	B	B	B	3.0	Riparian areas, grasslands, oak woodland. Impacts highest in riparian areas.	CA-FP
	<i>Alhagi maurorum</i> (= <i>A. pseudalhagi</i> )	camelthorn	Moderate	B	B	B	3.2	Grassland, meadows, riparian and desert scrub, Sonoran thorn woodland. Very invasive in southwestern states. Limited distribution in CA.	GV, D, SNE
◆	<i>Alternanthera philoxeroides</i>	alligatorweed	High	A	B	C	2.9	Freshwater aquatic systems, including marshes	GV, SW
	<i>Ammophila arenaria</i>	European beachgrass	High	A	B	B	3.2	Coastal dunes	NW, CW, SW
	<i>Anihoa odoratum</i>	sweet vernalgrass	Moderate	B	B	B	2.7	Coastal prairie, coniferous forest. Little information available on impacts and limited ecological range.	NW, SN, CW
◆	<i>Arctotheca calendula</i> (fertile strains)	fertile capeweed	Moderate	B	B	C	3.6	Coastal prairie. Can produce seed. Important agricultural weed in Australia, but limited distribution in CA.	NW, CW
	<i>Arctotheca calendula</i> (sterile strains)	sterile capeweed	Moderate	B	B	B	2.8	Coastal prairie. Only propagates vegetatively. More competitive than fertile form, but limited distribution.	NW, CW
	<i>Arundo donax</i>	giant reed	High	A	B	A	2.8	Riparian areas. Commercially grown for musical instrument reeds, structural material, etc.	CW, SN, GV, SW

Scientific names based on *The Jepson Manual*. For each species, the first common name is based on the Weed Science Society of America's "Composite List of Weeds" ([www.wssa.net](http://www.wssa.net)), followed by other names used in California. Scores: A = Severe, B = Moderate, C = Limited, D = None, U = Unknown. Documentation level averaged. Regions invaded based on Jepson geographic regions. Plant assessment forms, literature citations, and full rating criteria available at [www.cal-ipc.org](http://www.cal-ipc.org).

**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California** (continued)

Alert	Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
◆	<i>Asparagus asparagoides</i>	bridal creeper	Moderate	B	B	D	2.6	Riparian woodland	CW, SW
◆	<i>Asphodelus fistulosus</i>	onionweed	Moderate	B	A	C	2.9	Coastal dunes, prairie, grasslands. Invasive in Australia. High invasiveness but limited distribution in CA.	GV, SW
	<i>Atriplex semibaccata</i>	Australian saltbush	Moderate	B	B	B	2.9	Coastal grasslands, scrub, upper salt marsh. Limited distribution, but can be very invasive regionally.	CA except CaR and SN
	<i>Avena barbata</i>	slender wild oat	Moderate	B	B	A	3.5	Coastal scrub, grasslands, oak woodland, forest. Very widespread, but impacts more severe in desert regions.	CA-FP, MP, DMoj
	<i>Avena fatua</i>	wild oat	Moderate	B	B	A	3.2	Coastal scrub, chaparral, grasslands, woodland, forest. Very widespread, but impacts more severe in desert regions.	CA-FP, MP, DMoj
	<i>Bassia hyssopifolia</i>	fivehook bassia	Limited	C	C	B	2.7	Alkaline habitats. Weed of agriculture or disturbed sites. Impacts minor in wildlands.	CA except NW
	<i>Bellardia trixago</i>	bellardia	Limited	C	C	C	1.9	Grasslands, including serpentine. Impacts and invasiveness appear to be minor.	NW, CW
◆	<i>Brachypodium sylvaticum</i>	perennial false-brome	Moderate	B	A	D	2.5	Redwoods and mixed evergreen forest in Santa Cruz Mtns. Expanding range rapidly in OR, potentially very invasive.	CW
	<i>Brassica nigra</i>	black mustard	Moderate	B	B	A	2.0	Widespread. Primarily a weed of disturbed sites, but can be locally a more significant problem in wildlands.	CA-FP
	<i>Brassica rapa</i>	birdrape mustard, field mustard	Limited	C	B	B	1.8	Coastal scrub, grasslands meadows, riparian. Primarily in disturbed areas. Impacts appear to be minor or unknown in wildlands.	CA-FP
	<i>Brassica tournefortii</i>	Saharan mustard, African mustard	High	A	A	B	2.3	Desert dunes, desert and coastal scrub	SW, D
	<i>Briza maxima</i>	big quakinggrass, rattlesnakegrass	Limited	B	C	B	2.3	Grasslands. Widespread in coast range. Impacts generally minor, but locally can be higher.	NW, SN, CW, SW
	<i>Bromus diandrus</i>	ripgut brome	Moderate	B	B	A	3.3	Dunes, scrub, grassland, woodland, forest. Very wide-spread, but monotypic stands uncommon.	CA

Scientific names based on *The Jepson Manual*. For each species, the first common name is based on the Weed Science Society of America's "Composite List of Weeds" ([www.wssa.net](http://www.wssa.net)), followed by other names used in California. Scores: A = Severe, B = Moderate, C = Limited, D = None, U = Unknown. Documentation level averaged. Regions invaded based on Jepson geographic regions. Plant assessment forms, literature citations, and full rating criteria available at [www.cal-ipc.org](http://www.cal-ipc.org).

**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California** (continued)

Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
<i>Bromus hordeaceus</i>	soft brome	Limited	B	C	A	2.8	Grasslands, sagebrush, serpentine soils, many other habitats. Very widespread, but primarily in converted annual grasslands.	CA
<i>Bromus madriensis</i> ssp. <i>rubens</i> (= <i>B. rubens</i> )	red brome	High	A	B	A	3.0	Scrub, grassland, desert washes, woodlands. Impacts most significant in desert areas.	CA
<i>Bromus tectorum</i>	downy brome, cheatgrass	High	A	B	A	3.1	Interior scrub, woodlands, grasslands. Most widely distributed invasive plant in the US.	SN, GB, D
<i>Cakile maritima</i>	European sea-rocket	Limited	C	B	B	3.6	Coastal dunes. Widespread, but impacts appear to be minor.	NW, CW, SW
◆ <i>Cardaria chalapensis</i> (= <i>C. draba</i> ssp. <i>chalepensis</i> )	lens-podded whitetop	Moderate	B	B	C	3.2	Central Valley wetlands. Limited distribution in CA. May not be as invasive as <i>C. draba</i> .	CA-PP, GB
<i>Cardaria draba</i>	hoary cress	Moderate	B	B	B	2.6	Riparian areas, marshes of central coast. More severe invasive in northern CA.	CW, SW
<i>Cardaria pubescens</i>	hairy whitetop	Limited	C	B	C	2.5	Grasslands and meadows. Impacts unknown but may be significant in meadows of Cascade Range.	GV, SW
<i>Carduus acanthoides</i>	plumeless thistle	Limited	B	C	C	3.0	Valley and foothill grasslands. Limited distribution in CA, impacts higher locally.	NW, SN, CW
<i>Carduus nutans</i>	musk thistle	Moderate	B	B	B	3.1	Grasslands. More invasive in other western states. Limited distribution in CA.	NW, CaR, SN
<i>Carduus pycnocephalus</i>	Italian thistle	Moderate	B	B	A	2.9	Forest, scrub, grasslands, woodland. Very widespread. Impacts may be variable regionally.	NW, SN, CW, SW
<i>Carduus tenuiflorus</i>	slenderflower thistle	Limited	C	C	B	2.8	Valley and foothill grasslands. Limited distribution. Impacts appear to be minor.	NW, SN, CW, SW
<i>Carpobrotus chilensis</i> (and <i>C. edulis</i> x <i>chilensis</i> hybrids)	sea-fig, iceplant	Moderate	B	B	A	1.8	Coastal dunes, scrub, prairie. Little information on species, most inferred from <i>C. edulis</i> .	NW, CW, SW
<i>Carpobrotus edulis</i>	Hottentot-fig, iceplant	High	A	B	A	3.3	Coastal habitats, especially dunes	NW, CW, SW
◆ <i>Carthamus lanatus</i>	woolly distaff thistle	Moderate	A	B	C	2.8	Grasslands. Expanding in coast ranges, may become more severe. Current distribution limited.	NW, SN, CW

Scientific names based on *The Jepson Manual*. For each species, the first common name is based on the Weed Science Society of America's "Composite List of Weeds" ([www.wssa.net](http://www.wssa.net)), followed by other names used in California. Scores: A = Severe, B = Moderate, C = Limited, D = None, U = Unknown. Documentation level averaged. Regions invaded based on Jepson geographic regions. Plant assessment forms, literature citations, and full rating criteria available at [www.cal-ipc.org](http://www.cal-ipc.org).

**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California** (continued)

Alert	Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
	<i>Centaurea calcitrapa</i>	purple starthistle	Moderate	B	B	B	2.7	Grasslands. Impacts regionally variable. Relatively limited distribution.	NW, SN, GV, CW, SW
◆	<i>Centaurea debeauxii</i> (= <i>C. jacea</i> x <i>C. nigra</i> , <i>C. x pratensis</i> )	meadow knapweed	Moderate	B	B	C	2.7	Grasslands. Spreading rapidly in NW CA, but limited distribution elsewhere. Little known of impacts.	NW, CW
	<i>Centaurea diffusa</i>	diffuse knapweed	Moderate	B	B	B	3.3	Great Basin scrub, coastal prairie. Severe impacts in other western states. Limited distribution in CA with impacts higher in some locations.	Ca-R, CW, NW, SN
	<i>Centaurea maculosa</i> (= <i>C. biebersteinii</i> )	spotted knapweed	High	A	B	B	3.4	Riparian, grasslands, wet meadows, forests. More widely distributed in other western states.	CA-FP, GB
	<i>Centaurea melitensis</i>	Malta starthistle, tocalote	Moderate	B	B	B	2.6	Grasslands, oak woodland. Sometimes misidentified as <i>C. solstitialis</i> . Impacts vary regionally.	CW, SW, D
	<i>Centaurea solstitialis</i>	yellow starthistle	High	A	B	A	3.0	Grasslands, woodlands, occasionally riparian	CA-FP
	<i>Centaurea virgata</i> var. <i>squarrosa</i> (= <i>C. squarrosa</i> )	squarrose knapweed	Moderate	B	B	B	2.8	Scrub, grassland, pinyon-juniper woodland. Highly invasive in Utah and other western states. Limited distribution in CA.	NW, CaR, MP
	<i>Chondrilla juncea</i>	rush skeletonweed	Moderate	B	B	B	3.1	Grasslands. Very invasive in other western states, but currently limited distribution in CA.	NW, CaR, SN, GV, CW,
	<i>Chrysanthemum coronarium</i>	crown daisy	Moderate	B	B	B	2.0	Coastal prairie, dunes, and scrub. Impacts generally low to moderate, but can vary regionally.	CW, SW
	<i>Cirsium arvense</i>	Canada thistle	Moderate	B	B	B	2.8	Grasslands, riparian areas, forests. Severe impacts in other western states. Limited distribution in CA.	CA-FP, DMoj
	<i>Cirsium vulgare</i>	bull thistle	Moderate	B	B	B	3.3	Riparian areas, marshes, meadows. Widespread, can be very problematic regionally.	CA-FP, GB
	<i>Conicosia pugioniformis</i>	narrow/leaf iceplant	Limited	C	B	C	2.1	Coastal dunes, scrub, grassland. Limited distribution. Impacts generally minor but can be higher locally.	CW
	<i>Conium maculatum</i>	poison-hemlock	Moderate	B	B	B	2.8	Riparian woodland, grassland. Widespread in disturbed areas. Abiotic impacts unknown. Impacts can vary locally.	CA-FP

Scientific names based on *The Jepson Manual*. For each species, the first common name is based on the Weed Science Society of America's "Composite List of Weeds" ([www.wssa.net](http://www.wssa.net)), followed by other names used in California. Scores: A = Severe, B = Moderate, C = Limited, D = None, U = Unknown. Documentation level averaged. Regions invaded based on Jepson geographic regions. Plant assessment forms, literature citations, and full rating criteria available at [www.cal-ipc.org](http://www.cal-ipc.org).

**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California** (continued)

Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
<i>Cordyline australis</i>	giant dracaena, New Zealand-cabbage tree	Limited	C	C	C	2.0	Coniferous forest. Two reports of horticultural escape into wildlands. Appears best suited to moist, cool climates.	NW, CW
<i>Cortaderia jubata</i>	jubatagrass	High	A	A	A	3.1	Many coastal and interior habitats	NW, CW, SW
<i>Cortaderia seloana</i>	pampasgrass	High	A	A	B	3.2	Coastal dunes, coastal scrub, Monterey pine, riparian, grasslands, wetlands, serpentine soils. Still spreading both coastal and inland.	CW, SW
<i>Cotoneaster franchetii</i>	orange cotoneaster	Moderate	B	A	B	2.6	Coniferous forest. Limited distribution. Abiotic impacts largely unknown.	NW, CW
<i>Cotoneaster lacteus</i>	Parney's cotoneaster	Moderate	B	B	B	2.1	Many coastal habitats, mainly a problem from SF Bay Area north along coast. Limited distribution. Abiotic impacts largely unknown.	NW, CW
<i>Cotoneaster pannosus</i>	silverleaf cotoneaster	Moderate	B	A	B	2.5	Many coastal habitats, mainly a problem from SF Bay Area north along coast. Limited distribution. Abiotic impacts largely unknown.	NW, CW
<i>Cotula coronopifolia</i>	brassbuttons	Limited	C	C	B	2.2	Salt and freshwater marshes. Impacts largely unknown, but appear to be minor.	NW, CW, SW
<i>Crataegus monogyna</i>	English hawthorn	Limited	C	B	C	3.4	Riparian habitats, woodland. Limited distribution. Impacts appear to be minor.	NW, CW, SW
<i>Crocsmia x crocosmiflora</i>	montbretia	Limited	C	B	B	2.6	Coastal scrub and prairie, north coast forests. Abiotic impacts unknown. Higher invasiveness in some areas.	NW, CW
<i>Crupina vulgaris</i>	common crupina, bearded creeper	Limited	B	C	B	3.2	Forest, woodland, grassland. Limited distribution. More invasive in other western states.	NW, MP
<i>Cynara cardunculus</i>	artichoke thistle	Moderate	B	B	B	4.0	Coastal grasslands. Impacts more severe in southern CA where monotypic stands are more common.	CW, SW
<i>Cynodon dactylon</i>	bermudagrass	Moderate	B	B	B	3.3	Riparian scrub in southern CA. Common landscape weed, but can be very invasive in desert washes.	SW, DSon
<i>Cynoglossum officinale</i>	houndstongue	Moderate	B	B	B	2.5	Woodland, forest, interior dunes. Abiotic impacts unknown. Limited distribution. Can have impacts in other western states.	CaR, SN

Scientific names based on *The Jepson Manual*. For each species, the first common name is based on the Weed Science Society of America's "Composite List of Weeds" (www.wssa.net), followed by other names used in California. Scores: A = Severe, B = Moderate, C = Limited, D = None, U = Unknown. Documentation level averaged. Regions invaded based on Jepson geographic regions. Plant assessment forms, literature citations, and full rating criteria available at www.cal-ipc.org.

**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California** (continued)

Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
<i>Cynosuroides echinatus</i>	hedgelog dogtailgrass	Moderate	B	B	A	2.5	Oak woodland, grassland. Widespread, impacts vary regionally, but typically not in monotypic stands.	NW, SN, GV, CW, SW
<i>Cytisus scoparius</i>	Scotch broom	High	A	B	A	3.2	Coastal scrub, oak woodland, horticultural varieties may also be invasive.	CA-FP
<i>Cytisus striatus</i>	Portuguese broom	Moderate	B	B	B	2.7	Coastal scrub, grasslands. Often confused with <i>C. scoparius</i> . Limited distribution.	NW, CW, SW
<i>Dactylis glomerata</i>	orchardgrass	Limited	C	B	B	2.9	Grasslands, broadleaved forest, woodlands. Common forage species. Impacts appear to be minor.	CA-FP
<i>Delairea odorata</i> (= <i>Senecio mikanioides</i> )	Cape-ivy, German-ivy	High	A	A	B	3.1	Coastal, occasionally other riparian areas.	CW, SW
<i>Descurainia sophia</i>	flixweed, tansy mustard	Limited	C	B	B	1.9	Scrub, grassland, woodland. Impacts appear to be minor, but locally more invasive in NE CA.	CA
<i>Digitalis purpurea</i>	foxglove	Limited	C	B	B	2.4	Forest, woodland. Widely escaped ornamental. Impacts largely unknown or appear to be minor.	NW, SN, CW
<i>Dipsacus fullonum</i>	common teasel	Moderate	B	B	B	3.8	Grasslands, seep, riparian scrub. Impacts regionally variable, forms dense stands on occasion.	NW, CW, SN
<i>Dipsacus sativus</i>	fuller's teasel	Moderate	B	B	B	3.8	Grasslands, seep, bogs. Impacts regionally variable, forms dense stands on occasion.	NW, CW, SW
◆ <i>Dittrichia graveolens</i>	stinkwort	Moderate	B	A	C	3.0	Grasslands, riparian scrub. Spreading rapidly, impacts may become more important in future.	NW, SN, CW, GV, SW
<i>Echium candicans</i>	pride-of-Madeira	Limited	C	B	B	1.5	Two escaped populations near Big Sur and San Elijo Lagoon. Little information on impacts.	CW, NW, SW
<i>Egeria densa</i>	Brazilian egeria	High	A	A	B	3.1	Streams, ponds, sloughs, lakes, Sacramento-San Joaquin Delta	SN, GV, SW
<i>Ehrlharta calycina</i>	purple veldtgrass	High	A	A	B	3.4	Sandy soils, especially dunes. Rapidly spreading on central coast.	CW, SW
<i>Ehrlharta erecta</i>	erect veldtgrass	Moderate	B	B	B	2.2	Scrub, grasslands, woodland, forest. Spreading rapidly. Impacts may become more important in future.	CW, SW

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**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California** (continued)

Alert	Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
◆	<i>Ehretia longiflora</i>	long-flowered veldtgrass	Moderate	B	B	C	2.8	Coastal scrub. Limited distribution, but spreading rapidly in southern CA. Impacts largely unknown.	SW
◆	<i>Eichhornia crassipes</i>	water hyacinth	High	A	A	C	3.2	Aquatic systems in Sacramento-San Joaquin Delta	GV, CW, SW
	<i>Elaeagnus angustifolia</i>	Russian-olive	Moderate	B	A	B	3.3	Interior riparian. Impacts more severe in other western states. Current distribution limited in CA.	GV, CW, DMoj
◆	<i>Emex spinosa</i>	spiny emex, devil's-thorn	Moderate	B	B	D	1.6	Edges of beaches, other coastal habitats. Invasive in other states and countries. Spreading rapidly in southern CA. Impacts not well known.	SW
	<i>Erechtites glomerata</i> , <i>E. minima</i>	Australian fireweed, Australian burnweed	Moderate	C	B	A	3.2	Coastal woodland, scrub, forests. Widespread on coast, but impacts low overall. May vary locally.	NW, CW
	<i>Erodium cicutarium</i>	redstem filaree	Limited	C	C	A	3.1	Many habitats. Widespread. Impacts minor in wildlands. High-density populations are transient.	CA
	<i>Eucalyptus camaldulensis</i>	red gum	Limited	C	C	C	2.2	Mainly southern CA urban areas. Impacts, invasiveness and distribution all minor.	NW, GV, CW, SW
	<i>Eucalyptus globulus</i>	Tasmanian blue gum	Moderate	B	B	B	2.8	Riparian areas, coastal grasslands, scrub. Impacts can be much higher in coastal areas.	NW, GV, CW, SW
◆	<i>Euphorbia esula</i>	leafy spurge	High	A	A	C	3.5	Forests, woodlands, juniper forest. More widespread invasive in northern states.	NW, CaR, MP
	<i>Euphorbia oblongata</i>	oblong spurge	Limited	C	C	B	2.0	Meadows, woodlands. Limited distribution. Impacts unknown. Locally in dense stands.	GV, CW
◆	<i>Euphorbia terracina</i>	carnation spurge	Moderate	B	B	C	1.7	Coastal scrub. Limited distribution. Spreading in southern CA. Impacts unknown.	SW
	<i>Festuca arundinacea</i>	tall fescue	Moderate	B	B	A	2.9	Coastal scrub, grasslands; common forage grass. Widespread, abiotic impacts unknown.	CA-FP
	<i>Ficus carica</i>	edible fig	Moderate	B	A	B	2.6	Riparian woodland. Can spread rapidly. Abiotic impacts unknown. Can be locally very problematic.	CW, SW, GV
	<i>Foeniculum vulgare</i>	fennel	High	A	B	A	3.0	Grasslands, scrub.	CA-FP

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Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
<i>Genista monspessulana</i>	French broom	High	A	A	B	3.2	Coastal scrub, oak woodland, grasslands. Horticultural selections may also be invasive.	NW, CW, SW
<i>Geranium dissectum</i>	cutleaf geranium	Limited	C	B	A	1.7	Numerous habitats but impacts appear minor.	CA-FP
<i>Glyceria declinata</i>	waxy manna grass	Moderate	B	B	B	1.9	Vernal pools, moist grasslands. Often confused with native <i>Glyceria</i> . Impacts largely unknown, but may be significant in vernal pools.	GV
<i>Halogeton glomeratus</i>	halogeton	Moderate	B	A	B	3.0	Scrub, grasslands, pinyon-juniper woodland. Larger problem in NV. Monotypic stands are rare.	CaR, DMoj, GB
<i>Hedera helix</i> , <i>H. canariensis</i>	English ivy, Algerian ivy	High	A	A	A	2.7	Coastal forests, riparian areas. Species combined due to genetics questions.	CA-FP
<i>Helichrysum petiolare</i>	licorice plant	Limited	C	B	C	2.0	North coastal scrub. Limited distribution. Impacts unknown, but can form dense stands.	NW, CW
<i>Hirschfeldia incana</i>	shortpod mustard, summer mustard	Moderate	B	B	A	1.9	Scrub, grasslands, riparian areas. Impacts not well understood, but appear to be greater in southern CA.	CW, GV, NW, SN, SW
<i>Holcus lanatus</i>	common velvet-grass	Moderate	B	B	A	2.9	Coastal grasslands, wetlands. Impacts can be more severe locally, especially in wetland areas.	CA-FP, DMoj, GB
<i>Hordeum marinum</i> , <i>H. murinum</i>	Mediterranean barley, hare barley, wall barley	Moderate	B	B	A	2.8	Grasslands. <i>H. marinum</i> invades drier habitats, while <i>H. murinum</i> invades wetlands. Widespread, but generally do not form dominant stands.	CA
◆ <i>Hydrilla verticillata</i>	hydrilla	High	A	B	C	3.2	Freshwater aquatic systems. The most important submerged aquatic invasive in southern states.	NW, SN, GV, SW, D
◆ <i>Hypericum canariense</i>	Canary Island hypericum	Moderate	B	B	C	1.2	Coastal scrub, prairie. Impacts unknown. Limited distribution. Spreading rapidly on central coast.	SW, CW
<i>Hypericum perforatum</i>	common St. Johnswort, klamathweed	Moderate	B	B	B	3.7	Many northern CA habitats. Abiotic impacts low. Biological control agents have reduced overall impact.	SN, CW, GV, NW, SW
<i>Hypochaeris glabra</i>	smooth catsear	Limited	C	B	B	3.1	Scrub and woodlands. Widespread. Impacts appear to be minor. Some local variability.	CA-FP
<i>Hypochaeris radicata</i>	rough catsear, hairy dandelion	Moderate	C	B	A	2.2	Coastal dunes, scrub, and prairie, woodland, forest. Widespread. Impacts unknown or appear to be minor.	CA-FP

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Alert	Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
◆	<i>Ilex aquifolium</i>	English holly	Moderate	B	B	C	2.7	North coast forests. Expanding range south from Oregon.	CW, NW
	<i>Iris pseudacorus</i>	yellowflag iris	Limited	C	B	C	2.3	Riparian, wetland areas, especially southern CA. Limited distribution. Abiotic impacts unknown.	SN, GV, CW, SW
	<i>Isatis tinctoria</i>	dyer's woad	Moderate	B	B	A	3.0	Great Basin scrub and grasslands, coniferous forest. More severe impacts in other western states, but can be locally very invasive in northern CA.	CaR, NW, SN, MP
	<i>Kochia scoparia</i>	kochia	Limited	B	C	B	3.2	Scrub, chaparral, grasslands. Primarily a weed of disturbed sites.	CW, GV, D, GB
	<i>Lepidium latifolium</i>	perennial pepperweed, tall whitetop	High	A	A	A	3.1	Coastal and inland marshes, riparian areas, wetlands, grasslands. Has potential to invade montane wetlands.	CA-FP, GB
	<i>Leucanthemum vulgare</i>	oxeye daisy	Moderate	B	B	B	2.5	Montane meadows, coastal grasslands, coastal scrub. Expanding range, invasiveness varies locally.	CW, NW, SN, SW
	<i>Linaria genisifolia</i> ssp. <i>dalmatica</i> (= <i>L. dalmatica</i> )	Dalmatian toadflax	Moderate	B	B	B	2.8	Grasslands, forest clearings. Limited distribution. More severe impacts in other western states.	CA-FP
	<i>Lobularia maritima</i>	sweet alyssum	Limited	C	B	B	2.4	Coastal dune, coastal scrub, coastal prairie, riparian.	NW, CW, SW
	<i>Lolium multiflorum</i>	Italian ryegrass	Moderate	B	B	A	2.6	Grasslands, oak woodland, pinyon-juniper woodland; widely used for post-fire erosion control. Widespread. Impacts can vary with region.	CA-FP
	<i>Ludwigia peploides</i> ssp. <i>montevidensis</i>	creeping water-primrose	High	A	B	B	2.5	Freshwater aquatic systems. Clarification needed on taxonomic identification.	NW, SN, GV, CW, SW, DMoj
◆	<i>Ludwigia hexapetala</i> (= <i>L. uruguayensis</i> )	Uruguay water-primrose	High	A	B	C	2.6	Freshwater aquatic systems. Clarification needed on taxonomic identification.	NW, CW, SW
	<i>Lythrum hyssopifolium</i>	hyssop loosestrife	Limited	C	B	B	3.0	Grasslands, wetlands, vernal pools. Widespread. Impacts unknown, but appear to be minor.	CA-FP
	<i>Lythrum salicaria</i>	purple loosestrife	High	A	A	B	3.8	Wetlands, marshes, riparian areas	NW, GV, MP
	<i>Marrubium vulgare</i>	white horehound	Limited	C	C	B	2.8	Grasslands scrub, riparian areas. Widespread. Rarely in dense stands. Impacts relatively minor.	CA-FP, DMoj

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**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California** (continued)

Alert	Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
	<i>Medicago polymorpha</i>	California burclover	Limited	C	C	A	2.8	Grasslands. Widespread weed of agriculture and disturbed areas. Impacts in wildlands minor.	CA-FP
	<i>Mentha pulegium</i>	pennyroyal	Moderate	C	A	A	2.7	Vernal pools, wetlands. Poisonous to livestock. Spreading rapidly. Impacts largely unknown.	CW, GV, NW, SW
◆	<i>Mesembryanthemum crystallinum</i>	crystalline iceplant	Moderate	B	B	C	3.7	Coastal bluffs, dunes, scrubs, grasslands. Limited distribution. Locally problematic, especially in southern CA.	CW, NW, SW
	<i>Myoporum laetum</i>	myoporum	Moderate	B	B	B	2.6	Coastal habitats, riparian areas. Mostly along the southern coast. Abiotic impacts unknown.	CW, SW
	<i>Myosotis latifolia</i>	common forget-me-not	Limited	C	B	B	2.2	Coniferous forest, riparian. Little information on impacts.	CA-FP
◆	<i>Myriophyllum aquaticum</i>	parrotfeather	High	A	B	C	2.8	Freshwater aquatic systems	NW, CaR, CW, SW
	<i>Myriophyllum spicatum</i>	Eurasian watermilfoil	High	A	A	B	2.8	Freshwater aquatic systems	SN, GV, CW
	<i>Nicotiana glauca</i>	tree tobacco	Moderate	B	B	B	2.5	Coastal scrub, grasslands, riparian woodland. Abiotic impacts unknown. Impacts vary locally. Rarely in dense stands.	NW, SN, GV, SW, D
	<i>Olea europaea</i>	olive	Limited	C	B	B	2.5	A problem in Australia. Rarely escapes in CA but is a concern due to the possibility of spread from planted groves.	CW, GV, NW, SW
	<i>Ononis alopecuroides</i>	foxtail restharrow	Limited	C	B	C	2.2	Grasslands, oak woodland. Highly invasive but impacts unknown. Nearly eradicated.	CW
	<i>Onopordum acanthium</i>	Scotch thistle	High	A	B	B	2.9	Wet meadows, sage brush, riparian areas	CA-FP, MP
	<i>Oxalis pes-caprae</i>	buttercup oxalis, Bermuda buttercup, yellow oxalis	Moderate	B	B	B	2.9	Coastal dunes, scrub, oak woodland. Impacts in coastal areas may prove more severe in time.	CW, NW, SW
	<i>Parentucellia viscosa</i>	yellow glandweed, sticky parentucellia	Limited	C	B	B	2.5	Coastal prairie, grassland, and dunes. Impacts unknown, but can be locally significant.	NW, CaR, SN, CW, SW
	<i>Pennisetum clandestinum</i>	kikuyugrass	Limited	C	C	B	2.3	Present at low levels in numerous wildland habitats. Impacts unknown. Common turf weed.	NW, CW, SW

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	<i>Pennisetum setaceum</i>	crimson fountaingrass	Moderate	B	B	B	2.9	Coastal dunes and scrub, chaparral, grasslands. Some horticultural cultivars sterile. Very invasive in Hawaii.	CW, NW, SN, SW
	<i>Phalaris aquatica</i>	hardinggrass	Moderate	B	B	B	2.6	Coastal sites, especially moist soils. Limited distribution. Can be highly invasive locally.	CW, NW, SN, SW
	<i>Phoenix canariensis</i>	Canary Island date palm	Limited	C	B	D	2.3	Desert washes; agricultural crop plant. Limited distribution in southern CA. Impacts can be higher locally.	CW, SW
	<i>Picris echioides</i>	bristly oxtongue	Limited	C	B	B	2.4	Coastal prairie, scrub, riparian woodland. Widespread locally. Abiotic impacts unknown.	CA-FP
	<i>Piptatherum miliaceum</i>	smilgrass	Limited	C	B	B	2.4	Coastal dunes, scrub, riparian, grassland. Expanding range. Impacts largely unknown.	GV, CW, SW
	<i>Plantago lanceolata</i>	buckhorn plantain, English plantain	Limited	C	C	B	2.1	Many habitats. Turf weed primarily. Low density and impact in wildlands.	CA-FP
	<i>Poa pratensis</i>	Kentucky bluegrass	Limited	C	B	B	2.7	Grasslands scrub, riparian areas. Widespread turf plant. Abiotic impacts unknown.	CA
◆	<i>Polygonum cuspidatum</i> (= <i>Fallopia japonica</i> )	Japanese knotweed	Moderate	B	B	D	2.7	Riparian areas, wetlands, forest edges. More severe impacts in NW wetlands. Distribution limited in CA.	NW, CaR, SN, GV, CW
◆	<i>Polygonum sachalinense</i>	Sakhalin knotweed	Moderate	B	A	D	2.5	Riparian areas. More severe impacts in NW wetlands. Distribution limited in CA.	NW, CaR, SN, GV, CW
	<i>Polygonum monspeliensis</i> and subsp.	rabbitfoot polygon, rabbitgoot grass	Limited	C	C	B	2.3	Margins of ponds and streams, seasonally wet places, edge of coastal dunes. Widespread. Impacts appear to be minor.	CA
	<i>Potamogeton crispus</i>	curlyleaf pondweed	Moderate	B	B	B	3.2	Freshwater aquatic systems. Can be very invasive locally.	NW, GV, CW, SW, DMoj
	<i>Prunus cerasifera</i>	cherry plum, wild plum	Limited	C	B	B	1.8	Riparian habitats, chaparral, woodland. Limited distribution. Abiotic impacts unknown.	NW, CW
	<i>Pyracantha angustifolia</i> , <i>P. crenulata</i> , <i>P. coccinea</i>	pyracantha, firethorn	Limited	C	B	B	2.8	Coastal scrub and prairie, riparian areas. Horticultural escape. Impacts unknown or minor.	NW, CW, SW
	<i>Ranunculus repens</i>	creeping buttercup	Limited	C	C	B	2.9	Riparian areas, coniferous forest. Impacts appear to be minor to negligible in most areas.	NW, CaR, SN, CW, SW
	<i>Raphanus sativus</i>	radish	Limited	C	C	B	2.5	Present at low levels in numerous habitats. Widespread in disturbed sites.	CA-FP

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◆	<i>Retama monosperma</i>	bridal broom	Moderate	B	B	C	1.8	Coastal scrub. Can spread rapidly but largely if uncontrolled. Limited distribution in CA.	SW
	<i>Ricinus communis</i>	castorbean	Limited	C	B	B	2.5	Coastal scrub and prairie, riparian areas. Widespread in southern CA. Impacts locally variable.	GV, CW, SW
	<i>Robinia pseudoacacia</i>	black locust	Limited	C	B	B	2.8	Riparian areas, canyons. Severe impacts in southern states. Impacts minor in CA.	CA-FP, GB
	<i>Rubus armeniacus</i> (= <i>R. discolor</i> )	Himalaya blackberry	High	A	A	A	3.0	Riparian areas, marshes, oak woodlands	CA-FP
	<i>Rumex acetosella</i>	red sorrel, sheep sorrel	Moderate	B	B	A	2.3	Many habitats, riparian areas, forest, wetlands. Widespread. Abiotic impacts unknown. Impacts can vary locally.	CA-FP
	<i>Rumex crispus</i>	curly dock	Limited	C	C	A	2.7	Grasslands, vernal pool, meadows, riparian. Widespread. Impacts appear to be minor.	CA
	<i>Salsola paulsenii</i>	barbwire Russian-thistle	Limited	C	C	C	2.9	Desert and Great Basin scrub. Limited distribution. Impacts in desert appear to be minor.	SW, SNE, DMoj
	<i>Salsola tragus</i> (= <i>S. kali</i> )	Russian-thistle	Limited	C	B	B	2.8	Desert dunes and scrub, alkali playa. Widespread. Impacts minor in wildlands.	CA
	<i>Salvia aethiopsis</i>	Mediterranean sage	Limited	C	B	B	2.5	Sagebrush, juniper, bunchgrass. Limited distribution. Impacts minor but can be locally higher.	MP
◆	<i>Salvinia molesta</i>	giant salvinia	High	A	A	C	2.9	Freshwater aquatic systems	CW, DSon
◆	<i>Sapium sebiferum</i> (= <i>Triadica sebifera</i> )	Chinese tallowtree	Moderate	B	B	C	3.2	Riparian areas. Impacts severe in southeast US. Limited distribution, but spreading rapidly regionally.	GV
	<i>Saponaria officinalis</i>	bouncingbet	Limited	C	B	C	2.5	Riparian scrub and woodland. Impacts unknown or minor, but appear to be locally variable.	NW, GV, CW, SW, GB
	<i>Schinus molle</i>	Peruvian peppertree	Limited	C	B	B	2.5	Riparian. Limited distribution. Impacts largely unknown in CA.	GV, SN, CW, SW
	<i>Schinus terebinthifolius</i>	Brazilian peppertree	Limited	C	B	C	2.6	Riparian. Very invasive in tropics. Abiotic impacts unknown, but appear significant locally.	SW

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	<i>Selismus arabicus</i> , <i>S. barbatus</i>	mediterranean-grass	Limited	B C	A	2.3	Scrub, thorn woodland. Widespread in deserts. Impacts can be more important locally.	GV, CW, SW, D	
	<i>Senecio jacobaea</i>	tansy ragwort	Limited	C B	B	2.8	Grasslands, riparian. Impacts generally minor. Can be locally important in NW CA.	CA-FP	
◆	<i>Sesbania punicea</i>	red sesbania, scarlet wisteria	High	A B C	C	3.2	Riparian areas	GV	
	<i>Silybum marianum</i>	blessed milkthistle	Limited	C C	A	3.5	Grasslands, riparian. Widespread, primarily in disturbed areas. Impacts can be higher locally	NW, GV, CW, SW	
	<i>Sinapis arvensis</i>	wild mustard, charlock	Limited	C C	C	2.9	Grasslands. Primarily in disturbed sites. Impacts minor or unknown in wildlands.	CA-FP	
	<i>Sisymbrium irio</i>	London rocket	Moderate	B B	A	1.9	Scrub, grasslands. Widespread. Primarily in disturbed sites. Impacts vary locally.	GV, SW	
◆	<i>Spartina alterniflora</i> (and <i>S. alterniflora</i> x <i>foliosa</i> hybrids)	smooth cordgrass & hybrids, Atlantic cordgrass	High	A A	C	3.5	San Francisco Bay salt marshes and mudflats. Hybridizes with native <i>S. foliosa</i> .	CW	
◆	<i>Spartina anglica</i>	common cordgrass	Moderate	B B	D	3.4	San Francisco Bay salt marshes. Very severe impact in other countries. Limited distribution in CA.	CW	
◆	<i>Spartina densiflora</i>	dense-flowered cordgrass	High	A B	C	3.3	San Francisco and Humboldt Bay salt marshes	NW, CW	
	<i>Spartina patens</i>	saltmeadow cordgrass	Limited	C C	D	2.9	San Francisco Bay salt marshes. Very limited distribution. Impacts currently minor in CA, but high in other countries.	CW	
	<i>Spartium junceum</i>	Spanish broom	High	A B	B	3.2	Coastal scrub, grasslands, wetlands, oak woodland, forests	NW, CW, SW	
◆	<i>Stipa capensis</i>	Mediterranean steppegrass, twisted-awned speargrass	Moderate	B B	D	1.9	Desert scrub. First recorded in CA 1995. Limited distribution, but spreading rapidly in CA deserts.	Dson	
	<i>Taenatherum caput-medusae</i>	medusahead	High	A A	A	3.4	Grasslands, scrub, woodland	CaR, NW, SN, GV, SW	

Scientific names based on *The Jepson Manual*. For each species, the first common name is based on the Weed Science Society of America's "Composite List of Weeds" ([www.wssa.net](http://www.wssa.net)), followed by other names used in California. Scores: A = Severe, B = Moderate, C = Limited, D = None, U = Unknown. Documentation level averaged. Regions invaded based on Jepson geographic regions. Plant assessment forms, literature citations, and full rating criteria available at [www.cal-ipc.org](http://www.cal-ipc.org).

**TABLE 1: Invasive Non-Native Plants that Threaten Wildlands in California** (continued)

Scientific Name	Common Name	Rating	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Regions Invaded
<i>Tamarix aphylla</i>	athel tamarisk	Limited	C	B	B	3.5	Desert washes, riparian areas. Limited distribution. Impacts minor, but can be locally higher.	GV, SW, D
<i>Tamarix parviflora</i>	smallflower tamarisk	High	A	A	B	3.1	Riparian areas, desert washes, coastal scrub	NW, GV, CW, Dmoj
<i>Tamarix ramosissima</i>	saltcedar, tamarisk	High	A	A	A	3.3	Desert washes, riparian areas, seeps and springs	SN, GV, CW, SW, D, SNE
<i>Tanacetum vulgare</i>	common tansy	Moderate	B	B	B	2.3	Riparian areas, forest. Limited distribution. Severe problem in other western states.	NW, CaR,
<i>Torilis arvensis</i>	hedgearsley	Moderate	C	B	A	2.3	Expanding range. Appears to have only moderate ecological impacts.	CA-FP, especially CW, NW
<i>Trifolium hirtum</i>	rose clover	Moderate	C	B	B	2.8	Grasslands, oak woodland. Widely planted in CA. Impacts relatively minor in most areas.	CA-FP
<i>Ulex europaeus</i>	gorse	High	A	B	B	2.9	Scrub, woodland, forest, coastal grassland	NW, CaR, SN, CW
<i>Undaria pinnatifida</i>	wakame	Limited	C	B	C	3.3	Algae of estuaries. First recorded in CA in 2000. Impacts unknown, but do not appear to be significant	CW, SW
<i>Verbascum thapsus</i>	common mullein, woolly mullein	Limited	C	B	B	3.8	Meadows, riparian, sagebrush, pinyon-juniper woodlands. Widespread. Impacts minor.	NW, CaR, SN
<i>Vinca major</i>	big periwinkle	Moderate	B	B	B	2.8	Riparian, oak woodlands, coastal scrub. Distribution currently limited but spreading in riparian areas. Impacts can be higher locally.	CaR, SW, SN, GV
<i>Vulpia myuros</i>	rattail fescue	Moderate	B	B	A	3.0	Coastal sage scrub, chaparral. Widespread. Rarely forms monotypic stands, but locally problematic.	CA-FP, D
◆ <i>Washingtonia robusta</i>	Mexican fan palm	Moderate	B	B	C	2.7	Desert washes. Limited distribution but spreading in southern CA. Impacts can be higher locally.	SW
<i>Watsonia meriana</i>	bulbil watsonia	Limited	C	B	C	2.3	Coastal prairie, coniferous forest. Abiotic impacts unknown, but may be locally dense.	NW
<i>Zantedeschia aethiopica</i>	calla lily	Limited	C	B	C	2.1	Coastal prairie, wetlands. Impacts high in other countries and local impacts may be high in CA.	NW, CW, SW

Scientific names based on *The Jepson Manual*. For each species, the first common name is based on the Weed Science Society of America's "Composite List of Weeds" ([www.wssa.net](http://www.wssa.net)), followed by other names used in California. Scores: A = Severe, B = Moderate, C = Limited, D = None, U = Unknown. Documentation level averaged. Regions invaded based on Jepson geographic regions. Plant assessment forms, literature citations, and full rating criteria available at [www.cal-ipc.org](http://www.cal-ipc.org).

Click on "Bookmarks" for a Table of Contents of all Documents included.

## TABLE 2: Species Native to Part of California, but Invasive in Other Parts of the State

A few native species have become invasive in regions outside their natural range. This table lists those species that cause negative impacts in their introduced range. No overall rating is provided, since impacts are not statewide, but the section scores for each of the three plants assessed would result in Moderate ratings for the areas in which they are invasive.

Scientific Name	Common Name	Impacts	Invasiveness	Distribution	Doc. Level	Ecological Types Invaded and Other Comments	Native Range	Invasive Range
<i>Cupressus macrocarpa</i>	Monterey cypress	B	B	B	2.3	Native to Monterey area. Invades coastal prairie, desert scrub, riparian areas.	CW	NW
<i>Lupinus arboreus</i>	yellow bush lupine	B	B	B	3.5	Native south of Point Reyes. Invasive in north coast dunes.	SW, CW Bay Area	NW
<i>Phragmites australis</i>	common reed	Unable to score.				Genetic issues make it unclear which strains are native to CA.	Uncertain	
<i>Pinus radiata</i> cultivars	Monterey pine	B	B	B	2.6	Five populations native to CA. Invades coastal scrub, prairie, and chaparral.	CW	NW

Scientific names based on *The Jepson Manual*. For each species, the first common name is based on the Weed Science Society of America's "Composite List of Weeds" ([www.wssa.net](http://www.wssa.net)), followed by other names used in California. Scores: A = Severe, B = Moderate, C = Limited, D = None, U = Unknown. Documentation level averaged. Regions invaded based on Jepson geographic regions. Plant assessment forms, literature citations, and full rating criteria available at [www.cal-ipc.org](http://www.cal-ipc.org).

**TABLE 3: Species Evaluated But Not Listed**

In general, this designation is for species for which information is currently inadequate to respond with certainty to the minimum number of criteria questions (i.e., too many “U” responses), or for which the sum effects of Ecological Impacts, Invasive Potential, and Ecological Amplitude and Distribution fall below the threshold for ranking (i.e. the overall score falls below Limited). Many such species are widespread but are not known to have substantial ecological impacts (though such evidence may appear in the future). All species receiving a D score for Ecological Impacts, regardless of other section scores, are by default placed into this category.

Scientific Name	Common Name	Impacts	Invasiveness	Distribution	Doc. Level	Comments
<i>Acacia paradoxa</i>	kangaroothorn	D	C	C	2.5	Does not spread in wildlands.
<i>Aeschynomene rudis</i>	rough jointvetch	D	C	D	3.2	Serious agricultural weed, but not known to have impacts in wildlands.
<i>Aira caryophylla</i>	silver hairgrass	D	C	A	2.6	Widespread in grasslands, but impacts appear negligible.
<i>Aira praecox</i>	European hairgrass	D	C	C	2.8	Appears to be spreading locally, but impacts unknown.
<i>Albizia lophantha</i>	plume acacia	U	B	C	1.5	Present in Golden Gate National Recreation Area. Need more information
<i>Allium triquetrum</i>	three-cornered leak	U	C	C	1.6	Impacts unknown.
<i>Anthemis cotula</i>	mayweed chamomile, dog fennel	D	B	B	2.4	Abiotic and wildlife impacts unknown
<i>Bellis perennis</i>	English daisy	D	C	C	2.8	Present along trails, not known to spread into undisturbed areas.
<i>Berberis darwinii</i>	Darwin barberry	U	B	D	2.1	Impacts unknown.
<i>Buddleja davidii</i>	butterflybush	D	B	D	2.5	Not known to be invasive in CA, although it is a problem in Oregon.
<i>Cestrum parqui</i>	willow jessamine	U	B	C	2.0	Impacts unknown.
<i>Chorispora tenella</i>	blue mustard	U	C	C	1.5	Impacts unknown.
<i>Cistus ladanifer</i>	gum rockrose	D	C	C	3.3	Negligible known impacts in wildlands.
<i>Convolvulus arvensis</i>	field bindweed	D	B	B	3.5	Only known as agricultural weed.
<i>Daucus carota</i>	wild carrot, Queen Anne's lace	D	C	B	2.7	Very widespread, but primarily in disturbed sites, particularly roadsides.
<i>Dimorphotheca sinuata</i>	African daisy	D	C	B	1.8	Impacts to abiotic processes and plant communities unknown.
<i>Erigeron karvinskianus</i>	Mexican daisy	U	B	C	1.9	Impacts unknown, but appears to be expanding. May become more problematic in future.
<i>Erodium botrys</i>	broadleaf filaree	D	C	A	2.8	Present in wildlands but known impacts are negligible. Often transient.
<i>Erodium brachycarpum</i>	short-fruited filaree	D	C	A	2.6	Present in wildlands but known impacts are negligible. Often transient.
<i>Erodium moschatum</i>	whitestem filaree	D	C	A	2.7	Primarily an agricultural weed, little impact in wildlands.
<i>Euphorbia lathyris</i>	caper spurge	D	C	B	2.2	Abiotic impacts unknown.
<i>Fumaria officinalis</i>	fumitory	D	C	D	2.3	Abiotic impacts unknown.
<i>Geranium molle</i>	dovefoot geranium	D	B	A	1.7	Present in wildlands, but known impacts are negligible.

**TABLE 3: Species Evaluated But Not Listed** (continued)

Scientific Name	Common Name	Impacts	Invasiveness	Distribution	Doc. Level	Comments
<i>Geranium retrorsum</i>	New Zealand geranium	D	B	B	1.9	Present in wildlands, but known impacts are negligible.
<i>Geranium robertianum</i>	herb-robert, Robert geranium	D	B	C	2.8	Present in wildlands, but known impacts are negligible.
<i>Gleditsia triacanthos</i>	honey locust	D	B	C	3.3	Very limited distribution.
<i>Lactuca serriola</i>	prickly lettuce	D	C	B	3.1	Primarily an agricultural and roadside weed.
<i>Leptospermum laevigatum</i>	Australian tea tree	D	C	D	2.2	Very limited distribution.
<i>Ligustrum lucidum</i>	glossy privet	D	B	C	3.1	May prove problematic in riparian areas.
<i>Lotus corniculatus</i>	birdsfoot trefoil	D	B	B	2.8	Primarily a turf or agricultural weed in CA.
<i>Malephora crocea</i>	coppery mesembryanthemum	D	C	C	2.0	A problem on southern CA islands, but statewide impacts are limited.
<i>Maytenus boaria</i>	mayten	D	C	D	2.4	Infestation on Angel Island, San Francisco Bay.
<i>Melilotus officinalis</i>	yellow sweetclover	D	C	C	3.3	Present in human-disturbed habitats only.
<i>Nerium oleander</i>	oleander	D	B	D	2.6	Not known to be invasive, although reported from riparian areas in Central Valley and San Bernardino Mtns.
<i>Nothoscordum gracile</i>	false garlic	D	B	D	2.1	Mainly an urban garden weed.
<i>Nymphaea odorata</i>	fragrant waterlily	D	B	C	2.3	Present only at one site.
<i>Oxalis corniculata</i>	creeping woodsorrel	D	C	C	2.2	Primarily a turf weed in CA.
<i>Parkinsonia aculeata</i>	Mexican palo-verde	D	B	D	2.2	Has not escaped into wildlands enough to cause impacts.
<i>Pistachia chinensis</i>	Chinese pistache	U	C	D	0.9	Impacts unknown.
<i>Pittosporum undulatum</i>	Victorian box	D	C	D	2.7	Infestations in CA are small. More problematic on north coast.
<i>Plantago coronopus</i>	cutleaf plantain	U	C	B	1.7	Impacts unknown. Common on north coast.
<i>Solanum elaeagnifolium</i>	silverleaf nightshade	D	B	B	2.8	Primarily an agricultural weed, but escaping to wildlands in other countries. May prove to be more important in future.
<i>Sonchus asper</i>	spiny sowthistle	D	B	B	3.1	Primarily an agricultural weed.
<i>Taraxacum officinale</i>	common dandelion	D	B	B	2.8	Primarily a turf weed in CA.
<i>Tragopogon dubius</i>	yellow salsify	D	C	B	3.2	Generally a minor component of disturbed areas.
<i>Tropaeolum majus</i>	garden nasturtium	D	C	C	1.4	Impacts on abiotic processes and native plants unknown.
<i>Ulmus pumila</i>	Siberian elm	D	B	B	2.5	Impacts unknown.
<i>Verbena bonariensis</i> , <i>V. litoralis</i>	tall vervain, seashore vervain	D	B	C	2.1	Often in disturbed areas of irrigation canals.
<i>Vicia villosa</i>	hairy vetch	D	C	B	2.8	Primarily an agricultural weed. Widespread but impacts minor in wildlands.
<i>Vulpia bromoides</i>	squirreltail fescue	D	C	B	2.9	Less common than <i>V. myuros</i> .

## TABLE 4: Species Nominated but Not Reviewed

The following species were nominated for review, but not evaluated because either they are not known to escape into wildlands or we lacked sufficient information to complete an assessment.

Scientific Name	Common Name	Comments
<i>Aptenia cordifolia</i>	baby sun rose, heartleaf iceplant	Occasional ornamental escape.
<i>Araujia sericifera</i>	bladderflower	Need more information.
<i>Brassica oleracea</i>	cabbage	Disturbed areas along north and central coast.
<i>Catalpa bignonioides</i>	southern catalpa	Reported from Sacramento/San Joaquin Valley riparian corridors. Need more information.
<i>Chrysanthemum segetum</i>	corn daisy	Disturbed areas only.
<i>Coprosma repens</i>	creeping mirrorplant	1999 Cal-EPPC list indicated no evidence of wildland threat.
<i>Crepis capillaris</i>	smooth hawkbeard	Primarily in pastures and roadsides in coastal areas of northwest CA.
<i>Erica lusitanica</i>	Spanish heath	Reported from Humboldt and Del Norte Cos. Need more information.
<i>Eriogonum fasciculatum</i>	California buckwheat	Invades along roadsides and other areas of human disturbance. Not known to threaten wildlands.
<i>Gazania linearis</i>	gazania	Reported to invade in San Francisco Bay Area. Need more information.
<i>Grindelia squarrosa</i>	curlycup gumweed, gumplant	Mainly along roadsides. More a problem in Nevada.
<i>Kniphofia varia</i>	redhot poker	Primarily along roadsides.
<i>Lathyrus latifolius</i>	perennial sweetpea	Reported from the north coast. Need more information.
<i>Lathyrus tingitanus</i>	Tangier pea	Along roadsides. Need more information.
<i>Limonium ramosissimum</i> ssp. <i>provinciale</i>	sea-lavender	Present in salt marshes. Need more information.
<i>Melilotus indicus</i>	Indian sweetclover	Reported from disturbed sites. Need more information.
<i>Mesembryanthemum nodiflorum</i>	slenderleaf iceplant	Common in San Diego area along coast. Need more information on impacts.
<i>Osteospermum fruticosum</i>	shrubby daisybush	Occasional ornamental escape in southern CA. Does not appear to be invasive.
<i>Passiflora caerulea</i>	blue passionflower	Not known to invade wildlands.
<i>Phalaris arundinacea</i>	reed canarygrass	<i>Jepson Manual</i> lists it as native in CA. Acts like a native in most areas of the state. A problem in NW states.
<i>Phoenix dactylifera</i>	date palm	Reported from southern CA deserts. Need more information.
<i>Phytolacca americana</i>	pokeweed	Reported invading riparian areas in northern Sacramento Valley. Need more information.
<i>Salsola soda</i>	glasswort	Reported from San Francisco Bay shorelines and creek mouths. Need more information.
<i>Ulmus parvifolia</i>	Chinese elm	Present in disturbed areas or old homesites only.
<i>Watsonia borbonica</i>	watsonia	May be confused with <i>W. meriana</i> , which is invasive in Mendocino Co.
<i>Zoysia</i> spp.	zoysiagrass	Does not appear to have escaped from turf.

## APPENDIX 1. Species Listed by Category

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◆ = Alert

### High

- Aegilops triuncialis* (barb goatgrass)
- ◆ *Alternanthera philoxeroides* (alligatorweed)
- Ammophila arenaria* (European beachgrass)
- Arundo donax* (giant reed)
- Brassica tournefortii* (Saharan mustard, African mustard)
- Bromus madritensis* ssp. *rubens* (= *B. rubens*) (red brome)
- Bromus tectorum* (downy brome, cheatgrass)
- Carpobrotus edulis* (Hottentot-fig, iceplant)
- Centaurea maculosa* (= *C. biebersteinii*) (spotted knapweed)
- Centaurea solstitialis* (yellow starthistle)
- Cortaderia jubata* (jubatagrass)
- Cortaderia selloana* (pampasgrass)
- Cytisus scoparius* (Scotch broom)
- Delairea odorata* (= *Senecio mikanioides*) (Cape-ivy, German-ivy)
- Egeria densa* (Brazilian egeria)
- Ehrharta calycina* (purple veldtgrass)
- ◆ *Eichhornia crassipes* (water hyacinth)
- ◆ *Euphorbia esula* (leafy spurge)
- Foeniculum vulgare* (fennel)
- Genista monspessulana* (French broom)
- Hedera helix*, *H. canariensis* (English ivy, Algerian ivy)
- ◆ *Hydrilla verticillata* (hydrilla)
- Lepidium latifolium* (perennial pepperweed, tall whitetop)
- ◆ *Ludwigia hexapetala* (= *L. uruguayensis*) (Uruguay water-primrose)
- Ludwigia peploides* ssp. *montevidensis* (creeping water-primrose)
- Lythrum salicaria* (purple loosestrife)
- ◆ *Myriophyllum aquaticum* (parrotfeather)
- Myriophyllum spicatum* (Eurasian watermilfoil)
- Onopordum acanthium* (Scotch thistle)

- Rubus armeniacus* (= *R. discolor*) (Himalaya blackberry, Armenian blackberry)
- ◆ *Salvinia molesta* (giant salvinia)
- ◆ *Sesbania punicea* (red sesbania, scarlet wisteria)
- ◆ *Spartina alterniflora* hybrids (smooth cordgrass, Atlantic cordgrass)
- ◆ *Spartina densiflora* (dense-flowered cordgrass)
- Spartium junceum* (Spanish broom)
- Taeniatherum caput-medusae* (medusahead)
- Tamarix parviflora* (smallflower tamarisk)
- Tamarix ramosissima* (saltcedar, tamarisk)
- Ulex europaeus* (gorse)

### Moderate

- Ageratina adenophora* (croftonweed, eupatorium)
- Ailanthus altissima* (tree-of-heaven)
- Alhagi maurorum* (= *A. pseudalhagi*) (camelthorn)
- Anthoxanthum odoratum* (sweet vernalgrass)
- ◆ *Arctotheca calendula* (fertile) (fertile capeweed)
- Arctotheca calendula* (sterile) (sterile capeweed)
- ◆ *Asparagus asparagoides* (bridal creeper, smilax asparagus)
- ◆ *Asphodelus fistulosus* (onionweed)
- Atriplex semibaccata* (Australian saltbush)
- Avena barbata* (slender wild oat)
- Avena fatua* (wild oat)
- ◆ *Brachypodium sylvaticum* (perennial false-brome)
- Brassica nigra* (black mustard)
- Bromus diandrus* (ripgut brome)
- ◆ *Cardaria chalapensis* (= *C. draba* ssp. *chalapensis*) (lens-podded whitetop)
- Cardaria draba* (hoary cress)
- Carduus nutans* (musk thistle)
- Carduus pycnocephalus* (Italian thistle)
- Carpobrotus chilensis* (sea-fig, iceplant)
- ◆ *Carthamus lanatus* (woolly distaff thistle)

## APPENDIX 1: Species Listed by Category (continued)

### Moderate (continued)

- Centaurea calcitrapa* (purple starthistle)
- ◆ *Centaurea debeauxii* (= *C. x pratensis*) (meadow knapweed)
  - Centaurea melitensis* (Malta starthistle, tocalote)
  - Centaurea virgata* ssp. *squarrosa* (= *C. squarrosa*) (squarrose knapweed)
  - Chondrilla juncea* (rush skeletonweed)
  - Chrysanthemum coronarium* (crown daisy)
  - Cirsium arvense* (Canada thistle)
  - Cirsium vulgare* (bull thistle)
  - Conium maculatum* (poison-hemlock)
  - Cotoneaster franchetii* (orange cotoneaster)
  - Cotoneaster lacteus* (Parney's cotoneaster)
  - Cotoneaster pannosus* (silverleaf cotoneaster)
  - Cynara cardunculus* (artichoke thistle)
  - Cynodon dactylon* (bermudagrass)
  - Cynoglossum officinale* (houndstongue)
  - Cynosurus echinatus* (hedgehog dogtailgrass)
  - Cytisus striatus* (Portuguese broom, striated broom)
  - Dipsacus fullonum* (wild teasel)
  - Dipsacus sativus* (fuller's teasel)
  - ◆ *Dittrichia graveolens* (stinkwort)
  - Ehrharta erecta* (erect veldtgrass)
  - ◆ *Ehrharta longiflora* (long-flowered veldtgrass)
  - Elaeagnus angustifolia* (Russian-olive)
  - ◆ *Emex spinosa* (spiny emex, devil's thorn)
  - Erechtites glomerata*, *E. minima* (Australian fireweed, Australian burnweed)
  - Eucalyptus globulus* (Tasmanian blue gum)
  - ◆ *Euphorbia terracina* (carnation spurge)
  - Festuca arundinacea* (tall fescue)
  - Ficus carica* (edible fig)
  - Geranium dissectum* (cutleaf geranium)
  - Glyceria declinata* (waxy mannagrass)
  - Halogeton glomeratus* (halogeton)
  - Hirschfeldia incana* (shortpod mustard, summer mustard)
  - Holcus lanatus* (common velvetgrass)
  - Hordeum marinum*, *H. murinum* (Mediterranean barley, hare barley, wall barley)
  - ◆ *Hypericum canariense* (Canary Island hypericum)
  - Hypericum perforatum* (common St. Johnswort, klamathweed)
  - Hypochaeris radicata* (rough catsear, hairy dandelion)
  - ◆ *Ilex aquifolium* (English holly)
  - Isatis tinctoria* (dyer's woad)
  - Kochia scoparia* (kochia)
  - Leucanthemum vulgare* (oxeye daisy)
  - Linaria genistifolia* ssp. *dalmatica* (= *L. dalmatica*) (Dalmation toadflax)
  - Lolium multiflorum* (Italian ryegrass)
  - Lythrum hyssopifolium* (hyssop loosestrife)
  - Mentha pulegium* (pennyroyal)
  - ◆ *Mesembryanthemum crystallinum* (crystalline iceplant)
  - Myoporum laetum* (myoporum)
  - Nicotiana glauca* (tree tobacco)
  - Oxalis pes-caprae* (buttercup oxalis, yellow oxalis, Bermuda buttercup)
  - Pennisetum setaceum* (crimson fountaingrass)
  - Phalaris aquatica* (hardinggrass)
  - ◆ *Polygonum cuspidatum* (= *Fallopia japonica*) (Japanese knotweed)
  - ◆ *Polygonum sachalinense* (Sakhalin knotweed, giant knotweed)
  - Potamogeton crispus* (curlyleaf pondweed)
  - ◆ *Retama monosperma* (bridal broom)
  - Rumex acetosella* (red sorrel, sheep sorrel)
  - ◆ *Sapium sebiferum* (Chinese tallowtree)
  - Sisymbrium irio* (London rocket)
  - ◆ *Spartina anglica* (common cordgrass)
  - ◆ *Stipa capensis* (Mediterranean steppegrass, twisted-awned speargrass)
  - Tanacetum vulgare* (common tansy)
  - Torilis arvensis* (hedgearsley)
  - Trifolium hirtum* (rose clover)
  - Vinca major* (big periwinkle)
  - Vulpia myuros* (rattail fescue)
  - ◆ *Washingtonia robusta* (Mexican fan palm, Washington palm)

## APPENDIX 1: Species Listed by Category (continued)

### Limited

<i>Acacia melanoxylon</i> (black acacia, blackwood acacia)	<i>Parentucellia viscosa</i> (yellow glandweed, sticky parentucellia)
<i>Agrostis avenacea</i> (Pacific bentgrass)	<i>Pennisetum clandestinum</i> (kikuyugrass)
<i>Agrostis stolonifera</i> (creeping bentgrass)	<i>Phoenix canariensis</i> (Canary Island date palm)
<i>Bassia hyssopifolia</i> (fivehook bassia)	<i>Picris echioides</i> (bristly oxtongue)
<i>Bellardia trixago</i> (bellardia)	<i>Piptatherum miliaceum</i> (smilograss)
<i>Brassica rapa</i> (birdsrape mustard, field mustard)	<i>Plantago lanceolata</i> (buckhorn plantain, English plantain)
<i>Briza maxima</i> (big quackinggrass, rattlesnakegrass)	<i>Poa pratensis</i> (Kentucky bluegrass)
<i>Bromus hordeaceus</i> (soft brome)	<i>Polypogon monspeliensis</i> and subspp. (rabbitfoot polypogon, annual beardgrass, rabbitfoot grass)
<i>Cakile maritima</i> (European sea-rocket)	<i>Prunus cerasifera</i> (cherry plum, wild plum)
<i>Cardaria pubescens</i> (hairy whitetop)	<i>Pyracantha angustifolia</i> , <i>P. crenulata</i> , <i>P. coccinea</i> , etc. (pyracantha, firethorn)
<i>Carduus acanthoides</i> (plumeless thistle)	<i>Ranunculus repens</i> (creeping buttercup)
<i>Carduus tenuifolius</i> (slenderflower thistle)	<i>Raphanus sativus</i> (radish)
<i>Conicosia pugioniformis</i> (narrowleaf iceplant)	<i>Ricinus communis</i> (castorbean)
<i>Cordyline australis</i> (giant dracaena, New Zealand-cabbage tree)	<i>Robinia pseudoacacia</i> (black locust)
<i>Cotula coronopifolia</i> (brassbuttons)	<i>Rumex crispus</i> (curly dock)
<i>Crataegus monogyna</i> (English hawthorn)	<i>Salsola paulsenii</i> (barbwire Russian-thistle)
<i>Crocsmia x crocosmiiflora</i> (montbretia)	<i>Salsola tragus</i> (Russian-thistle)
<i>Crupina vulgaris</i> (common crupina, bearded creeper)	<i>Salvia aethiopis</i> (Mediterranean sage)
<i>Dactylis glomerata</i> (orchardgrass)	<i>Saponaria officinalis</i> (bouncingbet)
<i>Descurainia sophia</i> (flixweed, tansy mustard)	<i>Schinus molle</i> (Peruvian peppertree)
<i>Digitalis purpurea</i> (foxglove)	<i>Schinus terebinthifolius</i> (Brazilian peppertree)
<i>Echium candicans</i> (pride-of-Madeira)	<i>Schismus arabicus</i> , <i>S. barbatus</i> (mediterraneangrass)
<i>Erodium cicutarium</i> (redstem filaree)	<i>Senecio jacobaea</i> (tansy ragwort)
<i>Eucalyptus camaldulensis</i> (red gum)	<i>Silybum marianum</i> (blessed milkthistle)
<i>Euphorbia oblongata</i> (oblong spurge)	<i>Sinapis arvensis</i> (wild mustard, charlock)
<i>Helichrysum petiolare</i> (licoriceplant)	<i>Spartina patens</i> (saltmeadow cordgrass)
<i>Hypochaeris glabra</i> (smooth catsear)	<i>Tamarix aphylla</i> (athel tamarisk)
<i>Iris pseudacorus</i> (yellowflag iris)	<i>Undaria pinnatifida</i> (wakame)
<i>Lobularia maritima</i> (sweet alyssum)	<i>Verbascum thapsus</i> (common mullein, woolly mullein)
<i>Marrubium vulgare</i> (white horehound)	<i>Watsonia meriana</i> (bulbil watsonia)
<i>Medicago polymorpha</i> (California burclover)	<i>Zantedeschia aethiopica</i> (calla lily)
<i>Myosotis latifolia</i> (common forget-me-not)	
<i>Olea europaea</i> (olive)	
<i>Ononis alopecuroides</i> (foxtail restharrow)	

## APPENDIX 2. Cal-IPC Species Listed by Other Ratings Systems

This table is provided so that those familiar with other commonly-used ratings systems may compare those lists to the 2006 Cal-IPC ratings. See the cited websites for explanations of rating systems. Species not included in this appendix do not appear on any of these lists.

**CAL-EPPC 1999** – Cal-EPPC. 1999. The Cal-EPPC List: Exotic Pest Plants of Greatest Ecological Concern in California. California Exotic Pest Plant Council: San Juan Capistrano, CA. Available: [www.cal-ipc.org](http://www.cal-ipc.org).

**C DFA** – CDFA. 2005. EncycloWeedia: Notes on Identification, Biology, and Management of Plants Defined as Noxious Weeds by California Law. California Department of Food and Agriculture: Sacramento, CA. Available: [www.cdffa.ca.gov/weedhome](http://www.cdffa.ca.gov/weedhome).

**USDA** – Plant Protection and Quarantine. 2002. Federal Noxious Weed List. USDA Animal and Plant Health Inspection Service. US Department of Agriculture: Washington, D.C. Available: [plants.usda.gov](http://plants.usda.gov).

**AZ** – Arizona Invasive Plant Working Group. 2005. Invasive Non-native Plants that Threaten Wildlands in Arizona. Southwest Vegetation Management Association. Available: [www.swvma.org](http://www.swvma.org).

**NATURESERVE** – NatureServe. 2005. Invasive Species Impact Ranks for the United States: Summary of Results as of January 10, 2005. NatureServe: Arlington, VA. Available: [www.natureserve.org](http://www.natureserve.org).

Scientific Name	Cal-EPPC 1999	C DFA	USDA	Arizona	NatureServe
<i>Acacia melanoxylon</i>	Need More Info				Medium/Insignificant
<i>Acacia paradoxa</i>		B			
<i>Acroptilon repens</i>		B		High	High/Medium
<i>Aegilops triuncialis</i>	Annual Grasses	B			
<i>Aeschynomene rudis</i>	Need More Info	A			
<i>Ageratina adenophora</i>	B		✓		
<i>Agrostis avenacea</i>	Need More Info				
<i>Ailanthus altissima</i>	A-2	*			Medium/Low
<i>Aira caryophylla</i>					Medium/Insignificant
<i>Albizia lophantha</i>	Considered, not listed				
<i>Alhagi maurorum</i> (=A. <i>pseudalhagi</i> )	Red Alert	A		Medium	Medium/Low
<i>Alternanthera philoxeroides</i>		A			Medium
<i>Ammophila arenaria</i>	A-1				High/Medium
<i>Anthemis cotula</i>					Medium/Insignificant
<i>Anthoxanthum odoratum</i>	Considered, not listed				
<i>Aptenia cordifolia</i>	Need More Info				
<i>Araujia sericifera</i>		B			
<i>Arctotheca calendula</i> (fertile strains)	Red Alert	A			

## APPENDIX 2: Cal-IPC Species Listed by Other Rating Systems (continued)

Scientific Name	Cal-EPPC 1999	CDFA	USDA	Arizona	NatureServe
<i>Arundo donax</i>	A-1	*		High	High
<i>Asparagus asparagoides</i>					Low/Insignificant
<i>Asphodelus fistulosus</i>	Need More Info		✓	Low	
<i>Atriplex semibaccata</i>	A-2				High/Low
<i>Avena barbata</i>	Annual Grasses				
<i>Avena fatua</i>	Annual Grasses			Medium	High/Low
<i>Bassia hyssopifolia</i>	B				Low/Insignificant
<i>Bellardia trixago</i>	B				Medium/Insignificant
<i>Brachypodium sylvaticum</i>					High/Low
<i>Brassica nigra</i>	B				
<i>Brassica tournefortii</i>	A-2			Medium	High/Low
<i>Bromus diandrus</i>	Annual Grasses			Medium-Alert	
<i>Bromus madritensis</i> ssp. <i>rubens</i> (=B. <i>rubens</i> )	A-2			High	
<i>Bromus tectorum</i>	A-1			High	High
<i>Buddleja davidii</i>					High/Low
<i>Cardaria chalepensis</i> (=C. <i>draba</i> ssp. <i>chalepensis</i> )	B	B		Medium-Alert	
<i>Cardaria draba</i>	A-2	B		Medium-Alert	
<i>Cardaria pubescens</i>		B		Medium-Alert	
<i>Carduus acanthoides</i>	Need More Info	A			Medium/Low
<i>Carduus nutans</i>		A		Medium	High/Low
<i>Carduus pycnocephalus</i>	B	C			Medium
<i>Carduus tenuifolius</i>		C			Unknown
<i>Carpobrotus chilensis</i>	Considered, not listed				Medium
<i>Carpobrotus edulis</i>	A-1				High
<i>Carthamus lanatus</i>		B			
<i>Centaurea debeauxii</i> (=C. x <i>pratensis</i> )		A			
<i>Centaurea diffusa</i>		A		Medium	
<i>Centaurea maculosa</i> (=C. <i>bibersteinii</i> )	Red Alert	A		Medium	
<i>Centaurea melitensis</i>	B	C		Medium	Medium/Low
<i>Centaurea solstitialis</i>	A-1	C		High	High/Medium
<i>Centaurea virgata</i> ssp. <i>squarrosa</i> (=C. <i>squarrosa</i> )		A			
<i>Chondrilla juncea</i>		A		Medium-Alert	Medium/Insignificant
<i>Chorispora tenella</i>		B			Insignificant
<i>Cirsium arvense</i>	B	B		Medium	
<i>Cirsium vulgare</i>	B	*		Low	
<i>Cistus ladanifer</i>	Need More Info				
<i>Conicosia pugioniformis</i>	A-2				

## APPENDIX 2: Cal-IPC Species Listed by Other Rating Systems (continued)

Scientific Name	Cal-EPPC 1999	CDFA	USDA	Arizona	NatureServe
<i>Conium maculatum</i>	B			Medium-Alert	Medium/Low
<i>Convolvulus arvensis</i>	Considered, not listed	C		Medium	Medium/Low
<i>Coprosma repens</i>	Considered, not listed				
<i>Cordyline australis</i>	Need More Info				
<i>Cortaderia jubata</i>	A-1	*			Medium
<i>Cortaderia selloana</i>	A-1			Medium	Medium/Low
<i>Cotoneaster franchetii</i>	Need More Info				
<i>Cotoneaster lacteus</i>	A-2				
<i>Cotoneaster pannosus</i>	A-2				Medium
<i>Crataegus monogyna</i>	B				
<i>Crocsmia x crocosmiiflora</i>	Considered, not listed				
<i>Crupina vulgaris</i>	Red Alert	A	✓		Medium/Low
<i>Cupressus macrocarpa</i>	Need More Info				
<i>Cynara cardunculus</i>	A-1	B			Medium
<i>Cynodon dactylon</i>		C		Medium	Medium/Low
<i>Cynoglossum officinale</i>				Low	Medium/Low
<i>Cytisus scoparius</i>	A-1	C			High/Medium
<i>Cytisus striatus</i>	A-2				
<i>Dactylis glomerata</i>					Medium/Insig
<i>Daucus carota</i>					Low
<i>Delairea odorata</i>	A-1	*			Medium
<i>Descurainia sophia</i>	Need More Info				Medium/Low
<i>Digitalis purpurea</i>	Considered, not listed				Medium/Insignificant
<i>Dimorphotheca sinuata</i>	Need More Info				
<i>Dipsacus fullonum</i>	Considered, not listed				High/Low
<i>Dipsacus sativus</i>	Considered, not listed				
<i>Echium candicans</i>	Need More Info				
<i>Egeria densa</i>	A-2	C			High/Medium
<i>Ehrharta calycina</i>	A-2				Medium/Low
<i>Ehrharta erecta</i>	B				Medium/Insignificant
<i>Ehrharta longiflora</i>	Need More Info				
<i>Eichhornia crassipes</i>	A-2			High-Alert	High
<i>Elaeagnus angustifolia</i>	A-2			High	High
<i>Emex spinosa</i>			✓		Insignificant
<i>Erechtites glomerata, E. minima</i>	B				Medium/Insignificant
<i>Erica lusitanica</i>	Need More Info				
<i>Erodium brachycarpum</i>					Insignificant

## APPENDIX 2: Cal-IPC Species Listed by Other Rating Systems (continued)

Scientific Name	Cal-EPPC 1999	CDFA	USDA	Arizona	NatureServe
<i>Erodium cicutarium</i>				Medium	Medium/Low
<i>Eucalyptus globulus</i>	A-1				Medium
<i>Euphorbia esula</i>	A-2	A		High-Alert	High/Medium
<i>Euphorbia lathyris</i>	Need More Info				
<i>Euphorbia oblongata</i>		B			
<i>Festuca arundinacea</i>	B				
<i>Ficus carica</i>	A-2				Medium
<i>Foeniculum vulgare</i>	A-1				Medium/Low
<i>Fumaria officinalis</i>	Considered, not listed				
<i>Gazania linearis</i>	Need More Info				
<i>Genista monspessulana</i>	A-1	C			Medium
<i>Glyceria declinata</i>	Need More Info				
<i>Halogeton glomeratus</i>	Red Alert	A			High/Medium
<i>Hedera helix</i>	B				High/Medium
<i>Hedera canariensis</i>	Need More Info				
<i>Helichrysum petiolare</i>	Red Alert				
<i>Hirschfeldia incana</i>	Need More Info				High/Low
<i>Holcus lanatus</i>	B				
<i>Hordeum marinum, H. murinum</i>				Medium	High/Low
<i>Hydrilla verticillata</i>	Red Alert	A	✓	Not listed	High/Medium
<i>Hypericum canariense</i>	Need More Info				Low
<i>Hypericum perforatum</i>	B	C			High/Medium
<i>Hypochaeris radicata</i>	Need More Info				High/Low
<i>Ilex aquifolium</i>	B				High/Low
<i>Iris pseudacorus</i>	B				
<i>Isatis tinctoria</i>	Need More Info	B			High/Low
<i>Lactuca serriola</i>					Low/Insignificant
<i>Lepidium latifolium</i>	A-1	B		High-Alert	High
<i>Leucanthemum vulgare</i>	B			Low	Medium/Low
<i>Ligustrum lucidum</i>	Need More Info				
<i>Limonium ramosissimum</i> ssp. <i>provinciale</i>	Need More Info				
<i>Linaria genistifolia</i> ssp. <i>dalmatica</i> (= <i>L. dalmatica</i> )		A		Medium-Alert	
<i>Lolium multiflorum</i>	Annual Grasses				
<i>Lotus corniculatus</i>					Medium/Low
<i>Ludwigia hexapetala</i> (= <i>L. uruguayensis</i> )	Need More Info				
<i>Lupinus arboreus</i>	A-2				
<i>Lythrum salicaria</i>	Red Alert	B			

## APPENDIX 2: Cal-IPC Species Listed by Other Rating Systems (continued)

Scientific Name	Cal-EPPC 1999	CDFA	USDA	Arizona	NatureServe
<i>Malephora crocea</i>	Need More Info				
<i>Marrubium vulgare</i>					Medium/Low
<i>Maytenus boaria</i>	Need More Info				
<i>Medicago polymorpha</i>	Considered, not listed				
<i>Melilotus officinalis</i>	Considered, not listed			Medium	Medium/Low
<i>Mentha pulegium</i>	A-2				
<i>Mesembryanthemum crystallinum</i>	B			Low	
<i>Mesembryanthemum nodiflorum</i>	Need More Info			Medium-Alert	
<i>Myoporum laetum</i>	A-2				
<i>Myriophyllum aquaticum</i>	B			High-Alert	High/Medium
<i>Myriophyllum spicatum</i>	A-1			High-Alert	High
<i>Nerium oleander</i>	Considered, not listed				Low/Insignificant
<i>Nicotiana glauca</i>	Need More Info				High/Low
<i>Olea europaea</i>	B				
<i>Ononis alopecuroides</i>	Red Alert		Q		
<i>Onopordum acanthium</i>			A	Low	
<i>Oxalis pes-caprae</i>	Need More Info				
<i>Parentucellia viscosa</i>	Need More Info				
<i>Passiflora caerulea</i>	Need More Info				
<i>Pennisetum clandestinum</i>	Need More Info		C	✓	
<i>Pennisetum setaceum</i>	A-1			High	High/Medium
<i>Phalaris aquatica</i>	B				
<i>Picris echioides</i>	Considered, not listed				
<i>Pinus radiata</i> cultivars	Need More Info				
<i>Piptatherum miliaceum</i>	Need More Info				
<i>Pistachia chinensis</i>	Need More Info				
<i>Pittosporum undulatum</i>					High/Low
<i>Plantago lanceolata</i>					High/Low
<i>Polygonum cuspidatum</i> (=Fallopia japonica)			B		
<i>Polygonum sachalinense</i>					High/Medium
<i>Polypogon monspeliensis</i> and subspp.					High/Low
<i>Potamogeton crispus</i>	B				Medium
<i>Prunus cerasifera</i>	Need More Info				Medium/Insignificant
<i>Pyracantha angustifolia, crenulata, coccinea, etc.</i>	Need More Info				Hi/Low, Low/Insig
<i>Ranunculus repens</i>					High/Medium
<i>Retama monosperma</i>	Red Alert				
<i>Ricinus communis</i>	B				

## APPENDIX 2: Cal-IPC Species Listed by Other Rating Systems (continued)

Scientific Name	Cal-EPPC 1999	CDFA	USDA	Arizona	NatureServe
<i>Robinia pseudoacacia</i>	B				
<i>Rubus armeniacus</i> (=R. <i>discolor</i> )	A-1			Medium-Alert	Medium/Insignificant
<i>Salsola paulsenii</i>		C		Medium	Low
<i>Salsola soda</i>	Need More Info				
<i>Salsola tragus</i> (=S. <i>kali</i> )	Need More Info	C		Medium	
<i>Salvia aethiops</i>	Need More Info	B			Low
<i>Salvinia molesta</i>	Red Alert		✓	High-Alert	Medium
<i>Sapium sebiferum</i>	Red Alert				
<i>Saponaria officinalis</i>	A-2				Low/Insignificant
<i>Schimus molle</i>	B				Medium/Low
<i>Schimus terebinthifolius</i>	B				
<i>Schismus arabicus</i> , <i>S. barbatus</i>	Annual Grasses			Medium	Medium, Hi/Medium
<i>Senecio jacobaea</i>	B	B			Low
<i>Sesbania punicea</i>	Red Alert				
<i>Silybum marianum</i>	Considered, not listed				Medium/Low
<i>Sisymbrium irio</i>					Medium/Insignificant
<i>Solanum elaeagnifolium</i>		B			
<i>Sonchus asper</i>				Medium	
<i>Spartina alterniflora</i> hybrids	A-2				
<i>Spartina anglica</i>	Red Alert				
<i>Spartina densiflora</i>	Red Alert				High/Medium
<i>Spartina patens</i>	Red Alert				
<i>Spartium junceum</i>	B	*			
<i>Stipa capensis</i>	Need More Info				
<i>Taeniatherum caput-medusae</i>	A-1	C			High
<i>Tamarix aphylla</i>	Need More Info			Low	
<i>Tamarix parviflora</i>	A-1	*			
<i>Tamarix ramosissima</i>	A-1	*		High	High
<i>Tanacetum vulgare</i>	Need More Info				Low
<i>Ulex europaeus</i>	A-1	B			
<i>Ulmus pumila</i>				Medium	Medium/Low
<i>Verbascum thapsus</i>	B			Not listed	Medium
<i>Verbena bonariensis</i> , <i>V. litoralis</i>	Need More Info				
<i>Vinca major</i>	B			Medium-Alert	
<i>Zantedeschia aethiopica</i>	Considered, not listed				Medium/Low
<i>Zoysia</i> spp.	Considered, not listed				

\*Under consideration. Not yet rated.

## APPENDIX 3. Examples of Ecological Types

These ecological types were used to score the Distribution section of plant assessment forms. Adapted from "Preliminary Descriptions of the Terrestrial Natural Communities of California" drafted by R. F. Holland for the California Department of Fish and Game (1986). Communities within minor ecotypes include all those listed in Holland (1986). Additional information from Sawyer, J. O., and T. Keeler-Wolf. 1995. A Manual of California Vegetation. California Native Plant Society: Sacramento, CA.

Major Ecological Types	Minor Ecological Types	Communities within Minor Ecotypes
<b>Marine Systems</b>	marine systems	kelp and other macroalgae
	lakes, ponds, reservoirs	submergent and emergent vegetation in standing water
<b>Freshwater and Estuarine Aquatic Systems</b>	rivers, streams, canals	submergent and emergent vegetation in moving ephemeral, intermittent or perennial water
	estuaries	submergent vegetation in estuaries (seagrass beds)
	coastal	foredunes, dune scrub
<b>Dunes</b>	desert	desert dunes and sand fields
	interior	interior and relictual dunes, primarily in the Great Valley
	coastal bluff scrub	northern and southern coastal bluff scrub
<b>Scrub and Chaparral</b>	coastal scrub	coyote bush, salal, silk-tassel, coastal sage, maritime succulent, Diegan coastal, Diablan, and Riversidian sage scrubs
	Sonoran desert scrub	Sonoran creosote bush, Sonoran mixed woody and succulent scrubs
	Mojavean desert scrub	Mojave creosote bush, blackbush, Mojave mixed woody, Mojave mixed steppe, and Mojave wash scrubs; Joshua tree woodland
	Great Basin scrub	big sagebrush and rabbitbrush scrubs; sagebrush steppe
	chenopod scrub	desert saltbush, desert sink, desert greasewood, shadscale, valley sink, and valley saltbush scrubs
	montane dwarf scrub	low sagebrush series
	Upper Sonoran subshrub scrub	bladderpod-California ephedra-narrowleaf goldenbush series
	chaparral	mixed, redshank, semi-desert, and montane (mixed, ceanothus, manzanita) chaparrals; chamise
	coastal prairie	coastal terrace and bald hills prairies
	valley and foothill grassland	valley needlegrass, valley sacaton, serpentine bunchgrass, valley wildrye and, pine bluegrass grasslands
<b>Grasslands, Vernal Pools, Meadows, and other Herb Communities</b>	Great Basin grassland	open, steppe-like vegetation of perennial bunchgrasses
	vernal pool	hardpan, claypan, basalt flow, and San Diego mesa vernal pools
	meadow and seep	wet or dry montane meadows; wet or dry subalpine or alpine meadows; alkali meadows and seeps; freshwater seep
	alkali playa	low, grayish, microphyllous, and succulent shrubs primarily in transmontane deserts
	pebble plain	dense clay soils with quartzite pebbles

## APPENDIX 3: Examples of Ecological Types (continued)

Major Ecological Types	Minor Ecological Types	Communities within Minor Ecotypes
<b>Bog and Marsh</b>	bog and fen	sphagnum bog, Darlingtonia bog, fen
	marsh and swamp	salt, brackish, freshwater, transmontane alkali, and vernal marshes; freshwater swamp
<b>Riparian and Bottomland</b>	riparian forest	cottonwood, cottonwood-sycamore, red alder, white alder, aspen, willow, live oak, valley oak, Mojave, and mixed riparian forests; mesquite bosque
	riparian woodland	sycamore, sycamore-alder, desert dry wash, and fan palm oasis woodlands
	riparian scrub	riparian, mulefat, willow, mesquite, and buttonbush, desert wash, tamarisk and arrowweed scrubs; elderberry savanna; desert washes
<b>Woodland</b>	cismontane	blue oak, coast live oak, interior live oak, valley oak, island oak, California walnut, and foothill pine woodlands
	piñon and juniper	juniper woodland and scrub, pinon woodland
	Sonoran thorn	crucifixion thorn and Arizona woodlands
<b>Forest</b>	broadleaved upland	mixed evergreen, California bay, coast live oak, black oak, tan oak, red alder, and aspen forests
	North Coast coniferous	redwood, Sitka spruce-grand fir, western hemlock, Douglas-fir, and Port Orford Cedar forests
	closed cone coniferous	beach pine, bishop pine, Monterey pine, Torrey pine, Monterey cypress, pygmy cypress, interior cypress, knobcone pine forests
	lower montane coniferous	Coast Range coniferous, Klamath coniferous, ponderosa pine, Coulter pine, white pine, white fir, and big tree forests
	upper montane coniferous	Jeffrey pine, upper montane mixed coniferous, upper montane fir, and Klamath enriched coniferous forests
	subalpine coniferous	lodgepole pine, whitebark pine, foxtail pine, bristlecone pine, and limber pine forests
<b>Alpine Habitats</b>	alpine boulder and rock field	fell-field, talus and scree slope, snow margin
	alpine dwarf scrub	shrub dominated communities above the treeline

## APPENDIX 4. Species by Common Name

Includes Species from Tables 1, 2, 3 and 4.

acacia, blackwood	<i>Acacia melanoxylon</i>	camelthorn	<i>Alhagi maurorum</i> (=A. <i>pseudalhagi</i> )
acacia, plume	<i>Albizia lophantha</i>	canarygrass, reed	<i>Phalaris arundinacea</i>
alligatorweed	<i>Alternanthera philoxeroides</i>	Cape-ivy	<i>Delairea odorata</i> (= <i>Senecio mikanioides</i> )
alyssum, sweet	<i>Lobularia maritima</i>	capeweed, fertile	<i>Arctotheca calendula</i> (fertile)
asparagus, smilax	<i>Asparagus asparagoides</i>	capeweed, sterile	<i>Arctotheca calendula</i> (sterile)
barberry, Darwin	<i>Berberis darwinii</i>	carrot, wild	<i>Daucus carota</i>
barbwire Russian-thistle	<i>Salsola paulsenii</i>	castorbean	<i>Ricinus communis</i>
barley, Mediterranean	<i>Hordeum marinum</i> ,	catalpa, southern	<i>Catalpa bignonioides</i>
barley, wall	<i>Hordeum murinum</i>	catsear, rough	<i>Hypochaeris radicata</i>
beachgrass, European	<i>Ammophila arenaria</i>	catsear, smooth	<i>Hypochaeris glabra</i>
beardgrass, annual	<i>Polypogon monspeliensis</i> and subspp.	chamomile, mayweed	<i>Anthemis cotula</i>
bellardia	<i>Bellardia trixago</i>	charlock	<i>Sinapis arvensis</i>
bentgrass, creeping	<i>Agrostis stolonifera</i>	cheatgrass	<i>Bromus tectorum</i>
bentgrass, Pacific	<i>Agrostis avenacea</i>	cherry plum	<i>Prunus cerasifera</i>
bermudagrass	<i>Cynodon dactylon</i>	Chinese tallowtree	<i>Sapium sebiferum</i>
bindweed, field	<i>Convolvulus arvensis</i>	clover, California bur	<i>Medicago polymorpha</i>
birdsfoot trefoil	<i>Lotus corniculatus</i>	clover, rose	<i>Trifolium hirtum</i>
blackberry, Armenian	<i>Rubus armeniacus</i> (=R. <i>discolor</i> )	cordgrass, Atlantic	<i>Spartina alterniflora</i>
blackberry, Himalaya	<i>Rubus armeniacus</i> (=R. <i>discolor</i> )	cordgrass, common	<i>Spartina anglica</i>
bladderflower	<i>Araujia sericifera</i>	cordgrass, dense-flowered	<i>Spartina densiflora</i>
bluegrass, Kentucky	<i>Poa pratensis</i>	cordgrass, saltmeadow	<i>Spartina patens</i>
blue gum, Tasmanian	<i>Eucalyptus globulus</i>	cordgrass, smooth	<i>Spartina alterniflora</i> hybrids
bouncingbet	<i>Saponaria officinalis</i>	cotoneaster, orange	<i>Cotoneaster franchetii</i>
brassbuttons	<i>Cotula coronopifolia</i>	cotoneaster, Parney's	<i>Cotoneaster lacteus</i>
brome, downy	<i>Bromus tectorum</i>	cotoneaster, silverleaf	<i>Cotoneaster pannosus</i>
brome, red	<i>Bromus madritensis</i> ssp. <i>rubens</i> (=B. <i>rubens</i> )	creeper, Australian bluebell	<i>Sollya heterophylla</i>
brome, ripgut	<i>Bromus diandrus</i>	creeper, bearded	<i>Crupina vulgaris</i>
brome, soft	<i>Bromus hordeaceus</i>	creeper, bridal	<i>Asparagus asparagoides</i>
broom, bridal	<i>Retama monosperma</i>	creep, hoary	<i>Cardaria draba</i>
broom, French	<i>Genista monspessulana</i>	croftonweed	<i>Ageratina adenophora</i>
broom, Portuguese	<i>Cytisus striatus</i>	crupina, common	<i>Crupina vulgaris</i>
broom, Scotch	<i>Cytisus scoparius</i>	cypress, Monterey	<i>Cupressus macrocarpa</i>
broom, Spanish	<i>Spartium junceum</i>	daisy, African	<i>Dimorphotheca sinuata</i>
broom, striated	<i>Cytisus striatus</i>	daisy, corn	<i>Chrysanthemum segetum</i>
buckwheat, California	<i>Eriogonum fasciculatum</i>	daisy, crown	<i>Chrysanthemum coronarium</i>
burclover, California	<i>Medicago polymorpha</i>	daisy, English	<i>Bellis perennis</i>
burnweed, Australian	<i>Erechtites glomerata</i> , <i>E. minima</i>	daisy, Mexican	<i>Erigeron karvinskianus</i>
buttercup, Bermuda	<i>Oxalis pes-caprae</i>	daisy, oxeye	<i>Leucanthemum vulgare</i>
buttercup, creeping	<i>Ranunculus repens</i>	daisybush, shrubby	<i>Osteospermum fruticosum</i>
butterflybush	<i>Buddleja davidii</i>	dandelion, common	<i>Taraxacum officinale</i>
cabbage	<i>Brassica oleracea</i>	dandelion, hairy	<i>Hypochaeris radicata</i>
cabbage tree, New Zealand	<i>Cordyline australis</i>	devil's thorn	<i>Emex spinosa</i>
calla lily	<i>Zantedeschia aethiopica</i>	dock, curly	<i>Rumex crispus</i>
		dogtailgrass, hedgehog	<i>Cynosurus echinatus</i>
		dracaena, giant	<i>Cordyline australis</i>
		dyer's woad	<i>Isatis tinctoria</i>
		egeria, Brazilian	<i>Egeria densa</i>

## APPENDIX 4: Species by Common Name (continued)

elm, Chinese	<i>Ulmus parvifolia</i>	houndstongue	<i>Cynoglossum officinale</i>
elm, Siberian	<i>Ulmus pumila</i>	hydrilla	<i>Hydrilla verticillata</i>
emex, spiny	<i>Emex spinosa</i>	hypericum, Canary Island	<i>Hypericum canariense</i>
eupatorium	<i>Ageratina adenophora</i>	iceplant	<i>Carpobrotus chilensis</i>
false-brome, perennial	<i>Brachypodium sylvaticum</i>	iceplant	<i>Carpobrotus edulis</i>
fennel	<i>Foeniculum vulgare</i>	iceplant, crystalline	<i>Mesembryanthemum crystallinum</i>
fennel, dog	<i>Anthemis cotula</i>	iceplant, heartleaf	<i>Aptenia cordifolia</i>
fescue, rattail	<i>Vulpia myuros</i>	iceplant, narrowleaf	<i>Conicosia pugioniformis</i>
fescue, squirreltail	<i>Vulpia bromoides</i>	iceplant, slenderleaf	<i>Mesembryanthemum nodiflorum</i>
fescue, tall	<i>Festuca arundinacea</i>	iris, yellowflag	<i>Iris pseudacorus</i>
fig, edible	<i>Ficus carica</i>	ivy, Algerian	<i>Hedera canariensis</i>
filaree, broadleaf	<i>Erodium botrys</i>	ivy, English	<i>Hedera helix</i>
filaree, redstem	<i>Erodium cicutarium</i>	jessamine, willow	<i>Cestrum parqui</i>
filaree, shortfruited	<i>Erodium brachycarpum</i>	jointvetch, rough	<i>Aeschynomene rudis</i>
filaree, whitestem	<i>Erodium moschatum</i>	jubatagrass	<i>Cortaderia jubata</i>
firethorn	<i>Pyracantha</i> spp.	kangaroothorn	<i>Acacia paradoxa</i>
fireweed, Australian	<i>Erechtites glomerata</i> , <i>E. minima</i>	kikuyugrass	<i>Pennisetum clandestinum</i>
fivehook bassia	<i>Bassia hyssopifolia</i>	klamathweed	<i>Hypericum perforatum</i>
flixweed	<i>Descurainia sophia</i>	knapweed, diffuse	<i>Centaurea diffusa</i>
forget-me-not, common	<i>Myosotis latifolia</i>	knapweed, meadow	<i>Centaurea debeauxii</i> (=C. $\times$ <i>pratensis</i> )
fountaingrass, crimson	<i>Pennisetum setaceum</i>	knapweed, Russian	<i>Acroptilon repens</i>
foxglove	<i>Digitalis purpurea</i>	knapweed, spotted	<i>Centaurea maculosa</i> (=C. <i>bibersteinii</i> )
foxtail restharrow	<i>Ononis alopecuroides</i>	knapweed, squarrose	<i>Centaurea virgata</i> ssp. <i>squarrosa</i> (=C. <i>squarrosa</i> )
fumitory	<i>Fumaria officinalis</i>	knotweed, Japanese	<i>Polygonum cuspidatum</i> (=Fallopija <i>japonica</i> )
garlic, false	<i>Nothoscordum gracile</i>	knotweed, Sakhalin	<i>Polygonum sachalinense</i>
gazania	<i>Gazania linearis</i>	kochia	<i>Kochia scoparia</i>
geranium, cutleaf	<i>Geranium dissectum</i>	leek, three-cornered	<i>Allium triquetrum</i>
geranium, dovefoot	<i>Geranium molle</i>	lettuce, prickly	<i>Lactuca serriola</i>
geranium, New Zealand	<i>Geranium retrorsum</i>	licoriceplant	<i>Helichrysum petiolare</i>
geranium, Robert	<i>Geranium robertianum</i>	locust, black	<i>Robinia pseudoacacia</i>
German-ivy	<i>Delairea odorata</i>	locust, honey	<i>Gleditsia triacanthos</i>
glandweed, yellow	<i>Parentucellia viscosa</i>	London rocket	<i>Sisymbrium irio</i>
glasswort	<i>Salsola soda</i>	loosestrife, hyssop	<i>Lythrum hyssopifolium</i>
goatgrass, barb	<i>Aegilops triuncialis</i>	loosestrife, purple	<i>Lythrum salicaria</i>
gorse	<i>Ulex europaeus</i>	lupine, yellow bush	<i>Lupinus arboreus</i>
grass, rabbitfoot	<i>Polypogon monspeliensis</i>	mannagrass, waxy	<i>Glyceria declinata</i>
gumweed, curlycup	<i>Grindelia squarrosa</i>	mayten	<i>Maytenus boaria</i>
hairgrass, European	<i>Aira praecox</i>	Mediterranean grass	<i>Schismus arabicus</i> , <i>S. barbatus</i>
hairgrass, silver	<i>Aira caryophyllea</i>	Mediterranean sage	<i>Salvia aethiops</i>
halogeton	<i>Halogeton glomeratus</i>	medusahead	<i>Taeniatherum caput-medusae</i>
hardinggrass	<i>Phalaris aquatica</i>	mesembryanthemum, coppery	<i>Malephora crocea</i>
hawksbeard, smooth	<i>Crepis capillaris</i>	milkthistle, blessed	<i>Silybum marianum</i>
hawthorn, English	<i>Crataegus monogyna</i>	mirrorplant, creeping	<i>Coprosma repens</i>
heath, Spanish	<i>Erica lusitanica</i>		
hedgearsley	<i>Torilis arvensis</i>		
herb-robert	<i>Geranium robertianum</i>		
holly, English	<i>Ilex aquifolium</i>		
horehound, white	<i>Marrubium vulgare</i>		
Hottentot-fig	<i>Carpobrotus edulis</i>		

## APPENDIX 4: Species by Common Name (continued)

montbretia	<i>Crocosmia x crocosmiiflora</i>	polypogon, rabbitfoot	<i>Polypogon monspeliensis</i> and subspp.
mullein, common	<i>Verbascum thapsus</i>	pondweed, curlyleaf	<i>Potamogeton crispus</i>
mullein, woolly	<i>Verbascum thapsus</i>	pride-of-Madeira	<i>Echium candicans</i>
mustard, birdsrape	<i>Brassica rapa</i>	privet, glossy	<i>Ligustrum lucidum</i>
mustard, black	<i>Brassica nigra</i>	pyracantha	<i>Pyracantha</i> spp.
mustard, blue	<i>Chorispora tenella</i>	quackinggrass, big	<i>Briza maxima</i>
mustard, field	<i>Brassica rapa</i>	Queen Anne's lace	<i>Daucus carota</i>
mustard, Saharan	<i>Brassica tournefortii</i>	radish	<i>Raphanus sativus</i>
mustard, shortpod	<i>Hirschfeldia incana</i>	ragwort, tansy	<i>Senecio jacobaea</i>
mustard, summer	<i>Hirschfeldia incana</i>	rattlesnakegrass	<i>Briza maxima</i>
mustard, tansy	<i>Descurainia sophia</i>	red gum	<i>Eucalyptus camaldulensis</i>
mustard, wild	<i>Sinapis arvensis</i>	redhot poker	<i>Kniphofia uvaria</i>
myoporum	<i>Myoporum laetum</i>	reed, common	<i>Phragmites australis</i>
nasturtium, garden	<i>Tropaeolum majus</i>	reed, giant	<i>Arundo donax</i>
nightshade, silverleaf	<i>Solanum elaeagnifolium</i>	rockrose, gum	<i>Cistus ladanifer</i>
oat, slender wild	<i>Avena barbata</i>	rose, baby sun	<i>Aptenia cordifolia</i>
oat, wild	<i>Avena fatua</i>	Russian-thistle	<i>Salsola tragus</i>
oleander	<i>Nerium oleander</i>	ryegrass, Italian	<i>Lolium multiflorum</i>
olive, Russian-	<i>Elaeagnus angustifolia</i>	salsify, yellow	<i>Tragopogon dubius</i>
olive	<i>Olea europaea</i>	saltbush, Australian	<i>Atriplex semibaccata</i>
onionweed	<i>Asphodelus fistulosus</i>	saltcedar	<i>Tamarix ramosissima</i>
orchardgrass	<i>Dactylis glomerata</i>	salvinia, giant	<i>Salvinia molesta</i>
oxalis, buttercup	<i>Oxalis pes-caprae</i>	sea-fig	<i>Carpobrotus chilensis</i>
oxalis, yellow	<i>Oxalis pes-caprae</i>	sea-lavender	<i>Limonium ramoissimum</i> ssp. <i>provinciale</i>
oxtongue, bristly	<i>Picris echioides</i>	sea-rocket, European	<i>Cakile maritima</i>
palm, Canary Island date	<i>Phoenix canariensis</i>	sesbania, red	<i>Sesbania punicea</i>
palm, date	<i>Phoenix dactylifera</i>	skeletonweed, rush	<i>Chondrilla juncea</i>
palm, Mexican fan	<i>Washingtonia robusta</i>	smilgrass	<i>Piptatherum miliaceum</i>
palm, Washington	<i>Washingtonia robusta</i>	sorrel, red	<i>Rumex acetosella</i>
paloverde, Mexican	<i>Parkinsonia aculeata</i>	sorrel, sheep	<i>Rumex acetosella</i>
pampasgrass	<i>Cortaderia selloana</i>	sowthistle, spiny	<i>Sonchus asper</i>
parentucellia, sticky	<i>Parentucellia viscosa</i>	speargrass, twisted-awned	<i>Stipa capensis</i>
parrotfeather	<i>Myriophyllum aquaticum</i>	spiny emex	<i>Emex spinosa</i>
passionflower, blue	<i>Passiflora caerulea</i>	spurge, caper	<i>Euphorbia lathyris</i>
pea, perennial sweet	<i>Lathyrus latifolius</i>	spurge, carnation	<i>Euphorbia terracina</i>
pea, Tangier	<i>Lathyrus tingitanus</i>	spurge, leafy	<i>Euphorbia esula</i>
pennyroyal	<i>Mentha pulegium</i>	spurge, oblong	<i>Euphorbia oblongata</i>
peppertree, Brazilian	<i>Schinus terebinthifolius</i>	St. Johnswort, common	<i>Hypericum perforatum</i>
peppertree, Peruvian	<i>Schinus molle</i>	starthistle, Malta	<i>Centaurea melitensis</i>
pepperweed, perennial	<i>Lepidium latifolium</i>	starthistle, purple	<i>Centaurea calcitrapa</i>
periwinkle, big	<i>Vinca major</i>	starthistle, yellow	<i>Centaurea solstitialis</i>
pine, Monterey	<i>Pinus radiata</i> cultivars	steppeggrass, Mediterranean	<i>Stipa capensis</i>
pistache, Chinese	<i>Pistachia chinensis</i>	stinkwort	<i>Dittrichia graveolens</i>
plantain, buckhorn	<i>Plantago lanceolata</i>	sweetclover, Indian	<i>Melilotus indicus</i>
plantain, cutleaf	<i>Plantago coronopus</i>	sweetclover, yellow	<i>Melilotus officinalis</i>
plantain, English	<i>Plantago lanceolata</i>	sweetpea, perennial	<i>Lathyrus latifolius</i>
plum, wild	<i>Prunus cerasifera</i>	tallowtree, Chinese	<i>Sapium sebiferum</i>
poison-hemlock	<i>Conium maculatum</i>		
pokeweed	<i>Phytolacca americana</i>		

## APPENDIX 4: Species by Common Name (continued)

tamarisk	<i>Tamarix ramosissima</i>	velvetgrass, common	<i>Holcus lanatus</i>
tamarisk, athel	<i>Tamarix aphylla</i>	vernalgrass, sweet	<i>Anthoxanthum odoratum</i>
tamarisk, smallflower	<i>Tamarix parviflora</i>	vervain, seashore	<i>Verbena litoralis</i>
tansy, common	<i>Tanacetum vulgare</i>	vervain, tall	<i>Verbena bonariensis</i>
tea tree, Australian	<i>Leptospermum laevigatum</i>	vetch, hairy	<i>Vicia villosa</i>
teasel, fuller's	<i>Dipsacus sativus</i>	Victorian box	<i>Pittosporum undulatum</i>
teasel, wild	<i>Dipsacus fullonum</i>	wakame	<i>Undaria pinnatifida</i>
thistle, artichoke	<i>Cynara cardunculus</i>	water hyacinth	<i>Eichhornia crassipes</i>
thistle, bull	<i>Cirsium vulgare</i>	waterlily, fragrant	<i>Nymphaea odorata</i>
thistle, Canada	<i>Cirsium arvense</i>	watermilfoil, Eurasian	<i>Myriophyllum spicatum</i>
thistle, Italian	<i>Carduus pycnocephalus</i>	water-primrose, creeping	<i>Ludwigia peploides</i> ssp.
thistle, musk	<i>Carduus nutans</i>		<i>montevidensis</i>
thistle, plumeless	<i>Carduus acanthoides</i>	water-primrose, Uruguay	<i>Ludwigia hexapetala</i>
thistle, Scotch	<i>Onopordum acanthium</i>		(= <i>L. uruguayensis</i> )
thistle, slenderflower	<i>Carduus tenuifolius</i>	watsonia	<i>Watsonia borbonica</i>
thistle, woolly distaff	<i>Carthamus lanatus</i>	watsonia, bulbil	<i>Watsonia meriana</i>
toadflax, Dalmatian	<i>Linaria genistifolia</i> ssp.	whitetop, hairy	<i>Cardaria pubescens</i>
	<i>dalmatica</i> (= <i>L. dalmatica</i> )	whitetop, lens-podded	<i>Cardaria chalepensis</i>
	<i>Nicotiana glauca</i>		(= <i>C. draba</i> ssp. <i>chalepensis</i> )
tobacco, tree	<i>Centaurea melitensis</i>	whitetop, tall	<i>Lepidium latifolium</i>
tocalote	<i>Ailanthus altissima</i>	wisteria, scarlet	<i>Sesbania punicea</i>
tree-of-heaven	<i>Ehrharta erecta</i>	woodsorrel, creeping	<i>Oxalis corniculata</i>
veldtgrass, erect	<i>Ehrharta longiflora</i>	zoysiagrass	<i>Zoysia</i> spp.
veldtgrass, long-flowered	<i>Ehrharta calycina</i>		
veldtgrass, purple			



The Nation Park Service's Exotic Plant Management Team removes satellite infestations of *Centaurea solstitialis* (yellow starthistle) to prevent the plant's spread. (Photo by Bobbi Simpson, Point Reyes National Seashore)

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*Circular clones of *Spartina alterniflora* x *foliosa* (smooth cordgrass hybrid) spread in San Francisco Bay. (Photo by Stephen Joseph, Invasive *Spartina* Project)*



## LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

October 10, 2008

Chairman Salud Carbajal  
Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, CA 93101

**Re: Santa Barbara Ranch Project Public Access Policy Issues**

Dear Chairman Carbajal & Honorable Supervisors,

This letter is submitted by the Environmental Defense Center on behalf of the Santa Barbara Chapter of the Surfrider Foundation and by the Law Office of Marc Chytilo on behalf of the Naples Coalition.

The Santa Barbara Project fails to provide access consistent with the LCP and Coastal Act and cannot be approved as currently planned. Inclusion of a pedestrian Coastal Trail segment along the bluff to complement the multi-use trail along Highway 101, and appropriate vertical access consistent with the site's constraints will resolve policy conflicts related to public access.

The County must take all necessary steps to defend the public's right of access to and along the shoreline through such means as legal action to acquire easements to beaches and access corridors for which prescriptive rights exist and accepting offers of dedication.<sup>1</sup>

### **Coastal Trail – Pedestrian Bluff-top Trail**

Coastal access and connection to the California Coastal Trail is normally required for any major coastal project and must be required for the Santa Barbara Ranch Project. The Coastal Act and LCP access provisions require the Project to provide suitable vertical access and horizontal access along the shoreline.

The Coastal Trail location is guided by criteria for siting.<sup>2</sup> One criterion is that "the Coastal Trail should be within sight, sound, or at least the scent of the sea." Another is that "the trail must be located and designed with a healthy regard for the protection of natural habitats, cultural and archaeological features, private property rights, neighborhoods, and agricultural operations along the way."

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<sup>1</sup> LCP Policy 7-1

<sup>2</sup> The Coastal Trail background is at <http://www.californiacoastaltrail.info/cms/pages/main/index.html> and is attached to this letter.

The County is required to ensure the applicants grant a lateral easement “along the shoreline” which is “adequate to allow for lateral access during periods of high tide.”<sup>3</sup> At Naples, a lateral easement which allows access along the shoreline at high-tide can only be located on the bluff-top. The area below the bluff is unsafe and impassable during high-tides, and along Highway 101 is not “along the shoreline.”

State coastal policy is to locate the Coastal Trail as close to the ocean and coastal bluff as possible while avoiding sensitive habitats. The County Parks, Recreation and Trails Map depicts the Coastal Trail as close to the bluff as possible.<sup>4</sup>

In contradiction with these policies, the applicant has refused to offer horizontal trail access along the coastal bluff, instead offering trails along Highway 101.

Santa Barbara Ranch (SBR) claims Dos Pueblos Ranch’s (DPR) unwillingness to allow the western end of the Coastal Trail on DPR property to cross DP-19, and cultural resources on Lot 12, prevent the Coastal Trail from going across the bluff-top. SBR claims hikers would try to use the railroad trestle. EDC, Surfrider and the Naples Coalition proposed a safe bluff-top trail that avoids sensitive resources.<sup>5</sup>

The pedestrian branch of the Coastal Trail should run the entire length of the bluff-top with the potential to connect to DPR and then Las Varas on the west and Makar on the east. The LCP locates a vertical access (see below) in Dos Pueblos Canyon, and if acquired, the bluff-top Coastal Trail could connect to Dos Pueblos Canyon as part of the network.

The developer’s “Freeway trail” should be retained as a surfaced multi-purpose trail (for bikes, strollers, horses, etc), but is patently not “along the shoreline,” is inappropriate as a Coastal Trail and is not “within sight, sound, or at least the scent of the sea.” A parallel pedestrian trail along the SBR bluff from Makar to DP Canyon would comply with trail siting policies, would provide an enhanced recreational experience, and would be sensitive of cultural and biological resources and homes<sup>6</sup>.

### **Vertical Access to the Beach should be provided in Dos Pueblos Canyon**

The proposed beach access plan does not identify a specific beach access point. Access should be provided at Dos Pueblos Canyon, or if DPR drops out of the Project, at a suitable proximate offsite location(s) (e.g. Makar, Las Varas) before findings of consistency with the LCP can be made.

For all development between the mean high-tide and the first public road, granting of an easement to allow access to the mean high-tide line is mandatory unless:

- (a) another more suitable proximate location exists and is proposed by the land use plan;
- (b) access would result in unmitigable impacts to habitat areas designated on the land use plan;
- (c) access is inconsistent with military security, public safety or would harm

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<sup>3</sup> LCP Policy 7-3.

<sup>4</sup> FEIR Figure 3.10-1.

<sup>5</sup> See attached Alternative Trail Plans.

<sup>6</sup> Homes should be shifted north to accommodate the Bluff-top Pedestrian Trail.

agriculture; or (d) the parcel is too narrow to allow vertical access without affecting the owner's privacy.<sup>7</sup> The Coastal Act contains similar requirements.<sup>8</sup>

SBR offered a blocky staircase that was ill-suited for the site and was unanimously rejected by your Planning Commission. The location was near the seal haul-out area and subject to proposed spring and summer closures, was visually intrusive and grossly incompatible with the area. Access to Naples Reef is discouraged except by way of boat,<sup>9</sup> so the staircase would have compromised County policy. In its decision, the Planning Commission noted that other proposed nearby residential development on either side (Makar and Las Varas) include vertical access, and so required Osgood to set aside in lieu funds to be held until those other projects are processed. Just days before the hearing, this requirement of in-lieu funding was removed from the MMRP (see Attachment F-6 to the supplemental staff report, p. 3).

The absence of coastal access is a red flag for the Coastal Commission. Community groups do not support the staircase structure, but there should be vertical access provided in Dos Pueblos Canyon where there is existing infrastructure and room for a new vertical access trail with east and west extensions along the bluff. Dos Pueblos Canyon is identified in the LCP as a location to be acquired for public access to the beach.<sup>10</sup> Dos Pueblos Canyon has paved access, parking, water and considerable space for recreational uses. The Beach at DP Canyon is the only wide, non bluff-backed sandy beach along DPR and SBR. Due to its location, DP Canyon access does not require a staircase and is safer than SBR Beach access.

The DEIR notes that DP Canyon "has many of the attributes of a preferred public access site, partly due to greater distance from the critical area of Naples Reef, as compared to the proposed access point."<sup>11</sup> DP Canyon access lessens impacts to the marine mammal haul-out, Naples Reef, coastal bluff scrub ESHA, coastal views and bluff stability. Access at DP Canyon better fulfills local<sup>12</sup> and state coastal policies.<sup>13</sup>

DPR has stated that public access at DP Canyon a deal-breaker. DPR withdrew the beachfront lot – DP-19 – from the project in an unabashed effort of thwarting the LCP's public access policy. The County should condition DPR's benefits on providing this singly important public benefit.

Removal of the obtrusive beach access structure from the Alt. 1B Project protects sensitive coastal resources including the seal haul out, beach and reef, but creates

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<sup>7</sup> LCP Policy 7-2.

<sup>8</sup> Coastal Act § 30212: "(a) Public access from the nearest public roadway to the shoreline land along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection [of] fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected..."

<sup>9</sup> LCP Policy 7-19.

<sup>10</sup> LCP Policy 7-18, Implementing Action (a)(2).

<sup>11</sup> DEIR at 6-58.

<sup>12</sup> LCP Policies 9-25, 9-33 and CLUP Text at 212 – 213 requiring protection for marine mammal rookeries.

<sup>13</sup> Coastal Act Sections 30210 and 30212 (protect natural resource areas from recreational overuse), 30214 (regulate time and manner of use due to site-specific constraints), 30253 (geological hazards).

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Chairman Salud Carbajal, Santa Barbara County Board of Supervisors re: Public Access

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conflicts with applicable public access policies including Coastal Act § 30212 and LCP Policy 7-2.

In order to avoid this pitfall, the Board should follow the directive in LCP Policy 7-18 (a) and (b), and acquire an easement for public access and day use facilities at Dos Pueblos Canyon. Relying on unsecured access at Makar or Las Varas is inappropriate and may be growth inducing, as discussed in our letter on CEQA (10/10/08).

Otherwise, due to the policy conflicts, the Board cannot make the required finding under LCP Policy 1-4, that the Project is consistent with all applicable policies.

Further, these conflicts – created by the PC's new action to delete the public access trail – constitute significant new impacts<sup>14</sup> that require recirculation of the EIR pursuant to CEQA Guidelines § 15088.5 (a) (1).

## Conclusion

The Santa Barbara Ranch Project public access plan fails to follow the shoreline, lacks identified vertical access, violates various policies and causes. Alternative access plans which involve intelligently sited vertical beach access and a bluff-top pedestrian trail parallel to the planned multi-use trail along Highway 101 will balance human use and resource protection and comply with public access policies.

Thank you for your time and consideration. Please contact us with any questions.

Sincerely,

Brian Trautwein  
Environmental Analyst  
Environmental Defense Center

Marc Chytilo  
Law Office of Marc Chytilo

Cc: California Coastal Commission  
Naples Coalition  
Surfrider Foundation

Attachments: Map

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<sup>14</sup> CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936

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ENVIRONMENTAL LAW

October 10, 2008

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

By email to [sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)

**RE: October 13, 2008 Board of Supervisors Hearing on the Santa Barbara Ranch Project; Environmental Review Considerations and CEQA Violations**

*Dear Chair Carbajal and Members of the Board,*

This letter is submitted by the Environmental Defense Center (EDC) on behalf of the Santa Barbara Chapter of the Surfrider Foundation, and by the Law Office of Marc Chytilo on behalf of the Naples Coalition.

Since the inception of the Santa Barbara Ranch (SBR) Project, we have urged the County to conduct thorough environmental review consistent with the requirements of CEQA. Years and volumes of environmental review documents later, there are serious problems that persist, as well as new problems, and new opportunities, that have arisen through the process. While we understand the Applicant's and the County's desire to wrap-up the lengthy planning and environmental review process, taking short-cuts now will almost guarantee set-backs in the future.<sup>1</sup> This is the Board's opportunity to resolve both lingering issues concerning the adequacy of the environmental analysis, and the newly-generated issues introduced by Alternative 1B.

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<sup>1</sup> The Applicant and County Staff accelerated the Project through the Planning Commission—hearings were so closely spaced, and new information constantly released, that Commissioners and the public had an extremely difficult time keeping up with the process. This accelerated schedule was premised on the timetable set forth in the MOU, a far less complex project than Alt. 1 or Alt. 1 B, which introduced a dozen or more significant new issues and impact areas. Virtually all of the delays in project processing are therefore directly attributable to the Applicant's proposal of the Alt. 1 project. In fact, in the only pending lawsuit between the Developer and the County, which has been continued by stipulation for years, the Applicant specifically referred to the complexity of the alternative *they themselves* introduced as the cause of delay in the County's environmental review and planning approval process. See Stipulations in Case No. 203256, attached hereto as Exhibit 1. Additionally, the stipulations state that the Applicant reviewed the Administrative Draft of the EIR, a statement refuted by County Staff. See Exhibit 8.

The Applicant introduced Alternative 1B (Alt. 1B) on May 29, 2008, after the Final EIR (FEIR) was purportedly complete. Alt. 1B was made possible by Schulte's sale of an option to sell a 360 acre portion of Dos Pueblos Ranch (DPR) to Osgood, announced the same day as Alt. 1B was introduced to the Planning Commission and the public. Alt. 1B relocates 14 lots from the coastal zone north of Highway 101 to outside the coastal zone north of Highway 101. Some homes are hidden from the Hwy 101 viewshed, but many are not and continue to intrude into the skyline as seen from Hwy 101 and other public viewing places. Alt. 1B also clears more sensitive habitat as compared to Alt. 1, weakens agricultural protections, allows two-story structures on the coastal bluff, removes beach access, removes the coastal loop trail, reduces acreages of agricultural lands under the Williamson Act, quadruples grading volumes, maintains houses atop sensitive cultural resources, and so on.

Contrary to assertions by County Staff, Alt. 1B does introduce new significant environmental impacts, substantially increases the severity of environmental impacts and reveals feasible new alternatives and mitigation measures that would substantially lessen the environmental impact of the Project. Significantly, the very option that made Alt. 1B possible, also makes possible numerous feasible alternatives which reduce the environmental impacts of the Project. For these reasons, CEQA requires that the EIR, or portions of it, be revised and recirculated for public comment.

CEQA contains a firm substantive mandate that a project not be approved if feasible alternatives or mitigation measures exist that could substantially lessen its environmental impacts. Feasible alternatives and mitigation measures exist but have not been implemented. Significantly, the scope of the Alt. 1B Project and changes to the ownership of the Project site offers considerable opportunity for reduced development and/or clustered alternatives that would substantially lessen the environmental impacts of the Project. The EIR assessed the feasibility of Alternative 5, the Clustered Development Alternative, and Alternative 4, the Reduced Development Alternative based on project configurations that are no longer being pursued and circumstances which no longer apply because SBR now controls the option areas. Under new circumstances introduced with Alt. 1B, these previously-rejected alternatives are now clearly feasible due to SBR's new control over the option areas and would substantially lessen the environmental impacts of the Project.

As presented, Alternative 1B is not the environmentally superior alternative. An alternative based on the Alt. 1B footprint could be developed which reduces the projects environmental impacts by removing development from the coastal bluff. Evidence indicates such an alternative is feasible<sup>2</sup>, and would gain support of Surfrider and the Naples Coalition. The Board has the opportunity now to complete the environmental review necessary to resolve the issues that are now being swept under the rug. As a part of this process, the Board should specifically direct Staff to sit down with the Applicant and representatives from key stakeholder groups in the environmental community including the Naples Coalition and the Environmental Defense Center with their client Surfrider, to develop a Project Alternative that modifies Alternative 1B to

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<sup>2</sup> See Ellis Report, October 8, 2008, Exhibit 2 to our letter submitted 10/10/08 on Alternatives

resolve Naples land use issues while reducing environmental impacts to the maximum extent feasible and eliminating policy inconsistencies.

Below, we identify changes to the Project requiring recirculation of the EIR, as well as underlying inaccuracies and omissions from the FEIR that affect the impact analysis, the adequacy of mitigation measures, and the development and comparison of alternatives.

Additional environmental review substantially benefits the environment and the community, and would protect the County and the developer Mr. Osgood from later delays and expense incurred by defending a sub-par project before the Coastal Commission, and defending a sub-par EIR and unsupported findings in court. We urge the Board to seize this opportunity to resolve these issues and recirculate the EIR.

## **I. Recirculation of the EIR**

Recirculation is required when significant new information is added to the EIR after public notice of the draft EIR's availability, but before certification. CEQA Guidelines § 15088.5 (a). To be significant, the new information must change the EIR in such a way that deprives the public of a meaningful opportunity to comment upon: a *substantial* adverse environmental effect<sup>3</sup> of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." *Laurel Heights* (1993) 6 Cal. 4th 1112, 1129; Guidelines § 15088.5 (a).

Additionally, where a disclosure shows one of the following, it is considered "significant new information":

- 1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- 2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce that impact to a level of insignificance.
- 3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project proponents decline to adopt it.
- 4) Fundamental inadequacy of the EIR.

Additionally, the court in *Preservation Action Council v. City of San Jose* (2006) 141 Cal. App. 4<sup>th</sup> 1336, 1357, determined that a revision which remedied the EIR's "inadequate analysis of the

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<sup>3</sup> A "substantial adverse environmental effect" is not defined, but its meaning appears to be equivalent to "significant impact." See PRC § 21068 (Significant effect on the environment means a substantial, or potentially substantial, adverse change in the environment) and Guidelines § 15358 ("Effects" and "impacts" as used in these Guidelines are synonymous).

reduced-size alternative will necessarily require recirculation of this section of the amended DEIR". The Court reasoned that "the public should have had the opportunity to assess and comment upon an adequate analysis of the reduced-size alternative." *Id.* at 1358.

Staff's position is that the new information introduced by Alternative 1B does not trigger recirculation of the FEIR. CEQA Findings, p. 8. Staff's position is not supported by substantial evidence in the record. Their Confirming Analysis is brief and conclusory, glossing over numerous project changes and failing to disclose their associated significant impacts. Pursuant to the above legal standards, CEQA requires recirculation of the SBR EIR for the reasons stated below.

1. The SBR EIR must Be Recirculated because Significant New Information Was Added after Public Notice of the Draft EIR's Availability but before Certification

The Applicant proposed Alternative 1B in a Planning Commission workshop on visual resources on May 29, 2008. The legal standards set forth in the above section determine whether or not recirculation is required. The project applicant cannot avoid required environmental review by threatening to withdraw a proposed change that would trigger recirculation. The Confirming Analysis prepared by County Staff reaches the Applicant's required result in concluding that Alt. 1B does not create new impacts, substantially increase impacts, or otherwise alter the environmental analysis. The Confirming Analysis is only able to reach this conclusion by "sweeping issues under the rug", something prohibited by CEQA (*Concerned Citizens of Costa Mesa v. 32<sup>nd</sup> Dist. Agricultural Ass'n* (1986) 42 Cal. 3d 929, 935). A thorough consideration of the changes introduced by Alt. 1B reveals significant new information that alters the impact analysis, alternatives analysis, and efficacy of mitigation measures, and thus requires recirculation of the EIR.

a. Removal of Vertical Beach Access and Lateral Access along the Coast

The Alternative 1B Project takes away one of the key public benefits of the SBR project. It removes vertical access to the beach, and removes the coastal loop trail from the project description, the only coastal trail component of the Project<sup>4</sup>. This substantial change to the Project Description causes the project to become inconsistent with numerous policies in the LCP and Coastal Act requiring beach access, creating new significant land use impacts due to these policy inconsistencies. As such the changes to the access component of the project require recirculation of the EIR. Additionally, the removal of beach access creates other potentially significant impacts including growth inducing impacts from reliance on the future approval of other projects to provide access. Removal of the beach access without identification of a superior alternate beach access causes impacts related to safety hazards, bluff erosion and habitat degradation created by informal beach access down steep bluff faces.

i. The Confirming Analysis Does Not Analyze the Access Changes

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<sup>4</sup> EDC, Surfrider and the Naples Coalition have argued vigorously from the start that the "coastal loop trail" proposed as part of the MOU and Alt. 1 projects was not a true coastal trail as it traversed the bluff for a short distance only. However Alt. 1B now includes no trail segment, no matter how limited, along the coastal bluff.

The Planning Commission made major alterations to the public access components of the Project without the benefit of environmental review. The FEIR including the Confirming Analysis does not analyze the project without beach access or any coastal trail. The Confirming Analysis states for example, “Alternative 1B does not alter Alternative 1A’s proposals for the Coastal Trail or De Anza Trail. [citations omitted] Therefore, Alternative 1B will not result in new, or substantially more severe, significant impact or require new mitigation measures with regard to recreation.” (p. 8) This statement is completely unsupported given that the loop in the coastal loop trail—the only proposed trail located along the coastal bluff—has been deleted from the project. With Alt. 1B there is no opportunity *whatsoever* to walk *along* the coastal bluff as is intended by the De Anza Trail. Furthermore, Alt. 1B deleted the vertical beach access structure—Alt. 1A would have provided access to the beach and Alt. 1B will not. The Confirming Analysis demonstrates that the impacts associated with the severe alterations to the access components of the Project were not analyzed.

ii. Significant New Land Use Impacts Arising from Inconsistency with Public Access Policies

Inconsistency with applicable policies designed at least in part to reduce environmental impacts are considered significant environmental impacts under CEQA. (*See* CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936.) Alt. 1B introduced several changes which generate serious conflicts with the public access provisions of the Local Coastal Plan (LCP) and Coastal Act. Specifically, the removal of beach access introduces a conflict with Coastal Act § 30212 and LCP Policy 7-2, which require the provision of beach access for all new coastal developments. Removal of coastal trail also introduces a conflict with LCP Policy 7-3, Coastal Act § 30212, and GP LU Parks/Recreation Policy 4, which require the provision of lateral beach access for all new coastal developments. These policy conflicts are substantial and cause potentially significant impacts which must be analyzed in a revised and recirculated EIR.

iii. Other Potentially Significant Impacts Caused by Truncating Access

Modifications to project’s access components include the addition of a new mitigation measure (Rec-1) providing that the Project’s trails would connect to a vertical access trail proposed as part of the Las Varas Ranch project currently pending before the County.<sup>5</sup> MMRP p. 49. There are potentially significant new growth-inducing impacts resulting from the new mitigation measure because it relies on the approval of other Gaviota residential projects on prime agricultural lands to provide beach access, thereby adding a substantial benefit, access for Naples, to what otherwise may be a harmful project, violating coastal policies, causing significant impacts and inducing sprawl. *See* Exhibit 2, and Exhibits 13 and 14 to the Naples Coalition DEIR comment letter (Coastal Commission Staff Reports for the Polacek and Wadell).

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<sup>5</sup> Discussions at the Planning Commission also included using the vertical access proposed at Makar as beach access for the SBR project, but this is not reflected in the MMRP.

This additional benefit could tip the balance towards project approval when it might not be otherwise justified.

An additional potentially significant new impact related to the removal of beach access without identifying a superior alternative beach access site is the hazard created by building homes, providing a parking lot, and encouraging public access of a coastal area that provides no safe access to the beach. Members of the public and Project residents alike will find a way down, and may become seriously injured in the process, in turn generating substantial liability for project landowners. Similarly, sensitive Coastal Bluff habitat and biological resources including the seal haul-out area are jeopardized by informal beach access without seasonal restrictions down sensitive and erosion-prone drainage-ways. This too could cause additional significant biological impacts above those determined in the EIR which assumed seasonal restrictions.

Finally, off-site access may trigger impacts that are foreseeable but not addressed in the EIR. Decision-makers and the public have not had a meaningful opportunity to comment upon any of these potentially significant new impacts, which should be analyzed as part of a revised and recirculated EIR.

#### b. Increased Removal of Sensitive Habitats

Alternative 1B relocates 14 lots further up the ridgelines, which changes the habitats and biological resources affected by the project. Comparing the figures presented in the Confirming Analysis with the figures presented in the FEIR reveals that Alt. 1B will impact additional acreage of several sensitive habitat types, which substantially increases the biological impacts of the Project.

##### i. Increased Removal of Sensitive Habitats Is a New Significant Impact

The Confirming Analysis does not Analyze Significant Changes to Biological Resources Affected by Alt. 1B. Specifically, the CA fails to discuss how the changes effectuated in Alt. 1B change the amount of various vegetation types affected by the project. The chart included in the CA omits the figure necessary to make a comparison between Alt. 1A and Alt. 1B: the area affected by Alt. 1A. Comparing the Alt. 1B figures from this table with the Alt. 1A figures presented in the FEIR, reveals several notable changes: Alt. 1B will affect 1.15 acres of Coast-live Oak Riparian Woodland, where Alt. 1A would affect only 0.33 acres. Alt. 1B will affect 0.89 acres of Coast Live Oak Woodland, compared with 0.486 acres affected by Alt. 1A. Alt. 1B will affect 9.24 acres of Coastal Scrub where Alt. 1A would affect 6.2 acres, 5.42 of them directly (CA does not distinguish between direct and indirect impacts re. Alt. 1B). Alt. 1B will affect 8.64 acres of disturbed area, compared with 0.46 acres under Alt. 1A. Alt. 1B will affect 171.23 acres of Non-native Grassland, increased from 136.83 acres under Alt. 1A. Additionally, the CA adds a new category of Non-native grassland not included in the FEIR, namely AG/NNG. The CA states that the Alt. 1 area includes 21.7 acres of this vegetation type, 17.16 acres of which will be affected by Alt. 1B. When added to the total non-native grassland affected, Alt. 1B affects 229.32 acres—an 18% increase over Alt. 1A.

This substantial increase in acreage of sensitive habitats affected by Alt. 1B constitutes a significant new impact that must be analyzed in a recirculated EIR. *See* Guidelines § 15088.5 (a)(1); *Laurel Heights* 6 Cal. 4th at 1120. The County CEQA Thresholds and Guidelines provide that “Direct removal of riparian vegetation” and “Disruption of riparian habitat, particularly animal dispersal corridors and or understory vegetation” are among the types of project-related impacts that may be significant (p. 42). Alt. 1B disrupts over three times the acreage of Coast-live Oak Riparian Woodland; under the above standards this is a significant impact. Further, the County CEQA Thresholds provide that “Removal of understory” in Woodlands and Forest Habitat areas may be considered a significant impact (p. 43). Alt. 1B affects twice as much of this habitat type, and as discussed below, may involve removal of understory and possibly mature oaks, though the Confirming Analysis is extremely vague on this point. The EIR provides narrowly crafted mitigation, which as explained below, does not mitigate for the increases in affected habitats and acreage of habitat lost. This mitigation is non-responsive to the increased acreage of sensitive habitats affected. As such, recirculation of the EIR is required to examine the significant new impacts caused by the changes introduced by Alt. 1B.

ii. Increased Removal of Sensitive Habitats Causes a Substantial Increase in Biological Impacts, not Mitigated to Insignificance

1. Riparian Woodland Habitat

More than tripling the amount of Coast-live Oak Riparian Woodland habitat affected results in a substantial increase in the severity of Impact Bio-4: Effects on Special-status Plants Associated with Riparian Woodland Habitats and Isolated Seep Habitats, without a commensurate increase in mitigation measures. Existing mitigation measures are insufficient to reduce that impact to a level of insignificance. Recirculation is therefore required under Guidelines § 15088.5 (a) (2).

The FEIR characterizes Impact Bio-4 as resulting from grading for access roads and building pads and associated erosion and introduction of sediment into riparian habitat areas, altering surface flows and infiltration of water or introducing pollutants associated with construction, and from human occupation and activities including pesticide use and plant collection. (p. 9.4-62) The FEIR classifies Impact Bio-4 as Class II, significant but feasibly mitigated. Mitigation measures proposed to reduce this impact below significance include: WQ-1a, 1b and 1d, which require the implementation of only some of the EIR’s Best Management Practices (BMPs) to control erosion and siltation during construction and to implement a resident and public use education program. These mitigation measures are insufficient to address the substantial increase in the severity of Impact Bio-4.

2. Oak Woodland Habitat

Doubling the acreage of Coast Live Oak Woodland also results in a substantial increase in the severity of Impact Bio-3: Impacts to Special-status Plants Associated with Oak Woodland Habitats, and mitigation measures are insufficient to reduce that impact to a level of insignificance. Recirculation is therefore required under Guidelines § 15088.5 (a) (2).

The FEIR concludes that Impact Bio-3 is Class III, based on the fact that the Alt. 1 design building footprints “are located well away from this habitat type.” The FEIR goes on to say that “some development envelopes, however, are adjacent to coastal oak woodland (e.g. Lots DP-01, DP-02, DP-03) and these may indirectly affect the habitat through drainage and runoff, but these will be avoided or minimized by other mitigation measures (WQ-1a, 1b, and 1d). A single isolated oak tree is within the yard or grading envelope of Lot DP-03...the intent of the project design is to preserve this tree in place...A small area, amounting to 0.49 acres, mapped as coast live oak woodland on Lots DP-02 and DP-03 will be filled for the construction of the access drive in this area. The vegetation affected consists of understory shrubs and no mature oak trees would be affected. The Alt. 1 design would not fragment intact areas of oak woodland habitat from one another, or from remaining habitat along drainage courses in the vicinity. Indirect effects related to vegetation management and human occupation would be buffered by the intervening agricultural and open space areas planned within the Alt. 1 design.” (FEIR, p. 9.4-62). Alt. 1B introduces a second building envelope east of DP-03 (now DP-03A) and immediately north the mapped coast live oak woodland and several other building envelopes in the vicinity of DP-02 and DP-03. This substantial increase in development in this area will likely require increased physical removal of coast live oak woodland, most likely accounting for the additional acreage ‘affected’. Such an increase in physical removal would substantially increase the impacts to this habitat type, particularly if mature trees will be removed. The Confirming Analysis is silent on this important issue.

### 3. Scrub Habitat

The thirty-percent increase in Coastal Scrub habitat affected by the project results in a substantial increase in the severity of Impact Bio-2: Removal of Special-status Plants Associated with Scrub Habitats, without a commensurate increase in mitigation measures. Existing mitigation measures are insufficient to reduce that impact to a level of insignificance. Recirculation is therefore required under Guidelines § 15088.5 (a) (2).

The FEIR states that Alt. 1 development could affect a number of special-status plants known to occur in coastal scrub habitat areas and that Alt. 1 may have impacts due to habitat loss/fragmentation of special-status plants. (p. 9.4-61) The FEIR concludes that this impact is Class II includes Mitigation measures Bio-2a and 2b to address respectively, retention and enhancement of coastal scrub, and handling of sensitive species if encountered. Mitigation Bio-2a provides for revegetation at 3:1 ratio, or 18.6 acres revegetated for 6.2 acres affected. 9.4-88. Alt. 1B increases the acres affected to 9.24 acres, but Mitigation Bio-2a has not changed to provide for additional revegetation. An additional 9.12 acres of coastal scrub revegetation would need to occur to achieve a 3:1 ratio for Alt. 1B. The vegetation restoration plan may be unable to mitigate for this additional loss. Mitigation Bio-2b does not mitigate the loss of Coastal Scrub habitat to the maximum extent feasible because it does not provide for preservation in place, even if threatened or endangered species are encountered. (CEQA Findings, p.16)

#### 4. Grassland Habitat

The twenty-five percent increase (compared to Alt 1), in affected non-native grassland acreage substantially increases the severity of Impact Bio-1: Removal of Special-status Plants Associated with Grassland Habitats, and mitigation measures are insufficient to reduce that impact to a level of insignificance. Recirculation is therefore required under Guidelines § 15088.5 (a) (2).

The increased acreage affected under Alt. 1B, coupled with the fundamentally inadequate methods used in the FEIR to identify native grasslands (*see* below discussion), causes this impact to remain significant despite implementation of Bio-1a and Bio-1b. Mitigation Bio-1a addresses native grasslands only. The FEIR vastly understates the amount of native grasslands on the site because it utilized scientifically unacceptable and inaccurate mapping techniques, such that many areas that meet established criteria for native grasslands are not mapped in the FEIR, and will not be addressed by this mitigation measure. *See* comment letter submitted we submitted on grasslands (10/8/08) and comment letter submitted by biologist David Magney (10/8/08). *See* Painter Letter (7-17-08), CNPS Letter (8-25-08) and CDFG Letter (1-22-08).

Further, although the mitigation measure states that it will also “minimize the effects to sensitive plant species occurring in grassland”, it is unclear how or whether this will occur. (FEIR, p. 9.4-85 and MMRP, pp. 22-23) Mitigation Bio-1b provides for surveys ‘Within one year of the commencement of construction’ and provides for the collection and transplantation of special status species. This mitigation measure does not mitigate the loss of special-status species to the maximum extent feasible because it does not provide for preservation in place, even if threatened or endangered species are encountered. (CEQA Findings, pp. 15-16) Thorough surveys must instead be conducted *before* construction commences and special status species preserved in place where it is feasible to reconfigure grading and development of the lot. Magney comment letter (10-08-08). Further, conducting these surveys before finalization of the subdivision map would allow for lots to be relocated in the event that avoiding special status species is not feasible within the confines of the proposed lot.

##### c. Allowance for Two-Story Structures on the Coastal Bluff

Alternative 1B would relocate some residences out of the Highway 101 viewshed, however it also introduces an important change that will increase impacts to views both from the ocean, public beaches and from public trails. Specifically, Alt. 1B will allow two -story structures on the coastal bluff. Alt. 1A permitted only single story structures.

Second stories will be used in the design of the Alt. 1B residences as viewing places, with windows, balconies and lighting, that were not present with the previous allowance for single story structures with “architectural features” up to 25 feet in height. Further, Policy 4-11 of the LCP limits building height to 15 feet within view corridor overlay areas. This area meets the definition of view corridor overlay in the LCP (“where there are views from a major coastal road to the ocean” and “all areas in the County where there are views from Highway 101 to the ocean

are shown on the land use maps with a View Corridor Overlay Designation” LCP P. 37) but was never made part of the overlay area.

i. The Confirming Analysis Understates the Significant Change to Visual Resources Introduced by Alternative 1B

The change to two- story bluff structures was omitted from the version of the Confirming Analysis made available to the Planning Commission and to the Public. *See* Confirming Analysis, Staff Report for August 13, 2008 Planning Commission hearing, Attachment H. The revised Confirming Analysis posted on September 23, 2008, reveals that project residences are no longer limited to a single story. The revised Confirming Analysis states as follows:

In the original 1A design, all of these residences would be single story, but the structures would have architectural features such as vaulted ceilings and entrances with heights up to 25 feet. In the visual modeling performed for views from the open ocean (discussed in Impact Vis-9) it was assumed that the structures had a uniform height of 25 feet around their entire perimeters. Under Alternative 1B, provision is made for limited use of two-story designs if the upper floors are set back from the building perimeter and the design is approved by the Central Board of Architectural Review. The 25 foot height limit would remain. Thus, Alternative 1B would have similar or less effects on views from the open ocean.

Thus, in overall scale and bulk—as determined by building placement, area, and height—the project design and appearance in the coastal terrace lots of Alternative 1B would be similar in nature to that originally proposed in Alternative 1A. None of these residences would be visible from Highway 101, but some of them (the most southeasterly in Lots 122, 119 and 93) would be visible from portion of the Coastal Trail (De Anza Trail) just south of the UPRR tracks (KOP 1A in the Final EIR) and from portions of the bluff access trail leading to the bluff overlook and information station. This recreational trail segment would be constructed by the project itself, and the overall effect of the Alternative 1B visibility from this trail segment would be very similar to that of the original Alternative 1A. The analysis in the Final EIR concluded that the visual impact from KOP 1A would be potentially significant, but mitigated (Class II) for Alternative 1B.

This analysis is flawed in several regards. First, it does not follow from the fact that the height limit will remain 25 feet, that visual impacts from the open ocean and from public trails will be “similar” to Alternative 1A. Two-storied structures tend to be more visible than single-storied structures with ‘architectural features’ of up to 25 feet, notwithstanding any slight reduction in total floor area.<sup>6</sup>

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<sup>6</sup> The revised confirming analysis states that residences are limited to 10,000 square feet under Alternative 1B, where under Alternative 1A they would have ranged from 6,300 to 13,000. square feet.

Second, the “visual modeling” performed from the ocean may not and indeed could not capture any qualitative change in how project structures look from the ocean. The “visual modeling” consisted solely of a diagram indicating the areas from which project structures would be visible.<sup>7</sup> The diagram clearly shows that project structures would be visible from most areas of the ocean including areas within less than 1/8 mile from the bluff. The two-story structures permitted under the Alternative 1B project will look different from Naples reef and from other areas of the ocean and El Capitan and other beaches from which project structures would be visible. This change is not accounted for or analyzed in the Confirming Analysis. Visual simulations of the structures proposed under Alternative 1B must be produced and analyzed in a revised EIR. This is critical because not only does Alt. 1B allow two-storied structures, but also because all project structures underwent considerable changes in design not accounted for in the visual simulations produced for Alt. 1A.

ii. Allowing Two-Story Structures on the Coastal Bluff Requires Recirculation of the EIR

The use of second stories as viewing places, with windows, balconies and lighting (including any night-lighting effects), along with the increased bulkiness creates a significant new impact to views from the ocean and nearby beaches including El Capitan, requiring recirculation of the EIR. *See* Guidelines § 15088.5 (a)(1); *Laurel Heights* 6 Cal. 4th at 1120.

Further, Alternative 1B will cause a substantial increase in Impact Vis-1A, 1B (both Class II) and Vis-9 (Class III) by allowing two -story structures on coastal bluff. No mitigation measures address this change in structure height and associated visibility. Recirculation of the EIR is therefore required pursuant to CEQA. CEQA Guidelines § 15088.5 (a)(2); *Laurel Heights* 6 Cal. 4th at 1120.

Moreover, any reliance on existing vegetation to mitigate impacts to visual resources is unacceptable given the transient nature of vegetation in a drought-prone and fire hazard area.

d. Increased Development in a Geologically Unstable Area

Alt. 1B provides for the relocation of 14 lots from the coastal zone north of Highway 101 to the northern ridgelines outside of the coastal zone. This lot relocation substantially increases the density of lots in this northern area, which the EIR acknowledges is less geologically stable and more prone to erosion and associated water quality impacts. *See e.g.* FEIR, p. 9.2-2, p. 9.2-21.

The Confirming Analysis states that “the proposed development under Alternative 1B is located within areas that were evaluated in the Final EIR in connection with Alternative 1A.

Accordingly, the same mitigation measures, such as Geo 4 and 5 proposed in Chapter 9.2 for

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<sup>7</sup> We have consistently maintained that such modeling is inadequate to assess visual impacts from Naples reef and El Capitan and other beaches, and that visual simulation of project structures as seen from these public viewing places is absolutely necessary prior to any conclusion regarding the significance of view impacts from the ocean.

Geology, Geologic Hazards and Soils, to ensure mitigation of any potential impacts of construction related to landsliding or soil conditions, or mitigation measures WQ-1a and WQ-1b proposed in Chapter 9.3 for Hydrology and Water Quality to avoid storm water pollution and to ensure storm water quality management, will serve to mitigate the potential water quality impacts of Alternative 1B, just as they serve to mitigate the potential water quality impacts of Alternative 1A.” Conf. Analysis p. 8.

This analysis is flawed because Alternative 1B proposes a substantial increase in the amount of development in geologically unstable areas, and locates new lots outside of the areas allegedly evaluated in the FEIR in connection with Alternative 1A. (See Lot Relocation Diagram)

Increased development and associated grading in the northern areas of the site substantially increase the severity of Impact Geol-2: Erosion from Grading. Impact Geol-2 is identified as a Class II impact in the FEIR for Alternative 1 (see p. 9.2-2).<sup>8</sup> The discussion of this impact identifies the estimated amount of cut and fill that will be required for Alternative 1. By contrast, no grading estimates are provided for Alternative 1B in the Confirming Analysis. Mitigation measures seek to minimize grading but may not be sufficient to reduce Impact Geol-2 below significance.

Alt. 1B will also cause a substantial increase in hydrologic impacts from increased grading and hardscaping on the steeper ridgelines. The mitigation measures identified in the FEIR for Alternative 1A may or may not be capable of reducing Alternative 1B’s hydrologic and water quality impacts, but this analysis must be performed.

e. Increase in Grading

Alt. 1B entails nearly four times the amount of grading as the Alt. 1 project. *Cf RDEIR 9.2.3.2.1*; Table 2, Exhibit 1 to the Conditions, Impacts from erosion and grading are recognized significant geologic impacts, significant hydrologic impacts include impacts from grading, biological impacts include impacts to riparian and other habitats from erosion, visual impacts are affected by the amount of grading and the natural appearance of the topography, and finally the project’s consistency with policies including visual resource policies in the General Plan and LCP, and Hillside and Watershed protection policies in the General Plan (discussed below). By substantially increasing the severity of environmental impacts, this increase in grading requires recirculation of the EIR. *See CEQA Guidelines § 15088.5; Laurel Heights 6 Cal. 4th at 1120.*

f. Increased Removal of Land from Williamson Act Protection

Alt. 1B results in the removal of 576 additional acres from Williamson Act contract from what was studied in the FEIR. (CA, p. 6) This substantially increases Impact Ag-1: Cancellation of Williamson Act Contract and Creation of an Agricultural Conservation Easement and mitigation measures are insufficient to reduce that impact to a level of insignificance. The FEIR and supplemental documents contain no clear articulation of this important distinguishing feature of

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<sup>8</sup> Inexplicably and without explanation, the grading volume for the project more than quadrupled between the RDEIR and the FEIR, from 116,400 cubic yards to 480,000 cubic yards. Impact Geol. 2.

Alt. 1B, let alone any analysis of its impacts. As such the public was deprived of a meaningful opportunity to comment. This clearly constitutes significant new information for which recirculation is required under CEQA. CEQA Guidelines § 15088.5; *Laurel Heights* 6 Cal. 4th at 1120.

Alt. 1B results in 105 *additional* acres of prime agricultural land removed from WA protection. (CA, p. 6) Compared to Alt. 1, this substantially increases Impact Ag-2: Loss of Prime Agricultural Land within Williamson Act (WA) Protection, and mitigation measures are insufficient to reduce that impact to a level of insignificance. Recirculation of the EIR is therefore required under Guidelines § 15088.5 (a) (2).

Alt. 1B will relocate 14 lots farther north, and increase lot density in the northern areas, which may substantially increase the severity of Impact AG-5: Agricultural Suitability and Land Use Conflicts (FEIR p. 9.7-19), and mitigation measures do not reduce this impact to insignificance. The FEIR states “The introduction of new residential use, particularly in the northerly areas proposed for development, will tend to decrease suitability due to removal of some areas from agricultural protection and due to potential conflicts” caused by “plac[ing] residential lots in close proximity to the agricultural easements and uses.” FEIR p. 9.7-19. Further, the brief analysis of Alt. 1B’s impacts includes no discussion of Impact AG-5 or of how the increase in density may affect agriculture. As such, the public is deprived of a meaningful opportunity to comment upon a substantial adverse environmental effect of Alt. 1B. Under these circumstances the change in density and increased potential for residential-agricultural conflicts constitutes significant new information requiring recirculation of the EIR. CEQA Guidelines § 15088.5; *Laurel Heights* 6 Cal. 4th at 1120.

Proposed mitigation (buyer notification, agricultural fencing, ACE) purports to address the Alt. 1A configuration but is non-responsive to the increased residential development and substantially increased agricultural impacts of Alt. 1B’s configuration.

Further, additional new information undermines the efficacy of mitigation measures (ACE). Specifically, the July 2008 letter to DPR from DFG reveals that diversions from Dos Pueblos Creek lacked the necessary authorization, and cannot continue. These diversions, used to irrigate existing agriculture on DPR, may be necessary to sustain agriculture within the ACE areas. The FEIR states, “water for irrigation is currently available and would remain so” to support its conclusion that Impact Ag-5 is Class II. Any loss in available water may affect agricultural suitability and undermine the ability to mitigate agricultural impacts such as Impact Ag-5.

#### g. Increased Loss of Productive Agriculture

Alternative 1B entails the physical removal of 6 acres of orchards beyond the 53 acres removed under the Alt. 1A project. In addition, the Project Description originally provided for the protection of existing orchards on the residential lots outside development envelopes, but Alt. 1B eliminates all orchard on all residential lots North of Hwy 101. This conversion of agricultural land to nonagricultural uses may itself be considered a significant environmental impact. *Cleary v. County of Stanislaus* (1981) 118 Cal. App. 3d 348; cited in County CEQA Thresholds and

Guidelines Manual, p. 9. The increase in physical conversion of productive agriculture, the intensification of development near active agriculture<sup>9</sup>, coupled with the substantial weakening of required mitigation measures by other significant new information (including the removal of a key ACE requirement, discussed below, and the Notice of Violation from the DFG, undermining DPR's ability to provide water to irrigate the ACE areas), is a significant new environmental impact that must be analyzed in a recirculated EIR. The EIR relies on protection of prime agricultural lands within the ACEs for finding less than significant impacts from the physical conversion of prime agricultural land to development (Impact Ag-3). (FEIR, p. 9.7-18). Discussed below and elsewhere in this letter and in other submissions to the Board, recent changes in the project including the bifurcation of the inland and coastal approvals process, and the weakening of ACE provisions, as well as removal of more land from Williamson Act Contract, undermine the agricultural mitigation measures required to reduce impacts including Impact Ag-3. Recirculation of the EIR is required to analyze the substantial increase in the severity of Impact Ag-3.

#### h. Removal of Key ACE Requirement

On Tuesday, October 7, just days from the deadline to send comments to the Board for Monday's hearing<sup>10</sup>, Staff released numerous substantive changes to the environmental review documents. One of these substantive changes is to Condition 2.a (Land Use). The requirement that each ACE document incorporate the provisions of Uniform Rule 1.2.3.C, which requires non prime land to be actively engaged in agricultural production, has now been removed from the Conditions. The lack of such an agricultural production requirement was a key criticism we made to the Planning Commission, the Agricultural Advisory Committee, and the Agricultural Preserve Advisory Committee. Without such a requirement, the ACE covering the 'mouse brain' area, the land which Osgood now has an option to purchase, located between the two ears of development, may not remain in active agriculture. The rationale for this argument is detailed in letters submitted by the Law Office of Marc Chytilo to the Planning Commission and the Agricultural Preserve Advisory Committee. *See* letter submitted to the Planning Commission by the Law Office of Marc Chytilo on behalf of the Naples Coalition, August 11, 2008, letter submitted to APAC by the Law Office of Marc Chytilo on behalf of the Naples Coalition, August 13, 2008). This last-minute weakening of the ACE creates a new significant impact, the loss of agricultural production within the mouse-brain, requiring recirculation of the EIR.

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<sup>9</sup> Increasing ranchette development in the inland project area will generate land use conflicts and directly affect agricultural production. An article by the American Farmland Trust, titled "Paving Paradise", and attached hereto as Exhibit 2 states "the spread of ranchettes is troublesome for reasons that go beyond the inefficient conversion of land. They tend to make agricultural production more difficult and expensive with demands that routine agricultural practices be curtailed or modified to protect the health and security of new neighbors. And they create an additional market demand for rural land that in many regions is inflating its price to a level above what commercial agriculture can pay and still remain economically viable. In this sense, ranchettes are like the bow wave created ahead of a ship; long before the ship itself hits, anything in its path will be swamped by the wave." P. 5.

<sup>10</sup> Addressing these substantial changes is particularly difficult for those observing Yom Kippur, which starts at sundown on October 8.

Guidelines § 15088.5 (a)(1). The potential withdrawal of DPR from the project, and loss of most protected agricultural lands from perpetual ACE protection, compounds the significance of the removal of the agricultural production requirement. The ACE weakening also severely undercuts the efficacy of required mitigation, and in so doing, substantially increases the severity of Impact AG-5: Agricultural Suitability and Land Use Conflicts, and recirculation of the EIR is therefore required. Guidelines § 15088.5 (a)(2).

## 2. Change in Ownership Status of DPR Lands

On May 29<sup>th</sup>, it was announced that the Schulte's have conveyed to SBR, an option to purchase most of the land on which development would occur to Santa Barbara Ranch. Given this, Schulte's participation is not required to shift development out of the Highway 101 viewshed and also off the coastal bluff. Eliminating the coastal bluff lots altogether is economically feasible as determined by MAI real estate appraiser John Ellis (*see* Ellis comment letter, attached to our 10/9/08 letter on Alternatives) and avoids numerous significant project impacts including impacts to cultural resources and potential water quality impacts related to the antiquated septic systems present on DPR. This new alternative is considerably different from others previously analyzed and would substantially lessen the significant environmental impacts of the project. Under these circumstances CEQA requires recirculation of the EIR. CEQA Guidelines § 15088.5 (a)(3)

## 3. Amendment to the MOU, Bifurcating the Project into Two

The project was processed as a whole through out the EIR process, and the EIR did not analyze the physical environmental and policy consequences of bifurcating the inland and coastal portions of the project. Discussed at length in separate submittals, the MOU amendment undercuts the likelihood that proposed mitigation, including ACE protections on DPR, will be available to mitigate the significant impacts to agriculture caused by replacing active agriculture and prime soils with residential development on SBR.<sup>11</sup> In this respect, the amendment constitutes significant new information substantially increasing the severity of a significant impact, for which recirculation of the EIR is required. Guidelines § 15088.5 (a)(2).

## 4. Removal of Pet Prohibition and Weakening of Revegetation Plan

Additional substantive changes were made to EIR in the supplement released on October 7, 2008. The prohibition on pets outside development envelopes was removed. This prohibition is required mitigation for otherwise significant impacts to wildlife, including special status species. A leash requirement is more difficult to enforce, and long and retractable leashes do not

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<sup>11</sup> For example, if the Coastal Commission conditions development on DPR such that DPR pulls out of the project, the majority of the land proposed for perpetual protection within the ACEs will no longer be part of the project. Protecting these agricultural lands in ACEs is relied upon to avoid project impacts including Impact AG-5. Locating a residential subdivision next to agricultural lands *not* protected in perpetuity, or not protected at all if DPR chooses not to renew their Williamson Act contract at the end of the applicable 10-year period, will cause significant impacts in terms of reducing the agricultural suitability of those lands. *See* Exhibit 2.

effectively prevent dogs from chasing wildlife and disturbing vegetation and soils. By removing required mitigation, this change constitutes significant new information creating a new significant impact and/or substantially increasing the severity of a significant impact, requiring recirculation of the EIR under Guidelines § 15088.5 (a and b).

The revegetation plan, discussed above, was seriously weakened by the last-minute changes released by Staff on October 7, 2008. This major change must be analyzed, as there is no assurance that it will be effective in mitigating otherwise significant impacts to biological resources. This change substantially increases the severity of a significant impact, and thus requires recirculation of the EIR under Guidelines § 15088.5 (b). (See our comments on Conditions of Approval)

## **II. The EIR is flawed and should not be certified**

### **1. Project Description Failure:**

#### **a. Unstable project description**

CEQA requires a stable and finite project description so the County and the public can review and evaluate the environmental impacts of the project. (*See Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.) The project description for the Santa Barbara Ranch project is a moving target, and it is not stable or finite as required by CEQA.

#### **b. Alt. 1B is not described with sufficient detail, precluding meaningful consideration of its impacts.**

“The project description must contain sufficient specific information about the project to allow the public and reviewing agencies to evaluate and review its environmental impacts.” *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26. Even if only an alternative, sufficient information still must be presented to enable complete analysis and meaningful consideration of its impacts. (*Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal. App. 3d 692, 734-735.) Alt. 1B is not fully described anywhere in the project documents, and important information about Alt. 1B is still unknown. There is only a single gross quantity of grading identified for the entire project. The impacts of grading on different project areas will be different - on ridges versus in riparian areas, for example. The grading quantities quadrupled with Alt. 1 B, yet there is no explanation of why or where that will occur. Preliminary grading maps seem to indicate that the building pads associated with Alt. 1 B will be much more pronounced and placed on more steeply graded areas - in effect creating terracing on the upper areas of the site. The FEIR does not sufficiently describe various components of the water treatment and delivery system, including: STP collection facilities or plant operations and the distinction between lift and gravity; the location of Seepage pits, soil conditions underneath, and where water will go (*see* comment letter submitted by hydrogeophysicist Barry Keller, 7/9/08); water treatment facilities for potable water, not described but depicted on project maps (e.g. Major Conditional Use Permit map and LUP for Inland Development Map—Exhibit 12). A full

understanding of these project components is critically important for the analysis of water quality impacts. The FEIR's failure to describe these important project components obscures potential impacts. For example, from examining Figure 9.5-1 in the FEIR it is apparent that one proposed location for a water storage tank is immediately south of an identified oil well, which could result in contamination of the Project's water supply. The uncertainty is compounded by the EIR's failure to determine baseline information regarding the location and condition of these oil wells, a particularly egregious omission considering this proximity to a water treatment facility.

The Alt. 1B project description also lacks any reference to the Private Agricultural Conservation Easements originally proposed in conjunction with the MOU and Alternative 1 Projects.

c. The Exclusion of the COC for DP-19 Constitutes Impermissible Piecemealing

An EIR must include analysis of the environmental effects of an action if "(1) it is a reasonably foreseeable *consequence* of the initial project; and (2) the future...action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Laurel Heights I* (1988) 47 Cal. 3d 376, 396 (italics added).

DPR has expressly stated that the lot known as DP-19 is not and shall not be part of the project, and that no approvals in connection with DP-19 are sought. *See* Schulte participation letter, 6/16/08. However, since making that statement, DPR has sought a Conditional Certificate of Compliance for the lot known as DP-19. *See* Exhibit 5. This Certificate is described as being part of the Alt. 1 project on the County's website, and Planning Commission agendas for the SBR project entitlement hearings all list this certificate among the approvals for the project. *See* Exhibit 6.

DP-19 provides a critical component otherwise lacking from the project: beach access. The inclusion of beach access fundamentally changes the nature of the project. In this respect, the inclusion of DP-19 via incorporation of the COC into the entitlements reviewed for the SBR Project, is necessary to avoid improper piecemealing. *See Laurel Heights I* (1988) 47 Cal. 3d 376, 396.

2. Inadequate Impact Analysis:

Not only is the EIR inadequate for failing to describe and analyze important changes introduced by Alternative 1B (see above section), it is also inadequate in many other regards.

a. Failure to Determine Environmental Baseline:

The FEIR failed to determine the environmental baseline with regards to 1) contaminated soils, 2) landslides and soil conditions, 3) wetlands, 4) native grasslands and 5) cultural resources. Specifically, scientifically unacceptable methods were used to determine location of native grasslands and wetlands. [see EDC comments] "A clearly inadequate or unsupported study is not entitled to judicial deference." *Laurel Heights I* (1988) 47 Cal. 3d 376, 409.)

Formal wetland delineation, identification of landslides and soil conditions present in the development envelopes, and determination the precise location and condition of oil wells and contaminated soils present on the project site, are all deferred until after approval of the development plan and/or subdivision map. It is critical for the CEQA document to qualify these baseline conditions up front, so that any potential impacts can be evaluated and mitigation measures and alternatives developed to avoid or address any potential impacts. For example, at least one oil well is located in close proximity to a proposed treatment plant for potable water. If contaminated soils resulted from this oil well, impacts related to water contamination may occur. Removal of large volumes of contaminated soils for remediation and/or to avoid water quality issues, may affect habitat, erosion, traffic, visual and agricultural resources. The woefully inadequate Project Description leaves many unanswered questions. These and other impacts cannot be determined absent baseline information.

b. Impact Misclassification

The FEIR systematically understated impacts and overstated the efficacy of proposed mitigation. *See* discussion of CEQA Findings, below, and see separate letter on Findings submitted on 10/9/08 for additional discussion of CEQA Findings and the misclassification of impacts. This impact misclassification distorts the decision-makers' and the public's understanding of the environmental consequences of the project. This impact misclassification further hindered the identification and analysis of alternatives and mitigation measures.

3. Inadequate Mitigation

CEQA requires that lead agencies mitigate the significant environmental impacts of a project to the maximum extent feasible. (Guidelines § 15126.4 (a)(1)). In numerous instances, significant impacts of the SBR project are not mitigated to the maximum extent feasible. FEIR fails to acknowledge the existence of feasible mitigation measures raised during public comment that would reduce visual impacts including Impact Vis-0, identified in the EIR as significant and unavoidable (Class I). Further, because the FEIR misclassifies numerous Class II impacts as Class III, it erroneously concludes that no mitigation is required.<sup>12</sup>

a. Visual Impact Mitigation Measures

The MMRP includes two mitigation measures addressing the overall visual impact of the project including Vis-1: Design Guidelines and Vis-2: Windrow Maintenance. We have maintained consistently that landscaping, including windrow maintenance is an inappropriate means to reducing the visual impact of project structures. Instead, the structures should be re-located and re-sized such that they do not cause significant visual impacts, with or without vegetation. Trees take a long time to grow, leaving structures exposed in the interim, and in high-fire country mature trees can burn down, exposing structures for a potentially considerable amount of time. Additionally, SBR's windrows are eucalyptus, known to be highly flammable. *See* Exhibits 3

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<sup>12</sup> The County is required to mitigate all adverse impacts to the maximum extent feasible per project findings. (see Project Findings, County LUDC § 35.82.080.E.1.b)

and 4. This increases not only the likelihood that the eucalyptus will not provide continual and permanent vegetative screening, but also the overall fire danger risk and consequence, increased when flammable trees are located along fire evacuation routes.

Vis-1 reduces visual impacts to some extent, providing for the relocation of development envelopes to reduce skyline intrusion and overall visibility. Vis-1 however applies after the lot configuration for the Project is established, so does not allow for lot relocation in the event that the proposed lots do not enable avoidance of visual impacts including skyline intrusion. Relocating and/or extinguishing lots with continuing visual impacts should be considered and implemented as a mitigation measure, and would significantly reduce visual impacts including Vis-0. Deferring visual impact mitigation to CBAR via conditions ties CBAR's hands by prohibiting substantial changes to the size and number of homes.

b. Biological Impact Mitigation Measures

Mitigation Bio-2a—see confirming analysis/recirculation, above.

Mitigation Bio-1b and 2b— see confirming analysis/recirculation, above.

c. Agricultural Impact Mitigation Measures

The FEIR relies extensively on the protection of agricultural land within ACEs to mitigate impacts caused by the conversion of agricultural lands to non-agricultural use, as well as the loss of agricultural land and prime agricultural land from Williamson Act contract. Specifically, Impact Ag-1 (Cancellation of a Williamson Act contract and creation of an Agricultural Conservation Easement) and Ag-2 (Loss of Prime Agricultural Land within Williamson Act Protection) are both classified as Class III impacts under Alternative 1 largely because “the remaining acreage of prime agricultural land north of the highway would be protected through the creation of a new Williamson Act contract and ACE.” FEIR p. 9.7-18. Alt. 1B does not place the remaining acreage of prime agricultural land north of the highway in a new Williamson Act contract. Additionally, Impact Ag-3 (Physical Conversion of Prime Agricultural Land to Development) relies on the protection of prime agricultural land within the new Williamson Act contract to offset the loss from the Project. Alt. 1B will result in the conversion of 6 additional acres of prime agricultural land to development. Both because of this substantial increase in prime agricultural land conversion, and the loss of Williamson Act protection for 105 acres of prime agricultural land, the significance of Impact Ag-3 and efficacy of mitigation measures must be reevaluated.

Additionally, there are several discrepancies in the project documents that cast doubt on the efficacy of the ACEs to mitigate the Project's agricultural impacts. For example, Mitigation AG-1 states that “No construction of improvements within the ACE area except for agricultural purposes” is allowed. P. 44. However, Development Plan SHT 4 clearly shows that improvements are planned in the ACE areas, including a road and water lines to serve residential development. Further, it is unclear whether areas slated for development were improperly included in the calculation of the acreage protected for agriculture for Alt 1 environmental

impact analysis,<sup>13</sup> but these areas will not be preserved under Alt. 1 B. This represents not only the loss of prime agricultural lands from future use, but destroys what is currently productive agricultural lands. The FEIR fails to distinguish and address these two forms of agricultural resources impacts.

County Staff further weakened the ACE protections only days before the hearing on the Project, by striking a provision in the Conditions that required the incorporation of §1.2.3.C of the Uniform Rules, which requires non-prime agricultural lands be actively engaged in agricultural production. Because the ‘mouse brain’ area, the land between the two ears of development north of Hwy 101, is under ACE only, it will lack this important requirement of agricultural production. We commented extensively on this issue before the Planning Commission (*see* letter submitted to the Planning Commission by the Law Office of Marc Chytilo on behalf of the Naples Coalition, August 11, 2008), and to the Agricultural Advisory Committee (AAC) and the Agricultural Preserve Advisory Committee (APAC) (*see* letter submitted to APAC by the Law Office of Marc Chytilo on behalf of the Naples Coalition, August 13, 2008). In short, without a requirement that the ACE land be actively farmed, the ACE will be insufficient mitigation for the Alt. 1B’s significant agricultural impacts.

Additionally, the MMRP states that “The protection of land within the ACE, used in lieu of paying Williamson Act contract cancellation fees, does not qualify as mitigation for the conversion of agricultural land to urban use.” P. 45. This statement, though included in the MMRP, is not discussed and seems to indicate the ACE is does not qualify to mitigate the conversion of agricultural land. The FEIR however relies on the ACEs to mitigate a number of agricultural impacts including conversion, and there are no other mitigation measures proposed to mitigate the conversion of agricultural land to urban use, so this remains an unmitigated impact.

Mitigation Ag-2: Agricultural Fencing and Mitigation Ag-3: Buyer Notification are insufficient to resolve Class II impacts related to agricultural suitability and land use conflicts (Impact AG-5). The CEQA Findings state that these two mitigation measures will reduce this impact below significance, but substantial evidence does not support this finding.

#### 4. Impermissible Deferral of Required Mitigation

CEQA does not permit the deferral of required mitigation measures pending the result of some future study. This prohibition is well articulated in *Sundstrom v. Mendocino* (1988) at 307-308 as follows:

The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA. *California Code of Regulations, title 14, section 15070*, subdivision (b)(1) provides that if an applicant proposes measures that will mitigate environmental effects, the project plans must be

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<sup>13</sup> The existing orchards on the eastern pod of development north of 101

revised to incorporate these mitigation measures "*before* the proposed negative declaration is released for public review . . . ." (Italics added.) Here, the use permit contemplates that project plans may be revised to incorporate needed mitigation measures after the final adoption of the negative declaration. This procedure, we repeat, is contrary to law.

By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. (See *Pub. Resources Code*, § 21003.1; *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d 68, 84.) In *Bozung v. Local Agency Formation Com.*, *supra*, 13 Cal.3d 263, 282, the Supreme Court approved "the principle that the environmental impact should be assessed as early as possible in government planning." Environmental problems should be considered at a point in the planning process "where genuine flexibility remains." (*Mount Sutro Defense Committee v. Regents of University of California*, *supra*, 77 Cal.App.3d 20, 34.) A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA."

The FEIR impermissibly deferred required mitigation for Geologic Impacts without performance standards under *Sundstrom*, preventing mitigation to maximum extent feasible (rearranging lots not an option for avoiding impacts) See Elihu Gevirtz comment letter, 10/9/08. Mitigation Geol-4 and Geo-5 (SBR-7) states as follows: "Constraints related to landslides or soil conditions and mitigations incorporating proper grading, foundation design, and inspection and compliance with of existing safety codes will be fully detailed in a geological and/or soils engineering study addressing structure sites and access roads. The results of the study will be used in the preparation of structural design criteria...." This constitutes impermissible deferral under *Sundstrom*. Additionally it precludes any reconfiguration of lots in the event that soil conditions preclude development on proposed lots.

Additional mitigation that is impermissibly deferred under *Sundstrom* includes the following:

Mitigation HM-1: requires that the applicant conduct a survey identifying subsurface structures with the potential to compromise structural and infrastructure integrity or pose a risk of exposure to hazardous materials or waste, based on 'approximate' locations of oil wells depicted on FEIR figure 9.5-2. See 07/18/08 and 10-8-08 letters submitted by Hydrogeologist/Environmental Geochemist Mark Kram.

Mitigation Measure Bio-5 requires formal wetland delineation after approval of the Development Plan for Alternative 1B. (CEQA Findings, p. 17) This precludes any reconfiguration of lots in the event that development cannot avoid impacting wetlands or where the required buffer cannot be implemented.

## 5. Alternatives Analysis:

CEQA requires the lead agency to identify a reasonable range of alternatives to the project or to the location of the project, that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of the significant effects of the project. Guidelines, § 15126.6(a), (f). The FEIR does not identify a reasonable range of alternatives, rejects alternatives without any evidence of infeasibility based on improper manipulation by DPR, and wrongly identifies Alt. 1B as the environmentally superior alternative.

### a. Improper Manipulation by Schulte

California courts have expressly rejected removing alternatives from consideration based only on the desires of the project applicant. *Preservation Action Council v. City of San Jose* (2006) 141 Cal. App. 4<sup>th</sup> 1336, 1352; *Uphold our Heritage v. Town of Woodside and Steven Jobs* (2007) 147 Cal. App. 4<sup>th</sup> 587, 595-596. DPR expressly stated numerous conditions to its participation in any aspect of the project. See DPR Participation Letter, June 16, 2008. Numerous project alternatives and feasible mitigation measures are effectively precluded by DPR's conditional participation. For example, DPR includes the preferred route for vertical access to the beach, identified in the LCP. However DPR has stated they will pull out of the project if vertical access is required across their land. Similarly, the EIR rejects alternatives including Alternative 2 because DPR would not consent to that particular alternative project configuration. The above referenced cases mandate that substantial evidence support the rejection of an alternative, and clearly state that the applicant's desires do not constitute substantial evidence of infeasibility.

### b. Feasible and Potentially Feasible Alternatives not Analyzed

There are numerous feasible alternatives that were not considered in the EIR despite our requests. Feasible alternatives include: clustering development within the Alt.1B project configuration; reducing development within the Alt. 1B project configuration e.g. Modification of Alt. 1B to preserve the coastal bluff; partial TDR<sup>14</sup> plus build-out of SBR under existing zoning (14 lots).

The EIR identifies environmentally preferable alternatives to the MOU project but arbitrarily concludes other than Alt.1 they are infeasible. Much of this perceived infeasibility no longer applies because of changes which enabled the Alt. 1B project. Specifically, Mr. Osgood now controls most of the land proposed for development under the Alt. 1B configuration. This land includes not only the "mouse ears" but also the "mouse brain." Development in the mouse brain area was not considered previously because the land was under the exclusive control of Dos Pueblos Ranch and under Williamson Act contract. Now Mr. Osgood has an option to purchase this land, and it is already slated for removal from Williamson Act contract. A small amount of additional conversion could alleviate numerous other project impacts including visual impacts and impacts resulting from development on the coastal bluff. Relocating nine lots to the mouse

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<sup>14</sup> The TDR program approved by the Board is flawed in many respects, as discussed in separate letters submitted to the Board for the hearing on TDR, September 16, 2008.

brain for example could potentially keep the entire bluff free from development, reducing numerous biological impacts including the Class 1 cumulative impact from loss of coastal terrace habitat. The EIR and Confirming Analysis fail to examine a reasonable range of alternatives to either the MOU Project or Alt. 1 and Alt. 1B, including hybrids, increasing the number of lots inland, clustering, and others which fulfill most objectives and substantially lessen significant impacts.

c. Wrongful Identification of Alt. 1B as the Environmentally Superior Alternative

Despite its numerous environmental impacts, and increased scope of development, the EIR concluded previously that Alt. 1 and now Alt. 1B is the environmentally superior alternative. This contention is not based on substantial evidence. *See* letter on Alternatives 10/9/08 for further discussion of the misclassification of Alt. 1B as the environmentally superior alternative.

6. Inadequate Responses to Comment:

“The evaluation and response to public comments is an essential part of the CEQA process. Failure to comply with the requirement can lead to disapproval of a project.” Discussion following Guidelines § 15088. Responses to comments must describe the disposition of the “significant environmental issues” raised in the comments. Public Resources Code § 21090 (d)(2)(b). “There must be a good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.” Guidelines § 15088 (c). When responding to proposals for mitigation of otherwise significant and unavoidable impacts, the County must assess the feasibility of the proposed mitigation measures. *Los Angeles Unified School District v. City of Los Angeles* (2d Dist. 1997) 58 Cal. App. 4<sup>th</sup>, 1019, 1028-1030. “Unless a specific suggestion for mitigating a significant environmental impact is facially infeasible, it must be responded to with good faith and reasoned analysis.” *Id.* at pp. 1029, 1030. Numerous responses to public comment on the SBR EIR fail to meet the above legal standards, and are thus inadequate under CEQA. Further, many key issues, including proposals for feasible mitigation are routinely ‘swept under the rug’ instead of confronted and analyzed. Specific examples are described below. Further identification and discussion of inadequate responses to comment and significant issues left unresolved in comment responses are detailed in a separate letter specific to responses to comment, submitted as an attachment to EDC’s August 6, 2008, letter to the Planning Commission, and in comment letters submitted by Mark Kram (10/8/08), David Magney (6/29/2008, and FWS (10/10/08).

Public comments suggest that eliminating or relocating lots to avoid skyline intrusion and associated visual impacts and policy inconsistencies/land use impacts is a feasible mitigation measure that should be pursued. The response to these comments is wholly insufficient and does not discuss whether this mitigation measure is feasible. *See e.g.* Comments G-2-461 through G-2-466 (response refers to response G-9-15 which is entirely non-responsive to the proposed mitigation measure of eliminating or relocating lots to avoid development on ridgelines) and corresponding responses (discussing failure to devise mitigation measures to avoid skyline intrusion)(G-8-144, G-2-383, G-2-429 and corresponding responses (discussing failure to identify visual and other policy conflicts as significant impacts under CEQA).

Comment G-8-32 raises the issue of baseline flaws, specifically referencing inadequacies in the cultural resources and hazardous soils baselines. The Response does not address the cultural or hazardous soils baselines directly, and only includes a general reference to EIR section on cultural resources. Baseline flaws infect the entire impact analysis and the failure to establish the cultural resources and hazardous soils baselines has been continually raised in public comment. The failure to directly address this critical issue violates CEQA because it does not demonstrate good faith, reasoned analysis, and rather is conclusory and lacking in factual support. *See* Guidelines § 15088 (c).

Comment G8-137 states that the Project is visible from locations such as El Capitan, and thus violates Coastal Act provisions protecting views to and along the ocean, and General Plan/LCP policies against skyline intrusion. The Response does not even address the General Plan/LCP violation. The public has repeatedly criticized the EIR for its failure to address important policy inconsistencies. The County's response does not evince the good faith effort required by CEQA. *See* Guidelines § 15088 (c).

Comment G-8-144 raises the EIR's failure to identify policy inconsistencies and failure to acknowledge policy inconsistencies as significant impacts. The Response only addresses the identification of policy inconsistencies, and does not address its failure to acknowledge inconsistencies as a significant impact. The failure to identify the relationship between policy consistency and CEQA recurs throughout the EIR, and significantly compromises the environmental analysis, as well as the development of mitigation measures and comparison of alternatives. The County's response fails to describe the disposition of this significant environmental issue in violation of CEQA. Public Resources Code § 21090 (d)(2)(b).

Comment I-14-2 states that guest houses must be included in the Project Description and their impacts analyzed. The Response does not address the Commenter's concerns regarding the Project Description, only stating the obvious that the EIR listed lots that may contain guest houses. Further the Response states "guest house impacts were evaluated...they were taken into account in the traffic estimates..." but the Comment speaks to all impacts of the guest houses, not merely traffic impacts. This Response is conclusory and does not evince a good faith reasoned analysis in violation of CEQA. *See* Guidelines § 15088 (c).

Comment I-14-7 suggests a mitigation measure for ameliorating the Project's contribution to Global Climate Change, namely including a provision that requires the Project to conform to the new CEQA Guidelines when available in January of 2009. The Response states that these Guidelines are not applicable, but does not respond to the Commenter's suggestion that the Project be conditioned to make them applicable. Any contribution of green house gases is significant, and the Response is required by CEQA to evaluate this proposed mitigation measure. *Los Angeles Unified School District v. City of Los Angeles* (2d Dist. 1997) 58 Cal. App. 4<sup>th</sup>, 1019, 1028-1030.

Numerous other comment responses are legally inadequate pursuant to CEQA and reveal many additional issues which remain unresolved. *See* attachment to EDC's August 6, 2008 letter to the Planning Commission on the FEIR, attached hereto as Exhibit 9.

### **III. CEQA's Substantive Mandate Precludes Project Approval**

CEQA precludes approval of a Project where feasible alternatives and/or mitigation measures exist that could substantially lessen its environmental effects. Pub. Resources Code § 21002; *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal. 4th 105, 134. There are feasible alternatives and mitigation measures that the EIR wrongly disregards. Furthermore, given the Alternative 1B Project configuration, there are numerous feasible alternatives that would substantially lessen the environmental effects of the project. See letter on Alternatives 10/9/08 for further discussion.

#### **i. Feasible alternatives**

There are feasible alternatives to the project that could substantially lessen its environmental effects, and therefore the Board is precluded from approving the Alt. 1B project. See Pub. Resources Code § 21002; *Mountain Lion Foundation*, 16 Cal. 4th at 134. For examples and discussion, see Alternatives Analysis and discussion of recirculation and the option agreement, above, and separate letter on Alternatives dated 10/9/08 for further discussion.

#### **ii. Feasible mitigation measures**

Relocating the development envelope on DP-20 would avoid cultural resources, however this was not done because it would have interfered with private views from Casa Grande, an existing residence on the DPR property. (FEIR p. 13-14). One could debate whether the visual impact to a private residence under the control of a project beneficiary renders an otherwise feasible mitigation measure infeasible, and most likely it does not. However, in addition to relocating the development envelope to lessen cultural impacts, other mitigation measures exist, namely extinguishing development from DP-20.

Reconfiguring lots to avoid visual impacts including skyline intrusion is a feasible alternative raised in public comment. Alt. 1B avoided visual impacts by relocating some lots to areas where they would not be visible from Highway 101. An additional reduction in visual impacts and conflicts with visual resource policies can be achieved by relocating the remaining lots which cause visual impacts and skyline intrusion. In the event that relocating additional development out of the viewshed is not feasible, extinguishing these lots is another feasible mitigation measure. There is no evidence suggesting that extinguishing *some* lots from the project is infeasible, and in fact economic evidence suggests otherwise. See Ellis comment letter, attached to our 10/9/08 letter on Alternatives). Lot reconfiguration and/or lot extinguishment is a tool available to the County to drastically reduce many of the project's environmental impacts. The Applicant has already substantially reconfigured lots to avoid some impacts, but additional project reconfiguration must be explored as feasible mitigation to resolve remaining impacts.

### **IV. The Findings Are Not Supported By Substantial Evidence in the Record**

“[A] Findings requirement serves to conduce the administrative body to draw legally relevant subconclusions supportive of its ultimate decision; the intended effect is to facilitate orderly

analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions.” *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 516-517. Findings must bridge the analytic gap between the raw evidence and ultimate decision or order (*Id.* at 515) by revealing the analytical process used to arrive at decisions, and must demonstrate that the County meaningfully considered alternatives and mitigation measures (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal. 4<sup>th</sup> 105, 134). Substantial evidence must support the findings and the findings must support the agency's decision. Guidelines § 15091 (b), *Topanga*, 11 Cal. 3d 506, 514.

The CEQA Findings prepared for Alt. 1B are inadequate under the above CEQA standards. Some specific examples are detailed below. Additional comments on the CEQA findings are included in a separate letter on Findings, dated 10/9/08.

b. Absence of Significant New Information

The Board cannot sustain a finding, based on substantial evidence, that no significant new information has come forward between the end of public comment period on the RDEIR and the certification of the FEIR. *See* above discussion on recirculation.

c. Class II Impacts to Geology, Geologic Hazards, and Soils

The Board cannot sustain a finding, based on substantial evidence, that the Project will cause Class II, as opposed to Class I, impacts to geology, geologic hazards, and soils. *See* discussion of deferred mitigation, above. *See also* separate letter on Findings submitted 10/9/08, p. 19, for discussion of mitigation measure inadequacy.

d. Class II Impacts to Hydrology and Water Quality

The Board cannot sustain a finding, based on substantial evidence, that the Project will cause Class II, as opposed to Class I, impact to hydrology and water quality. *See* comment letter submitted by hydrogeophysicist Barry Keller, 7/9/08; *see also* separate letter on Findings submitted 10/9/08, p. 19, for discussion of mitigation measure inadequacy.

e. Class II Impacts to Biological Resources

The Board cannot sustain a finding, based on substantial evidence, that the Project will cause Class II, as opposed to Class I, impacts to Biological Resources. *See* letter submitted on grasslands, 10/8/08; David Magney comment letter, 10/8/08 and separate letter on Findings submitted 10/9/08, pp. 19-20 for discussion of mitigation measure inadequacy.

f. Class II Hazards and Hazardous Materials Impacts

The Board cannot sustain a finding, based on substantial evidence, that the Project will cause Class II, as opposed to Class I, impacts related to contaminated soils. *See* comment letters submitted by Hydrogeologist/Environmental Geochemist Mark Kram, dated 7/18/08 and 10/8/08).

g. Class II Impacts to Agricultural Resources

The Board cannot sustain a finding, based on substantial evidence, that the Project will cause Class II, as opposed to Class I, impacts to Agricultural Resources. *See* separate letter on Findings submitted 10/9/08, p. 20, for discussion of mitigation measure inadequacy.

h. Class II Visual Impacts

The Findings disclose the KOPs from which Alt. 1B will significantly impact visual resources, however makes no mention of specific impacts relating to skyline intrusion and the visual policies which preclude this (p. 22). Mitigation Measure Vis-1, which the findings purport reduces impacts Vis-1 through Vis-8 to a less than significant level, states that the Design Guidelines and requiring installation of landscaping prior to building occupancy “will reduce the visual contrast of residences as seen against the backdrop of natural hillsides and/or skyline and make Alternative 1B blend in with the surrounding area” County general plan and local coastal plan policy both explicitly prohibit siting structures such that they intrude into the skyline as seen from public viewing places. Each KOP analyzed in the FEIR is a public viewing place. The Findings do not evince a meaningful consideration of alternatives or mitigation measures that would *avoid* impermissible skyline intrusion, and this failure renders the Findings inadequate under CEQA. *See Mountain Lion Foundation*, 16 Cal. 4<sup>th</sup> at 134.

i. Class II Impacts to Cultural Resources

The Board cannot sustain a finding, based on substantial evidence, that the Project will cause Class II, as opposed to Class I, impacts to Cultural Resources. *See* 6/30/08 and 8/21/08 SHPO letters; *see also* separate letter on Findings submitted 10/9/08, p. 21, for discussion of mitigation measure inadequacy.

j. Class III Impacts to Biological Resources

The CEQA findings state that Impact Bio-3: impacts to special-status plants associated with oak woodland habitats is less than significant. This statement is conclusory and is not supported by evidence in the record showing that Alt. 1B will affect a greater area of this habitat type, and may involve a significant increase in the direct removal of portions of this habitat type. The FEIR concludes that Alt. 1A would only remove a small amount of understory vegetation and no mature oaks would be removed. Neither the Confirming Analysis, Findings, or other CEQA documents clarify whether the increased acreage of this habitat type affected by Alt. 1B involves direct removal, and if so, whether any mature oaks or other special status species would be removed. The Confirming Analysis further does not clarify whether the mature oak slated for preservation under Alt. 1A would also be preserved under Alt. 1B. The lack of analysis in the environmental review documents precludes a finding that Impact Bio-3 is Class III, and the findings are legally inadequate in making this unsubstantiated conclusion.

k. Class III Land Use Impacts

The Final EIR identified three less than significant impacts on land use that would occur as a result of implementation of Alternative 1B: consistency with applicable land use plans, policies, and regulations (Land-1), potential neighborhood compatibility (Land-2), cumulative impacts associated with long-term changes in land use patterns on the Gaviota Coast (Land-3), as well as associated residual land use impacts.

The classification of Impact Land-1 as Class III is not supported by evidence. The FEIR is internally inconsistent in its treatment of this impact, and impermissibly labels policy conflicts as ‘potential conflicts’ only, and thus insignificant.

The executive summary in the FEIR states that policy inconsistency/land use is a class I impact, but this is not repeated elsewhere in the environmental review documents. The FEIR concludes that Alt. 1: 1) ‘could be inconsistent with some applicable plans and policies’ if there is no rezone pursuant to policy 2-13; and 2) is ‘potentially not consistent’ with three identified policies<sup>15</sup>. The FEIR nonetheless concludes this impact is less than significant, notwithstanding its deferral on the issue of actual conflict with applicable policy based on a rezone under the 2-13.

The FEIR does not establish why conflicts with visual resource policies preventing structures from intruding into the skyline as seen from public viewing places are merely potential as opposed to actual; as Alt. 1B is currently designed, at least five structures intrude into the skyline as seen from public viewing places: lots 51, 107A, 134, 135, and 215 (see PCA p. 8). Mitigation measures speak to avoiding skyline intrusion to the extent reasonably feasible but the applicable policies require avoidance. At this point in the process it is still feasible to eliminate impermissible skyline intrusion through lot reconfiguration or lot extinguishment. *See* Ellis comment letter, attached to our 10/9/08 letter on Alternatives. No evidence shows the infeasibility of either of these mitigation measures. Public comments raise this issue, but the response to these comments is insufficient. *See e.g.* Comments G-2-461 through G-2-466 (response refers to response G-9-15 which is entirely non-responsive to the proposed mitigation measure of eliminating or relocating lots to avoid development on ridgelines) and corresponding responses (discussing failure to devise mitigation measures to avoid skyline intrusion)(G-8-144, G-2-383, G-2-429 and corresponding responses (discussing failure to identify visual and other policy conflicts as significant impacts under CEQA).

In addition to policies requiring siting of structures to avoid skyline intrusion from public viewing places (GP LU Visual Resources Policy 2 and LCP Policy 4-3), Alt. 1B violates numerous other policies designed to protect the environment including policies requiring: avoidance of cultural resources where feasible (LCP Policy 10-1), the provision of public access

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<sup>15</sup> Coastal act § 30251 (visual compatibility)(incorporated by reference into LCP), GP VRP 2/LCP 4-3 (skyline intrusion, etc), and LCP 1-4 (consistency with other policies—due to conflict with prior two). The policy consistency analysis states that ALT. 1b resolves the conflict with coastal act 30251 because it relocates visible lots out of the coastal zone, leaving VRP 2/lcp 4-3 and LCP 1-4 because of that potential inconsistency.

to the beach and along the coast (LCP Policy 7-2 and 7-3 and Coastal Act § 30212), the protection of rural agricultural lands from conversion to non-agricultural use (LCP Policy 8-2), avoidance of urban development in rural areas (GP LU Development Policy 3), and f) adherence to densities proscribed in the land use plan (GP LU Development Policy 2 and LCP Policy 2-12). See LOMC Comments on Policy Consistency Analysis for discussion of how the Project violates each of these policies.

Conflicts with policies designed at least in part to protect the environment are significant environmental impacts under CEQA. See CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936.) This important provision of CEQA is largely ignored by the County throughout the FEIR, and numerous policy conflicts are disregarded based on Policy 2-13 and the desire to avoid build-out of the grid<sup>16</sup>. Because of the numerous policy conflicts discussed herein and in our separate letter on policy, a finding of Class III land use impacts cannot be supported by substantial evidence.

#### 1. Class III Agricultural Impacts

The CEQA Findings provide that three agricultural impacts are insignificant, including cancellation of a Williamson Act contract and creation of an agricultural conservation easement (AG-1), loss of prime agricultural land within Williamson Act protection (AG-2), physical conversion of prime agricultural land to development (AG-3). This Finding is conclusory and lacks evidentiary support because Alt. 1B affects changes to the amount of land replaced in Williamson Act contract, the amount of prime agricultural land within Williamson Act Contract, and the amount of prime agricultural land converted to development. The Confirming Analysis and other CEQA documents do not analyze the impacts of these changes.

#### m. Class III Visual Impacts

The CEQA Findings state that distant views from the Pacific Ocean (Vis-9), constitutes an insignificant impact. The FEIR did not include adequate support for this contention. Project residences would be readily visible from as near as 1/8 mile (or 220 yards) offshore, as approximated from the visibility analysis provided in the FEIR. The existing setting is made up of rural and open space lands, and would be replaced by a large number of homes. Naples reef is a destination point for surfers, recreational anglers and divers, and properly considered as a public viewing place in the FEIR. Given these facts, by the criteria used in the FEIR for assessing visual impacts, this impact is indeed significant. However the FEIR provided no visual simulation apart from the visibility analysis, and did not address structural visibility and the visibility of topographical alternations from Alt. 1 B. In other words, from the FEIR one can presumably determine whether or not Alt. 1 project structures would be visible from a given location, but cannot determine what the visual impact of those structures will be from the

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<sup>16</sup> The County has exaggerated the environmental impacts of the grid build-out by assuming that a high number of lots have development potential. A draft figure showing the number of developable lots produced in 2005 shows a significantly lower number of developable lots than the assumed in the FEIR, policy consistency analysis, and the TDR study. See Exhibit 7.

locations at which they would be visible, nor are any differences with Alt. 1 B considered whatsoever.

Moreover, Alt. 1B allows for two- storied structures along the coastal bluff, previously prohibited under Alt. 1A. These two-storied structures will likely be bulkier, and their design will involve more elevated fenestration, with more elevated lighting and elevated viewing places. For these reasons, the change to two-storied structures will make bluff structures more readily visible from off-shore locations. Any finding regarding the insignificance of visual impacts from the open ocean is premature and unsupportable, and in fact the impact to offshore and near-shore views is a significant impact pursuant to the County's CEQA Guidelines (the site has significant visual resources by virtue of its undeveloped state, and presence on an uninterrupted stretch of coast of unparalleled beauty; the project has the potential to degrade and significantly interfere with the public's enjoyment of the site's existing visual resources, by replacing this scenic and open view with a residential subdivision; by impacting the visual resources of the Coastal Zone and a visually important area; and by creating a significant adverse aesthetic impact through incompatibility with surrounding open space and agricultural uses, very low level of development, and substantial alteration of natural character.) *See* County Environmental Thresholds and Guidelines Manual, p. 180.

n. Alternatives

The Board cannot sustain the findings on alternatives on the basis of substantial evidence, as discussed in detail in a separate submitted to the Board letter on Findings.

## **V. Conclusion**

The CEQA process is critical not only so that decisionmakers and the public understand the environmental impacts of a project, but also so that environmental impacts can be avoided or mitigated through feasible alternatives and mitigation measures. The FEIR for the SBR Project neither presents sufficient information (particularly regarding Alt. 1B) so decisionmakers and the public can understand the project's environmental impacts. Further, and in part because the impacts of Alt. 1B were understated and/or ignored, feasible alternative and mitigation measures that would substantially reduce the impacts of the project were not explored in the environmental review process. These CEQA defects prevent the Board from approving the project, given that feasible alternatives and/or mitigation measures exist, and prevent the Board from making the required CEQA findings, on the basis of substantial evidence. Accordingly, we strongly urge the Board to adhere to CEQA and require recirculation of the EIR to address the points made in this letter.

Sincerely,



Brian Trautwein  
Environmental Analyst  
Environmental Defense Center



Marc Chytilo  
Law Office of Marc Chytilo

Cc: California Coastal Commission  
Naples Coalition  
Surfrider Foundation

Exhibit 1: Stipulations in Case No. 203256

Exhibit 2: Paving Paradise: A New Perspective on California Farmland Conversion, American Farmland Trust (November 2007)

Exhibit 3: City of Santa Barbara Fire Prevention Bureau, High Fire Hazard Area Landscape Guidelines (2001)

Exhibit 4: R. Santos, The Eucalyptus of California, Section Three, pp. 1-4 (1997) DP-19 COC application status

Exhibit 5: Status Overview and Task Status for 08-COC-00000-00004 (9/30/08)

Exhibit 6: PC Agendas showing 08-DP-19 COC-00000-00004 as part of the Alt. 1 Project

Exhibit 7: Grid Buildout Potential, August 2005 draft

Exhibit 8: Email from Tom Figg to Marc Chytilo re. administrative draft review (6/17/08)

Exhibit 9: EDC Response to Comment letter

DE ✓  
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SANTA BARBARA  
SUPERIOR COURT

MAY 21 2008

GARY M. BLAIR, EXEC. OFFICER  
By *Robert A. Villegas*  
ROBERT A. VILLEGAS, COUNTY CLERK

Attorneys for Defendants/Respondents  
County of Santa Barbara and Board of  
Supervisors of County of Santa Barbara

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
ANACAPA DIVISION

NAPLES PROPERTY OWNERS  
ASSOCIATION, a California non-profit  
mutual benefit corporation; JOHN M.  
MOREHART and FRANCES  
MOREHART

Petitioners

vs.

CALIFORNIA COASTAL  
COMMISSION; COUNTY OF SANTA  
BARBARA; THE BOARD OF  
SUPERVISORS OF THE COUNTY OF  
SANTA BARBARA; and DOES 1-25,  
inclusive,

Respondents,

Case No: 203256

STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ORDER

CMC Date: June 9, 2008  
Time: 8:30 a.m.  
Dept: 5  
New CMC Date: December 8, 2008

Assigned to Hon. J. William McLafferty  
for all purposes

Petitioners, Naples Property Owners Association and Respondents, California Coastal  
Commission and County of Santa Barbara, hereby stipulate as follows:

1. This action has been stayed pursuant to the Memorandum of Understanding  
("MOU") filed with this Court on December 11, 2002. The MOU provides a protocol for the  
submission of project applications for development and land conservation proposals for the  
Naples option property ("Property") that could moot and lead to the dismissal of this action

ORIGINAL

1 pursuant to § 6.4 of the MOU. The MOU has already resulted in the dismissal of a  
2 companion action, *Naples Property Owners Association v. County of Santa Barbara, et al.*,  
3 Santa Barbara Superior Court Case No. 179265.

4 2. Petitioners are presently under contract with the Santa Barbara Ranch, LLC  
5 (“Developer”), who is a party to the MOU, and who has already acquired portions of the  
6 Property and is presently in escrow to purchase a final takedown of additional property within  
7 the Naples Townsite. The project applications contemplated by the MOU and that have been  
8 filed by Developer require review and approval by both the County and Coastal Commission  
9 of legislative changes to County’s Local Coastal Program applicable to the Naples Townsite  
10 and quasi-adjudicative development entitlements for the Property.

11 3. In November 2003, Developer formally submitted initial project applications  
12 identified in the MOU. Given the complexity of the applications, they were found incomplete  
13 and the County staff and Developer worked cooperatively to complete them. After two  
14 subsequent submittals, the applications for the Property were deemed complete September 3,  
15 2004, and environmental review of those applications commenced thereafter in accordance  
16 with the MOU and CEQA. A public scoping meeting on the EIR occurred January 27, 2005.  
17 On January 27, 2005, as a result of considerable dialogue between the County, applicant and  
18 stakeholder community groups, Developer proposed an alternative project (“Alternative 1”)   
19 that Developer has requested be processed as the preferred project at a project level of detail  
20 in the EIR.

21 4. Alternative 1 requires the participation of the neighboring Dos Pueblos Ranch  
22 and involves the transfer of potential development to inland areas and an agricultural  
23 easement exchange for approximately 2400 acres of agriculturally zoned lands surrounding  
24 the Naples Townsite. Because of the complexity of the Alternative 1 project and the need for  
25 supplemental information, the schedule for completing the draft EIR has become protracted.  
26 This process has been further complicated by the recent demise of the owner of Dos Pueblos  
27 Ranch (Rudy Schulte) and achieving agreement among the successors of interest.  
28

1           5.       On May 15, 2006, the Developer submitted an updated project description and  
2 application for the Alternative 1 project, along with evidence that the successors and assigns  
3 to the Schulte Trust agree to the project. The public review period for the draft EIR ended in  
4 September 2006. In order to address changes to the project and to accommodate the  
5 Developer's comments on the Administrative Draft EIR, the Draft EIR was re-circulated in  
6 November of 2007 and the public comment period ended on January 23, 2008. Planning  
7 Commission hearings on the project and the EIR have been scheduled for May through July of  
8 2008. Also, in regard to a rezoning of the Naples parcels contemplated under Policy 2-13 of  
9 the County's Local Coastal Plan, on February 5, 2008, the Board of Supervisors found  
10 that: only a partial extinguishment of development potential at Naples is possible and that  
11 partial extinguishment will not resolve the underlying conflict that gives rise to Policy 2-13;  
12 and that the land use designation of AG-II-100 at Naples should be re-evaluated.

13           6.       The parties to this case believe it would be in the best interests of all concerned  
14 that the active prosecution and defense of this action be further stayed so that project  
15 applications and alternatives may be pursued pursuant to the MOU. The parties therefore  
16 desire to continue the Case Management Conference now set for June 9, 2008 to December 8,  
17 2008, at which time the parties will brief this Court as to the status of the project review.

18           7.       The parties stipulate that all statutory deadlines, statutes of limitation or other  
19 deadlines or time limits applicable to Case No. 203256 or any party thereto (including the  
20 time limit within which to bring said case to trial) are waived, extended and tolled until a date  
21 which is thirty (30) days after the date any party gives prior written notice to the other parties  
22 of the termination of said Stipulation for Stay. As previously agreed, petitioners shall not be  
23 entitled to collect damages as alleged in the Complaint for the period of time between the  
24 entry of the original Standstill Agreement and termination of that Agreement.

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**ORDER**

The Court, having considered the stipulation to continue the Case Management Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case Management Conference be continued from June 9, 2008, at 8:30 a.m. in Department Five of the Superior Court to December 8, 2008, at 8:30 a.m. in Department Five of the Superior Court of the County of Santa Barbara.

Further, based on the foregoing stipulation of the parties, and good cause appearing therefore, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED:           MAY 20 2008          

  
Honorable J. William McLafferty  
Judge of the Superior Court

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8. The parties through their respective attorneys of record stipulate that the Case Management Conference now scheduled for June 9, 2008, at 8:30 a.m. in Department Five of the Superior Court of Santa Barbara County before the Honorable J. William McLafferty may be continued to December 8, 2008, at 8:30 a.m. in Department Five of the Superior Court.

Respectfully submitted,

Dated: May 19, 2008

STEPHEN SHANE STARK  
COUNTY COUNSEL

By Michael C Ghizzoni  
MICHAEL C. GHIZZONI,  
Chief Deputy County Counsel  
Attorneys for Respondent  
COUNTY OF SANTA BARBARA

Dated: May \_\_\_\_, 2008

HOLLISTER & BRACE

By \_\_\_\_\_  
RICHARD C. MONK  
Attorneys for Petitioners

Dated: May \_\_\_\_, 2008

EDMUND G. BROWN, JR.  
Attorney General for The State of California

By \_\_\_\_\_  
JAMEE JORDAN PATTERSON  
Deputy Attorney General on behalf  
of Respondent California Coastal  
Commission





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STEPHEN SHANE STARK, COUNTY COUNSEL  
MICHAEL C. GHIZZONI (SBN 149514)  
CHIEF DEPUTY COUNTY COUNSEL  
COUNTY OF SANTA BARBARA  
105 E. Anapamu St., Suite 201  
Santa Barbara, CA 93101  
(805) 568-2950 / FAX: (805) 568-2982

**FILED**  
SANTA BARBARA  
SUPERIOR COURT

NOV 15 2007

GARY M. BLAIR, EXEC. OFFICER  
By *Rosa Reyes*  
ROSA REYES, Deputy Clerk

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Attorneys for Defendants/Respondents  
County of Santa Barbara and Board of  
Supervisors of County of Santa Barbara

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
ANACAPA DIVISION

NAPLES PROPERTY OWNERS  
ASSOCIATION, a California non-profit  
mutual benefit corporation; JOHN M.  
MOREHART and FRANCES  
MOREHART

Petitioners

vs.

CALIFORNIA COASTAL  
COMMISSION; COUNTY OF SANTA  
BARBARA; THE BOARD OF  
SUPERVISORS OF THE COUNTY OF  
SANTA BARBARA; and DOES 1-25,  
inclusve,

Respondents,

Case No: 203256

STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ORDER

CMC Date: December 10, 2007  
Time: 8:30 a.m.  
Dept: 5  
New CMC Date: June 9, 2008

Assigned to Hon. J. William McLafferty  
for all purposes

Petitioners, Naples Property Owners Association and Respondents, California Coastal  
Commission and County of Santa Barbara, hereby stipulate as follows:

1. This action has been stayed pursuant to the Memorandum of Understanding  
("MOU") filed with this Court on December 11, 2002. The MOU provides a protocol for the  
submission of project applications for development and land conservation proposals for the  
Naples option property ("Property") that could moot and lead to the dismissal of this action

ORIGINAL

1 pursuant to § 6.4 of the MOU. The MOU has already resulted in the dismissal of a  
2 companion action, *Naples Property Owners Association v. County of Santa Barbara, et al.*,  
3 Santa Barbara Superior Court Case No. 179265.

4 2. Petitioners are presently under contract with the Santa Barbara Ranch, LLC  
5 (“Developer”), who is a party to the MOU, and who has already acquired portions of the  
6 Property and is presently in escrow to purchase a final takedown of additional property within  
7 the Naples Townsite. The project applications contemplated by the MOU and that have been  
8 filed by Developer require review and approval by both the County and Coastal Commission  
9 of legislative changes to County’s Local Coastal Program applicable to the Naples Townsite  
10 and quasi-adjudicative development entitlements for the Property.

11 3. In November 2003, Developer formally submitted initial project applications  
12 identified in the MOU. Given the complexity of the applications, they were found incomplete  
13 and the County staff and Developer worked cooperatively to complete them. After two  
14 subsequent submittals, the applications for the Property were deemed complete September 3,  
15 2004, and environmental review of those applications commenced thereafter in accordance  
16 with the MOU and CEQA. A public scoping meeting on the EIR occurred January 27, 2005.  
17 On January 27, 2005, as a result of considerable dialogue between the County, applicant and  
18 stakeholder community groups, Developer proposed an alternative project (“Alternative 1”)  
19 that Developer has requested be processed as the preferred project at a project level of detail  
20 in the EIR.

21 4. Alternative 1 requires the participation of the neighboring Dos Pueblos Ranch  
22 and involves the transfer of potential development to inland areas and an agricultural  
23 easement exchange for approximately 2400 acres of agriculturally zoned lands surrounding  
24 the Naples Townsite. Because of the complexity of the Alternative 1 project and the need for  
25 supplemental information, the schedule for completing the draft EIR has become protracted.  
26 This process has been further complicated by the recent demise of the owner of Dos Pueblos  
27 Ranch (Rudy Schulte) and achieving agreement among the successors of interest.  
28

1           5.       On May 15, 2006, the Developer submitted an updated project description and  
2 application for the Alternative 1 project, along with evidence that the successors and assigns  
3 to the Schulte Trust agree to the project. The public review period for the draft EIR ended in  
4 September 2006. In order to address changes to the project and to accommodate the  
5 Developer's comments on the Administrative Draft EIR, the Draft EIR will be re-circulated in  
6 November of 2007. Also, in regard to a rezoning of the Naples parcels contemplated under  
7 Policy 2-13 of the County's Local Coastal Plan, the Planning Commission recommended on  
8 November 7, 2007, that the Board of Supervisors find that: only a partial extinguishment of  
9 development potential at Naples is possible and that partial extinguishment will not resolve  
10 the underlying conflict that gives rise to Policy 2-13; and that the land use designation of AG-  
11 Il-100 at Naples should be re-evaluated.

12           6.       The parties to this case believe it would be in the best interests of all concerned  
13 that the active prosecution and defense of this action be further stayed so that project  
14 applications and alternatives may be pursued pursuant to the MOU. The parties therefore  
15 desire to continue the Case Management Conference now set for December 10, 2007 to June  
16 9, 2008, at which time the parties will brief this Court as to the status of the project review.

17           7.       The parties stipulate that all statutory deadlines, statutes of limitation or other  
18 deadlines or time limits applicable to Case No. 203256 or any party thereto (including the  
19 time limit within which to bring said case to trial) are waived, extended and tolled until a date  
20 which is thirty (30) days after the date any party gives prior written notice to the other parties  
21 of the termination of said Stipulation for Stay. As previously agreed, petitioners shall not be  
22 entitled to collect damages as alleged in the Complaint for the period of time between the  
23 entry of the original Standstill Agreement and termination of that Agreement.

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8. The parties through their respective attorneys of record stipulate that the Case Management Conference now scheduled for December 10, 2007, at 8:30 a.m. in Department Five of the Superior Court of Santa Barbara County before the Honorable J. William McLafferty may be continued to June 9, 2008, at 8:30 a.m. in Department Five of the Superior Court.

Respectfully submitted,

Dated: November 8, 2007

STEPHEN SHANE STARK  
COUNTY COUNSEL

By   
MICHAEL C. GHIZZONI,  
Chief Deputy County Counsel  
Attorneys for Respondent  
COUNTY OF SANTA BARBARA

Dated: November \_\_\_\_, 2007

HOLLISTER & BRACE

By \_\_\_\_\_  
RICHARD C. MONK  
Attorneys for Petitioners

Dated: November \_\_\_\_, 2007

BILL LOCKYER  
Attorney General for The State of California

By \_\_\_\_\_  
JAMEE JORDAN PATTERSON  
Deputy Attorney General on behalf  
of Respondent California Coastal  
Commission

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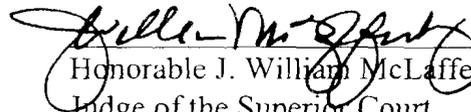
**ORDER**

The Court, having considered the stipulation to continue the Case Management Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case Management Conference be continued from December 10, 2007, at 8:30 a.m. in Department Five of the Superior Court to June 9, 2008, at 8:30 a.m. in Department Five of the Superior Court of the County of Santa Barbara.

Further, based on the foregoing stipulation of the parties, and good cause appearing therefore, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED: NOV 15 2007

  
Honorable J. William McLafferty  
Judge of the Superior Court

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STEPHEN SHANE STARK, COUNTY COUNSEL  
MICHAEL C. GHIZZONI (SBN 149514)  
CHIEF DEPUTY COUNTY COUNSEL  
COUNTY OF SANTA BARBARA  
105 E. Anapamu St., Suite 201  
Santa Barbara, CA 93101  
(805) 568-2950 / FAX: (805) 568-2982

FILED  
SANTA BARBARA  
SUPERIOR COURT

MAY 17 2007

GARY M. BLAIR, EXEC. OFFICER  
By Robert A. Villelongo  
ROBERT A. VILLELONGO, Deputy Clerk

Attorneys for Defendants/Respondents  
County of Santa Barbara and Board of  
Supervisors of County of Santa Barbara

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
ANACAPA DIVISION

620

NAPLES PROPERTY OWNERS  
ASSOCIATION, a California non-profit  
mutual benefit corporation; JOHN M.  
MOREHART and FRANCES  
MOREHART

Case No: 203256

STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ORDER

Petitioners

vs.

CALIFORNIA COASTAL  
COMMISSION; COUNTY OF SANTA  
BARBARA; THE BOARD OF  
SUPERVISORS OF THE COUNTY OF  
SANTA BARBARA; and DOES 1-25,  
inclusive,

CMC Date: June 11, 2007

Time: 8:30 a.m.

Dept: 5

New CMC Date: December 19, 2007

Respondents,

Assigned to Hon. J. William McLafferty  
for all purposes

Petitioners, Naples Property Owners Association and Respondents, California Coastal  
Commission and County of Santa Barbara, hereby stipulate as follows:

1. This action has been stayed pursuant to the Memorandum of Understanding  
("MOU") filed with this Court on December 11, 2002. The MOU provides a protocol for the  
submission of project applications for development and land conservation proposals for the  
Naples option property ("Property") that could moot and lead to the dismissal of this action  
pursuant to § 6.4 of the MOU. The MOU has already resulted in the dismissal of a

ORIGINAL

1 companion action, *Naples Property Owners Association v. County of Santa Barbara, et al.*,  
2 Santa Barbara Superior Court Case No. 179265.

3 2. Petitioners are presently under contract with the Santa Barbara Ranch, LLC  
4 ("Developer"), who is a party to the MOU, and who has already acquired portions of the  
5 Property and is presently in escrow to purchase a final takedown of additional property within  
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8 of legislative changes to County's Local Coastal Program applicable to the Naples Townsite  
9 and quasi-adjudicative development entitlements for the Property.

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11 identified in the MOU. Given the complexity of the applications, they were found incomplete  
12 and the County staff and Developer worked cooperatively to complete them. After two  
13 subsequent submittals, the applications for the Property were deemed complete September 3,  
14 2004, and environmental review of those applications commenced thereafter in accordance  
15 with the MOU and CEQA. A public scoping meeting on the EIR occurred January 27, 2005.  
16 On January 27, 2005, as a result of considerable dialogue between the County, applicant and  
17 stakeholder community groups, Developer proposed an alternative project ("Alternative 1")  
18 that Developer has requested be processed as the preferred project at a project level of detail  
19 in the EIR.

20 4. Alternative 1 requires the participation of the neighboring Dos Pueblos Ranch  
21 and involves the transfer of potential development to inland areas and an agricultural  
22 easement exchange for approximately 2400 acres of agriculturally zoned lands surrounding  
23 the Naples Townsite. Because of the complexity of the Alternative 1 project and the need for  
24 supplemental information, the schedule for completing the Draft EIR has become protracted.  
25 This process has been further complicated by the recent demise of the owner of Dos Pueblos  
26 Ranch (Rudy Schulte) and achieving agreement among the successors of interest.

27 5. On May 15, 2006, the Developer submitted an updated project description and  
28 application for the Alternative 1 project, along with evidence that the successors and assigns

1 to the Schulte Trust agree to the project. The public review period for the Draft EIR ended in  
2 September 2006. Based on public comments and changes to the project, the parties agreed  
3 that the Draft EIR should be re-circulated. In order to address changes to the project and to  
4 accommodate the Developer's comments on the Administrative Draft EIR, the Draft EIR will  
5 be re-circulated in July of 2007.

6 6. The parties to this case believe it would be in the best interests of all concerned  
7 that the active prosecution and defense of this action be further stayed so that project  
8 applications and alternatives may be pursued pursuant to the MOU. The parties therefore  
9 desire to continue the Case Management Conference now set for June 11, 2007 to December  
10 11, 2007, at which time the parties will brief this Court as to the status of the project review.

11 7. The parties stipulate that all statutory deadlines, statutes of limitation or other  
12 deadlines or time limits applicable to Case No. 203256 or any party thereto (including the  
13 time limit within which to bring said case to trial) are waived, extended and tolled until a date  
14 which is thirty (30) days after the date any party gives prior written notice to the other parties  
15 of the termination of said Stipulation for Stay. As previously agreed, petitioners shall not be  
16 entitled to collect damages as alleged in the Complaint for the period of time between the  
17 entry of the original Standstill Agreement and termination of that Agreement.

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**ORDER**

The Court, having considered the stipulation to continue the Case Management Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case Management Conference be continued from June 11, 2007, at 8:30 a.m. in Department Five of the Superior Court to December <sup>10</sup>~~9~~, 2007, at 8:30 a.m. in Department Five of the Superior Court of the County of Santa Barbara.

Further, based on the foregoing stipulation of the parties, and good cause appearing therefore, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED:           MAY 17 2007          

  
Honorable J. William McLafferty  
Judge of the Superior Court

Click on "Bookmarks" for a Table of Contents of all Documents included.

1 STEPHEN SHANE STARK, COUNTY COUNSEL  
 2 MICHAEL C. GHIZZONI (SBN 149514)  
 3 CHIEF DEPUTY COUNTY COUNSEL  
 4 COUNTY OF SANTA BARBARA  
 105 E. Anapamu St., Suite 201  
 Santa Barbara, CA 93101  
 (805) 568-2950 / FAX: (805) 568-2982

5 Attorneys for Defendants/Respondents  
 6 County of Santa Barbara and Board of  
 Supervisors of County of Santa Barbara

**FILED**  
 SANTA BARBARA  
 SUPERIOR COURT

DEC 04 2006

GARY M. BLAIR, EXEC. OFFICER

By *Robert A. Villegas*  
 ROBERT A. VILLEGAS, Deputy Clerk

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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF SANTA BARBARA  
 10 ANACAPA DIVISION

11 NAPLES PROPERTY OWNERS  
 12 ASSOCIATION, a California non-profit  
 13 mutual benefit corporation; JOHN M.  
 MOREHART and FRANCES  
 14 MOREHART

Petitioners

15 vs.

16 CALIFORNIA COASTAL  
 17 COMMISSION; COUNTY OF SANTA  
 18 BARBARA; THE BOARD OF  
 19 SUPERVISORS OF THE COUNTY OF  
 SANTA BARBARA; and DOES 1-25,  
 inclusive,

20 Respondents,

Case No: 203256

STIPULATION TO CONTINUE CASE  
 MANAGEMENT CONFERENCE AND  
 ORDER

CMC Date: December 11, 2006  
 Time: 8:30 a.m.  
 Dept: 5  
 New CMC Date: June 11, 2007

Assigned to Hon. J. William McLafferty  
 for all purposes

**BY FAX**

22 Petitioners, Naples Property Owners Association and Respondents, California Coastal  
 23 Commission and County of Santa Barbara, hereby stipulate as follows:

24 1. This action has been stayed pursuant to the Memorandum of Understanding  
 25 ("MOU") filed with this Court on December 11, 2002. The MOU provides a protocol for the  
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6720

Click on "Bookmarks" for a Table of Contents of all Documents included.

1 companion action, *Naples Property Owners Association v. County of Santa Barbara, et al.*,  
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3 2. Petitioners are presently under contract with the Santa Barbara Ranch, LLC  
4 ("Developer"), who is a party to the MOU, and who has already acquired portions of the  
5 Property and is presently in escrow to purchase a final takedown of additional property within  
6 the Naples Townsite. The project applications contemplated by the MOU and that have been  
7 filed by Developer require review and approval by both the County and Coastal Commission  
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9 and quasi-adjudicative development entitlements for the Property.

10 3. In November 2003, Developer formally submitted initial project applications  
11 identified in the MOU. Given the complexity of the applications, they were found incomplete  
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14 2004, and environmental review of those applications commenced thereafter in accordance  
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27 5. On May 15, 2006, the Developer submitted an updated project description and  
28 application for the Alternative 1 project, along with evidence that the successors and assigns

Click on "Bookmarks" for a Table of Contents of all Documents included.

1 to the Schulte Trust agree to the project. The public review period for the draft EIR ended in  
2 September 2006. Based on public comments and changes to the project, the draft EIR will be  
3 re-circulated in February 2007.

4 6. The parties to this case believe it would be in the best interests of all concerned  
5 that the active prosecution and defense of this action be further stayed so that project  
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7 desire to continue the Case Management Conference now set for December 11, 2006 to June  
8 11, 2007, at which time the parties will brief this Court as to the status of the project review.

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10 deadlines or time limits applicable to Case No. 203256 or any party thereto (including the  
11 time limit within which to bring said case to trial) are waived, extended and tolled until a date  
12 which is thirty (30) days after the date any party gives prior written notice to the other parties  
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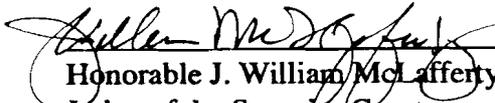
**ORDER**

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Further, based on the foregoing stipulation of the parties, and good cause appearing therefore, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED: DEC 01 2006

  
Honorable J. William McLafferty  
Judge of the Superior Court

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1 STEPHEN SHANE STARK, COUNTY COUNSEL  
2 KELLY A. CASILLAS (#214984)  
3 COUNTY OF SANTA BARBARA  
4 105 E. Anapamu St., Suite 201  
5 Santa Barbara, CA 93101  
6 (805) 568-2950 / FAX: (805) 568-2982

FILED  
SANTA BARBARA  
SUPERIOR COURT

JUN 22 2006

GARY M. BLAIR, EXEC. OFFICER

BY *Robert A. Villarreal*  
ROBERT A. VILLARREAL, CLERK

Attorneys for Defendants/Respondents  
County of Santa Barbara and Board of  
Supervisors of County of Santa Barbara

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF SANTA BARBARA

9 ANACAPA DIVISION

10  
11 NAPLES PROPERTY OWNERS  
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Case No: 203256

STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ORDER

Petitioners

vs.

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17 COMMISSION; COUNTY OF SANTA  
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21 inclusive,

CMC Date: July 10, 2006  
Time: 8:30 a.m.  
Dept: 5  
New CMC Date: December 11, 2006

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Assigned to Hon. J. William McLafferty  
for all purposes

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22 easement exchange for approximately 2400 acres of agriculturally zoned lands surrounding  
23 the Naples Townsite. Because of the complexity of the Alternative 1 project and the need for  
24 supplemental information, the schedule for completing the draft EIR has become protracted.  
25 This process has been further complicated by the recent demise of the owner of Dos Pueblos  
26 Ranch (Rudy Schulte) and achieving agreement among the successors of interest.

27 5. On May 15, 2006, the Developer submitted an updated project description and  
28 application for the Alternative 1 project, along with evidence that the successors and assigns

1 to the Schulte Trust agree to the project. This information is sufficient to complete the draft  
2 EIR, which is now scheduled for public release within the next thirty days.

3 6. The parties to this case believe it would be in the best interests of all concerned  
4 that the active prosecution and defense of this action be further stayed so that project  
5 applications and alternatives may be pursued pursuant to the MOU. The parties therefore  
6 desire to continue the Case Management Conference now set for July 10, 2006 to December  
7 11, 2006, at which time the parties will brief this Court as to the status of the project review.

8 7. The parties stipulate that all statutory deadlines, statutes of limitation or other  
9 deadlines or time limits applicable to Case No. 203256 or any party thereto (including the  
10 time limit within which to bring said case to trial) are waived, extended and tolled until a date  
11 which is thirty (30) days after the date any party gives prior written notice to the other parties  
12 of the termination of said Stipulation for Stay. As previously agreed, petitioners shall not be  
13 entitled to collect damages as alleged in the Complaint for the period of time between the  
14 entry of the original Standstill Agreement and termination of that Agreement.

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8. The parties through their respective attorneys of record stipulate that the Case Management Conference now scheduled for July 10, 2006, at 8:30 a.m. in Department Five of the Superior Court of Santa Barbara County before the Honorable J. William McLafferty may be continued to December 11, 2006, at 8:30 a.m. in Department Five of the Superior Court.

Respectfully submitted,

Dated: June 20, 2006

STEPHEN SHANE STARK  
COUNTY COUNSEL

By Mary Pat Barry  
for KELLY A. CASILLAS,  
Deputy County Counsel  
Attorneys for Respondent  
COUNTY OF SANTA BARBARA

Dated: June 26, 2006

HOLLISTER & BRACE

By Richard C. Monk  
RICHARD C. MONK  
Attorneys for Petitioners

Dated: June \_\_\_\_, 2006

BILL LOCKYER  
Attorney General for The State of California

By Jamee Jordan Patterson  
JAMEE JORDAN PATTERSON  
Deputy Attorney General on behalf  
of Respondent California Coastal  
Commission

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8. The parties through their respective attorneys of record stipulate that the Case Management Conference now scheduled for July 10, 2006, at 8:30 a.m. in Department Five of the Superior Court of Santa Barbara County before the Honorable J. William McLafferty may be continued to December 11, 2006, at 8:30 a.m. in Department Five of the Superior Court.

Respectfully submitted,

Dated: June \_\_\_\_, 2006

STEPHEN SHANE STARK  
COUNTY COUNSEL

By \_\_\_\_\_  
KELLY A. CASILLAS,  
Deputy County Counsel  
Attorneys for Respondent  
COUNTY OF SANTA BARBARA

Dated: June \_\_\_\_, 2006

HOLLISTER & BRACE

By \_\_\_\_\_  
RICHARD C. MONK  
Attorneys for Petitioners

Dated: June 19, 2006

BILL LOCKYER  
Attorney General for The State of California

By   
JAMEE JORDAN PATTERSON  
Deputy Attorney General on behalf  
of Respondent California Coastal  
Commission

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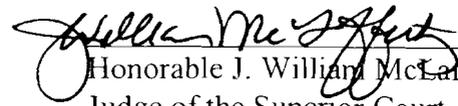
**ORDER**

The Court, having considered the stipulation to continue the Case Management Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case Management Conference be continued from July 10, 2006, at 8:30 a.m. in Department Five of the Superior Court to December 11, 2006, at 8:30 a.m. in Department Five of the Superior Court of the County of Santa Barbara.

Further, based on the foregoing stipulation of the parties, and good cause appearing therefore, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED: 6-21-06

  
Honorable J. William McLafferty  
Judge of the Superior Court

1 STEPHEN SHANE STARK, COUNTY COUNSEL  
2 ALAN L. SELTZER, CHIEF DEPUTY (Bar #092428)  
3 COUNTY OF SANTA BARBARA  
4 105 E. Anapamu St., Suite 201  
5 Santa Barbara, CA 93101  
6 (805) 568-2950 / FAX: (805) 568-2982

7 Attorneys for Defendants/Respondents  
8 County of Santa Barbara and Board of  
9 Supervisors of County of Santa Barbara

FILED  
SANTA BARBARA  
SUPERIOR COURT

NOV 28 2005

GARY M. BLAIR, EXEC. OFFICER  
By Robert A. Vifferas Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SANTA BARBARA  
12 ANACAPA DIVISION

13 NAPLES PROPERTY OWNERS  
14 ASSOCIATION, a California non-profit  
15 mutual benefit corporation; JOHN M.  
16 MOREHART and FRANCES  
17 MOREHART

18 Petitioners

19 vs.

20 CALIFORNIA COASTAL  
21 COMMISSION; COUNTY OF SANTA  
22 BARBARA; THE BOARD OF  
23 SUPERVISORS OF THE COUNTY OF  
24 SANTA BARBARA; and DOES 1-25,  
25 inclusive,

26 Respondents,

Case No: 203256

STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ORDER

CMC Date: December 12, 2005  
Time: 8:30 a.m.  
Dept: 5  
New CMC Date: July 10, 2006 *2006 P*

Assigned to Hon. J. William McLafferty  
for all purposes

27 Petitioners, Naples Property Owners Association and Respondents, California Coastal  
28 Commission and County of Santa Barbara, hereby stipulate as follows:

1. This action has been stayed pursuant to the Memorandum of Understanding ("MOU") filed with this Court on December 11, 2002. The MOU provides a protocol for the submission of project applications for development and land conservation proposals for the Naples option property ("Property") that could moot and lead to the dismissal of this action pursuant to § 6.4 of the MOU. The MOU has already resulted in the dismissal of a

ORIGINAL

1 companion action, *Naples Property Owners Association v. County of Santa Barbara, et al.*,  
2 Santa Barbara Superior Court Case No. 179265.

3 2. Petitioners are presently under contract with the Santa Barbara Ranch, LLC  
4 ("Developer"), who is a party to the MOU, and who has already acquired portions of the  
5 Property and is presently in escrow to purchase a final takedown of additional property within  
6 the Naples Townsite. The project applications contemplated by the MOU and that have been  
7 filed by Developer require review and approval by both the County and Coastal Commission  
8 of legislative changes to County's Local Coastal Program applicable to the Naples Townsite  
9 and quasi-adjudicative development entitlements for the Property.

10 3. In November 2003, Developer formally submitted initial project applications  
11 identified in the MOU. Given the complexity of the applications, they were found incomplete  
12 and the County staff and Developer worked cooperatively to complete them. After two  
13 subsequent submittals, the applications for the Property were deemed complete September 3,  
14 2004, and environmental review of those applications commenced thereafter in accordance  
15 with the MOU and CEQA. A public scoping meeting on the EIR occurred January 27, 2005.  
16 On January 27, 2005, as a result of considerable dialogue between the County, applicant and  
17 stakeholder community groups, Developer proposed an alternative project ("Alternative 1")  
18 that Developer has requested be processed as the preferred project at a project level of detail  
19 in the EIR.

20 4. Alternative 1 requires the participation of the neighboring Dos Pueblos Ranch  
21 and involves the transfer of potential development to inland areas and an agricultural  
22 easement exchange for approximately 2400 acres of agriculturally zoned lands surrounding  
23 the Naples Townsite. Because of the complexity of the Alternative 1 project and the need for  
24 additional information for review of the applicant's proposed alternative, the public draft EIR,  
25 originally completed for November 2005, will likely be issued in January 2006.

26 5. The parties to this case believe it would be in the best interests of all concerned  
27 that the active prosecution and defense of this action be further stayed so that project  
28 applications and alternatives may be pursued pursuant to the MOU. The parties therefore

1 desire to continue the Case Management Conference now set for December 12, 2005 to July  
2 10, 2006, at which time the parties will brief this Court as to the status of the project review.

3 6. The parties stipulate that all statutory deadlines, statutes of limitation or other  
4 deadlines or time limits applicable to Case No. 203256 or any party thereto (including the  
5 time limit within which to bring said case to trial) are waived, extended and tolled until a date  
6 which is thirty (30) days after the date any party gives prior written notice to the other parties  
7 of the termination of said Stipulation for Stay. As previously agreed, petitioners shall not be  
8 entitled to collect damages as alleged in the Complaint for the period of time between the  
9 entry of the original Standstill Agreement and termination of that Agreement.

10 7. The parties through their respective attorneys of record stipulate that the Case  
11 Management Conference now scheduled for December 12, 2005, at 8:30 a.m. in Department  
12 Five of the Superior Court of Santa Barbara County before the Honorable J. William  
13 McLafferty may be continued to July 10, 2006, at 8:30 a.m. in Department Five of the  
14 Superior Court.

15 Respectfully submitted,

16  
17 Dated: November 22, 2005

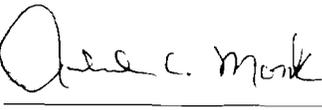
STEPHEN SHANE STARK  
COUNTY COUNSEL

18  
19 By 

ALAN L. SELTZER  
Chief Deputy County Counsel  
Attorneys for Respondent  
COUNTY OF SANTA BARBARA

20  
21  
22  
23 Dated: November 22, 2005

HOLLISTER & BRACE

24  
25 By 

RICHARD C. MONK  
Attorneys for Petitioners

1 Dated: November 22, 2005

BILL LOCKYER  
Attorney General for The State of California

2  
3 By Jamee Jordan Patterson  
4 JAMEE JORDAN PATTERSON  
5 Deputy Attorney General on behalf  
6 of Respondent California Coastal  
7 Commission

8 **ORDER**

9 The Court, having considered the stipulation to continue the Case Management  
10 Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case  
11 Management Conference be continued from December 12, 2005, at 8:30 a.m. in Department  
12 Five of the Superior Court to July 10, 2006, at 8:30 a.m. in Department Five of the Superior  
13 Court of the County of Santa Barbara.

14 Further, based on the foregoing stipulation of the parties, and good cause appearing  
15 therefor, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or  
16 time limits applicable to Case No. 203256 (including the time limit within which to bring said  
17 case to trial) or any party thereto are waived, extended and tolled until a date which is thirty  
18 (30) days after the date any party gives written notice to the other parties of the termination of  
19 said stipulation.

20 IT IS SO ORDERED.

21 DATED: 11-28-05

22 J. William McLafferty  
23 Honorable J. William McLafferty  
24 Judge of the Superior Court

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27 als\naples\stip.con.12-12-05 203256.doc

28 COUNTY COUNSEL  
County of Santa Barbara  
105 East Anapamu Street  
Santa Barbara, CA 93101  
(805) 568-2950

STEPHEN SHANE STARK, COUNTY COUNSEL  
ALAN L. SELTZER, CHIEF DEPUTY (Bar #092428)  
COUNTY OF SANTA BARBARA  
105 E. Anapamu St., Suite 201  
Santa Barbara, CA 93101  
(805) 568-2950 / FAX: (805) 568-2982

Attorneys for Defendants/Respondents  
County of Santa Barbara and Board of  
Supervisors of County of Santa Barbara

FILED  
SANTA BARBARA  
SUPERIOR COURT

JUL 07 2005

GARY M. BLAIR, EXEC. OFFICER

By: *[Signature]*  
ROBERT A. WILSON, CLERK

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DATE  
CLERK  
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ATTY  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
ANACAPA DIVISION

NAPLES PROPERTY OWNERS  
ASSOCIATION, a California non-profit  
mutual benefit corporation; JOHN M.  
MOREHART and FRANCES  
MOREHART

Case No: 203256

Petitioners

vs.

STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ORDER

CALIFORNIA COASTAL  
COMMISSION; COUNTY OF SANTA  
BARBARA; THE BOARD OF  
SUPERVISORS OF THE COUNTY OF  
SANTA BARBARA; and DOES 1-25,  
inclusive,

CMC Date: July 18, 2005  
Time: 8:30 a.m.  
Dept: 5  
New CMC Date: December 12, 2005

Respondents,

Assigned to Hon. J. William McLafferty  
for all purposes

Petitioners, Naples Property Owners Association and Respondents, California Coastal  
Commission and County of Santa Barbara, hereby stipulate as follows:

1. This action has been stayed pursuant to the Memorandum of Understanding  
("MOU") filed with this Court on December 11, 2002. The MOU provides a protocol for the  
submission of project applications for development and land conservation proposals for the  
Naples option property ("Property") that could moot and lead to the dismissal of this action  
pursuant to § 6.4 of the MOU. The MOU has already resulted in the dismissal of a

ORIGINAL

1 companion action, *Naples Property Owners Association v. County of Santa Barbara, et al.*,  
2 Santa Barbara Superior Court Case No. 179265.

3 2. Petitioners are presently under contract with the Santa Barbara Ranch, LLC  
4 ("Developer"), who is a party to the MOU, and who has acquired portions of the Property and  
5 an option to purchase the additional property within the Naples Townsite. The project  
6 applications contemplated by the MOU and that have been filed by Developer require review  
7 and approval by both the County and Coastal Commission of legislative changes to County's  
8 Local Coastal Program applicable to the Naples Townsite and quasi-adjudicative development  
9 entitlements for the Property.

10 3. In November 2003, Developer formally submitted initial project applications  
11 identified in the MOU. Given the complexity of the applications, they were found incomplete  
12 and the County staff and Developer worked cooperatively to complete them. After two  
13 subsequent submittals, the applications for the Property were deemed complete September 3,  
14 2004, and environmental review of those applications commenced thereafter in accordance  
15 with the MOU and CEQA. A public scoping meeting on the EIR occurred January 27, 2005.  
16 On January 27, 2005, as a result of considerable dialogue between the County, applicant and  
17 stakeholder community groups, Developer proposed an alternative project that Developer has  
18 requested be processed at a project level of detail in the EIR.

19 4. Because of the complexity of the project and the need for additional  
20 information for review of the applicant's proposed alternative, the draft EIR is likely to be  
21 completed between September and November 2005.

22 5. The parties to this case believe it would be in the best interests of all concerned  
23 that the active prosecution and defense of this action be further stayed so that project  
24 applications and alternatives may be pursued pursuant to the MOU. The parties therefore  
25 desire to continue the Case Management Conference now set for July 18, 2005 to December  
26 12, 2005, at which time the parties will brief this Court as to the status of the project review.

27 6. The parties stipulate that all statutory deadlines, statutes of limitation or other  
28 deadlines or time limits applicable to Case No. 203256 or any party thereto (including the

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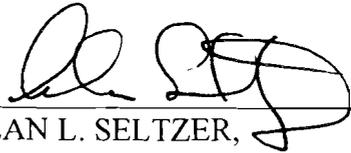
time limit within which to bring said case to trial) are waived, extended and tolled until a date which is thirty (30) days after the date any party gives prior written notice to the other parties of the termination of said Stipulation for Stay. As previously agreed, petitioners shall not be entitled to collect damages as alleged in the Complaint for the period of time between the entry of the original Standstill Agreement and termination of that Agreement.

7. The parties through their respective attorneys of record stipulate that the Case Management Conference now scheduled for July 18, 2005, at 8:30 a.m. in Department Five of the Superior Court of Santa Barbara County before the Honorable J. William McLafferty may be continued to December 12, 2005, at 8:30 a.m. in Department Five of the Superior Court.

Respectfully submitted,

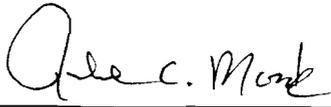
Dated: July 5, 2005

STEPHEN SHANE STARK  
COUNTY COUNSEL

By   
ALAN L. SELTZER,  
Chief Deputy County Counsel  
Attorneys for Respondent  
COUNTY OF SANTA BARBARA

Dated: July 1, 2005

HOLLISTER & BRACE

By   
RICHARD C. MONK  
Attorneys for Petitioners

Dated: July \_\_, 2005

BILL LOCKYER  
Attorney General for The State of California

By \_\_\_\_\_  
JAMEE JORDAN PATTERSON  
Deputy Attorney General on behalf  
of Respondent California Coastal  
Commission

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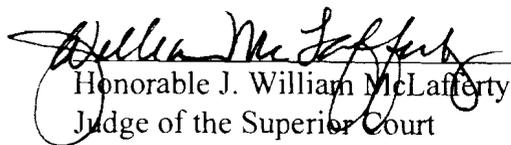
**ORDER**

The Court, having considered the stipulation to continue the Case Management Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case Management Conference be continued from July 18, 2005, at 8:30 a.m. in Department Five of the Superior Court to December 12, 2005, at 8:30 a.m. in Department Five of the Superior Court of the County of Santa Barbara.

Further, based on the foregoing stipulation of the parties, and good cause appearing therefor, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED: 7-7-05

  
Honorable J. William McLafferty  
Judge of the Superior Court

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STEPHEN SHANE STARK, COUNTY COUNSEL  
ALAN L. SELTZER, CHIEF DEPUTY (Bar #092428)  
COUNTY OF SANTA BARBARA  
105 E. Anapamu St., Suite 201  
Santa Barbara, CA 93101  
(805) 568-2950 / FAX: (805) 568-2982

CLERK OF  
THE SUPERIOR COURT

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SANTA BARBARA  
SUPERIOR COURT

JUL 08 2004

Attorneys for Defendants/Respondents  
County of Santa Barbara and Board of  
Supervisors of County of Santa Barbara

GARY M. BLAIR, EXEC. OFFICER

By Robert A. Villegas  
ROBERT A. VILLEGAS, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
ANACAPA DIVISION

ORIGINAL

NAPLES PROPERTY OWNERS  
ASSOCIATION, a California non-profit  
mutual benefit corporation; JOHN M.  
MOREHART and FRANCES  
MOREHART

Case No: 203256

Petitioners

vs.

STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ORDER

CALIFORNIA COASTAL  
COMMISSION; COUNTY OF SANTA  
BARBARA; THE BOARD OF  
SUPERVISORS OF THE COUNTY OF  
SANTA BARBARA; and DOES 1-25,  
inclusive,

CMC Date: July 19, 2004  
Time: 8:30 a.m.  
Dept: 5  
New CMC Date: July 18, 2005

Respondents,

Assigned to Hon. J. William McLafferty  
for all purposes

Petitioners, Naples Property Owners Association and Respondents, California Coastal  
Commission and County of Santa Barbara, hereby stipulate as follows:

1. This action has been stayed pursuant to the Memorandum of Understanding  
("MOU") filed with this Court on December 11, 2002. The MOU provides a protocol for the  
submission of project applications for development and land conservation proposals for the  
Naples option property ("Property") that could moot and lead to the dismissal of this action  
pursuant to § 6.4 of the MOU. The MOU has already resulted in the dismissal of a

1 companion action, *Naples Property Owners Association v. County of Santa Barbara, et al.*,  
2 Santa Barbara Superior Court Case No. 179265.

3 2. On July 14, 2003, the parties appeared at a case management conference before  
4 this Court. The Court continued the case management conference to July 19, 2004, to allow  
5 project applications for the Property contemplated by the MOU to be formulated and  
6 submitted to the County for environmental review and decision-making.

7 3. Petitioners are presently under contract with the Santa Barbara Ranch, LLC  
8 ("Developer"), who is a party to the MOU, and who has acquired portions of the Property and  
9 an option to purchase additional property within the Naples Townsite. The project  
10 applications contemplated by the MOU to be filed by Developer require review and approval  
11 by both the County and Coastal Commission of legislative changes to County's Local Coastal  
12 Program applicable to the Naples Townsite and quasi-adjudicative development entitlements  
13 for the Property. During the past year, the parties have met with each other and other  
14 community stakeholders in an effort to formulate the applications for legislative and  
15 adjudicative approvals to be submitted for review under the MOU. Developer has also met  
16 with respondents and other landowners of property within the Naples Townsite, including  
17 plaintiff in CPH Dos Pueblos Associates, LLC v. California Coastal Commission, SBCS Case  
18 No. 01111661, pending before the Honorable Thomas P. Anderle, in an effort to identify  
19 project alternatives that would encompass the entire Naples Townsite and globally resolve all  
20 development and conservation issues for this portion of the Gaviota Coast.

21 4. Developer has formally submitted project applications identified in the MOU.  
22 Given the complexity of the applications, they were found incomplete and the County staff  
23 and Developer have been working cooperatively to complete them. The parties believe  
24 applications for the Property will be complete this summer and that environmental review of  
25 those applications and project alternatives will proceed thereafter in accordance with the  
26 MOU and CEQA.



Click on "Bookmarks" for a Table of Contents of all Documents included.

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Dated: July 2, 2004

BILL LOCKYER  
Attorney General for The State of California

By   
JAMEE JORDAN PATTERSON  
Deputy Attorney General on behalf  
of Respondent California Coastal  
Commission

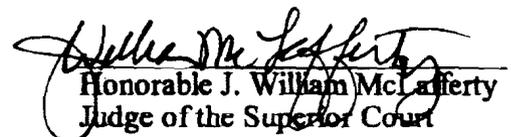
**ORDER**

The Court, having considered the stipulation to continue the Case Management Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case Management Conference be continued from July 19, 2004, at 8:30 a.m. in Department Five of the Superior Court to July 18, 2005, at 8:30 a.m. in Department Five of the Superior Court of the County of Santa Barbara.

Further, based on the foregoing stipulation of the parties, and good cause appearing therefor, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED: 7-7-04

  
Honorable J. William McLaugherty  
Judge of the Superior Court

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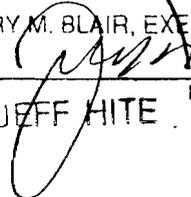
1 STEPHEN SHANE STARK, COUNTY COUNSEL  
2 ALAN L. SELTZER, CHIEF DEPUTY (Bar #092428)  
3 COUNTY OF SANTA BARBARA  
4 105 E. Anapamu St., Suite 201  
5 Santa Barbara, CA 93101  
6 (805) 568-2950 / FAX: (805) 568-2982

FILED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

JUL 11 2003

GARY M. BLAIR, EXEC. OFFICER

By  Deputy Clerk

JEFF HITE

Attorneys for Defendants/Respondents  
County of Santa Barbara and Board of  
Supervisors of County of Santa Barbara

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SANTA BARBARA  
9 ANACAPA DIVISION

11 NAPLES PROPERTY OWNERS  
12 ASSOCIATION, a California non-profit  
13 mutual benefit corporation; JOHN M.  
14 MOREHART and FRANCES  
15 MOREHART

Case No: SB 203256

**SUPPLEMENTAL CASE  
MANAGEMENT STATEMENT**

Petitioners

vs.

16 CALIFORNIA COASTAL  
17 COMMISSION; COUNTY OF SANTA  
18 BARBARA; THE BOARD OF  
19 SUPERVISORS OF THE COUNTY  
20 OF SANTA BARBARA; and DOES 1-  
21 25, inclusive,

Date: July 14, 2003  
Time: 8:30 a.m.  
Dept: 5

Assigned to Hon. J. William McLafferty  
for all purposes

Respondents,

21 This action has been stayed pursuant to standstill agreements and the  
22 Memorandum of Understanding ("MOU") filed with this Court on December 11, 2002.

23 The MOU provides a protocol for the submission of project applications that could  
24 moot and lead to the dismissal of this action pursuant to § 6.4 of the MOU. In light of  
25 the dismissal of the companion action, *Naples Property Owners Association v. County*  
26 *of Santa Barbara, et al.*, Santa Barbara Superior Court Case No. 179265, County  
27 suggests that a case management conference be scheduled for July 2004, since the  
28 project applications contemplated by the MOU have not yet been formally submitted to

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STEPHEN SHANE STARK, COUNTY COUNSEL  
ALAN L. SELTZER, CHIEF DEPUTY (Bar #092428)  
COUNTY OF SANTA BARBARA  
105 E. Anapamu St., Suite 201  
Santa Barbara, CA 93101  
(805) 568-2950 / FAX: (805) 568-2982

Attorneys for Defendants/Respondents  
County of Santa Barbara and Board of  
Supervisors of County of Santa Barbara

FILED  
SANTA BARBARA  
SUPERIOR COURT

APR 17 2003

GARY M. BLAIR, EXEC. OFFICER  
By *Rosa Reyes*  
ROSA REYES, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA BARBARA  
ANACAPA DIVISION

NAPLES PROPERTY OWNERS  
ASSOCIATION, a California non-profit  
mutual benefit corporation; JOHN M.  
MOREHART and FRANCES  
MOREHART

Petitioners

vs.

CALIFORNIA COASTAL  
COMMISSION; COUNTY OF SANTA  
BARBARA; THE BOARD OF  
SUPERVISORS OF THE COUNTY OF  
SANTA BARBARA; and DOES 1-25,  
inclusive,

Respondents,

Case No: 203256

STIPULATION TO CONTINUE CASE  
MANAGEMENT CONFERENCE AND  
ORDER

CMC Date: April 21, 2003  
Time: 8:30 a.m.  
Dept: 5  
New CMC Date: July 14, 2003

Assigned to Hon. J. William McLafferty  
for all purposes

Petitioners, Naples Property Owners Association and John M.. Morehart and Frances  
Morehart, and Respondents, California Coastal Commission and County of Santa Barbara,  
hereby stipulate as follows:

1. The parties to this case have, from time to time, entered into Stipulations for  
Stay (Standstill Agreements), which have each time been approved by the Court, staying all  
proceedings in the matter so that the parties could fully explore any and all settlement  
opportunities.

1           2.       Towards that end, the petitioners and defendant County prepared a  
2 Memorandum of Understanding ("MOU") which was unanimously approved by the Santa  
3 Barbara County Board of Supervisors and has been fully executed and in full force and effect  
4 since December 3, 2002. The MOU provides a protocol for the settlement and compromise of  
5 Case No. 203256 and dismissal of the companion Case No. 179265 in accordance with the  
6 provisions of the MOU and further establishes the framework for the submittal and review of  
7 development proposals for the Naples property ("Property")

8           3.       Petitioners are presently under contract with a developer, who is a party to the  
9 MOU, and who has acquired an option to purchase the Property. Pursuant to the MOU, the  
10 developer intends to seek permits from the County of Santa Barbara for residential and  
11 agricultural uses thereon, which could reasonably effectuate a global settlement of the within  
12 action and the companion case. The developer has already acquired that portion of the  
13 Property located north of U.S. Highway 101 consisting of approximately 263 acres containing  
14 72 Lots shown on the Official Map of Naples. The developer also acquired approximately 70  
15 acres of the Property located south of U.S. Highway 101 consisting of approximately 222  
16 acres on June 20, 2002. Pursuant to the option agreement, the developer has one final "take-  
17 down" to acquire the remainder of the Property located south of U.S. Highway 101 consisting  
18 of approximately 152 acres. The final "take-down" under the option has been extended to  
19 June 11, 2003, at the request of petitioners to facilitate a tax-deferred exchange. The  
20 requested continuance will allow the developer additional time to perform under the option  
21 agreement.

22           4.       Section 6.6 of the MOU requires that the affected parties submit the MOU to  
23 the respective judges assigned to Case Nos. 179265 and 203256 for approval and for filing in  
24 the court files of said respective court cases. A copy of the executed MOU was previously  
25 filed in these actions on December 11, 2002.

26           5.       Section 6.4 of the MOU provides that upon the developer's purchase of all of  
27 the Property which is the subject of the option, the petitioners shall dismiss with prejudice  
28 Case No. 179265, which is the "takings" case. As stated above, the final "take-down" is to

1 occur on June 11, 2003.

2 7. The parties to this case believe it would be in the best interests of all concerned  
3 that the active prosecution and defense of this action be further stayed so that petitioners and  
4 the developer can pursue their respective rights under the aforesaid option and MOU. The  
5 parties therefore desire to continue the Case Management Conference now set for April 21,  
6 2003 to July 14, 2003, at which time it is anticipated the final "take-down" shall have  
7 occurred and Case No. 179265 dismissed.

8 8. The parties stipulate that all statutory deadlines, statutes of limitation or other  
9 deadlines or time limits applicable to Case No. 203256 or any party thereto (including the  
10 time limit within which to bring said case to trial) are waived, extended and tolled until a date  
11 which is thirty (30) days after the date any party gives prior written notice to the other parties  
12 of the termination of said Stipulation for Stay. As previously agreed, petitioners shall not be  
13 entitled to collect damages as alleged in the Complaint for the period of time between the  
14 entry of the original Standstill Agreement and termination of that Agreement.

15 9. The parties through their respective attorneys of record stipulate that the Case  
16 Management Conference now scheduled for April 21, 2003 at 8:30 a.m. in Department Five  
17 of the Superior Court of Santa Barbara County before the Honorable J. William McLafferty  
18 may be continued to July 14, 2003 at 8:30 a.m. in Department Five of the Superior Court.

19 Respectfully submitted,

20  
21 Dated: April 10, 2003

STEPHEN SHANE STARK  
COUNTY COUNSEL

22  
23  
24 By

  
ALAN L. SELTZER,  
Chief Deputy County Counsel  
Attorneys for Respondent  
COUNTY OF SANTA BARBARA

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Dated: April 10, 2003

HOLLISTER & BRACE

By Richard C. Monk  
RICHARD C. MONK  
Attorneys for Petitioners

Dated: April 10, 2003

BILL LOCKYER  
Attorney General for The State of California

By Jamie Jordan Patterson  
JAMIE JORDAN PATTERSON  
Deputy Attorney General on behalf  
of Respondent California Coastal  
Commission

**ORDER**

The Court, having considered the stipulation to continue the Case Management Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case Management Conference be continued from April 21, 2003, at 8:30 a.m. in Department Five of the Superior Court to July 14, 2003, at 8:30 a.m. in Department Five of the Superior Court of the County of Santa Barbara.

Further, based on the foregoing stipulation of the parties, and good cause appearing therefor, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED: 4-11-03

William McLafferty  
Honorable J. William McLafferty  
Judge of the Superior Court



1           2.       Towards that end, the parties have exchanged a number of confidential settlement  
2 proposals to resolve the above-entitled action and a companion case, *Naples Property Owners Assn.*  
3 *v. County of Santa Barbara, et al.*, Santa Barbara Superior Court Case No. 179265, and avoid  
4 further litigation relating to the Townsite of Naples property (the "Property"). In order to afford the  
5 parties an opportunity to further such settlement negotiations, the aforesaid stay orders in the  
6 respective cases have been extended periodically.

7           3.       Plaintiffs are presently under contract with a developer who has acquired an option  
8 to purchase the Property and intends to seek permits from the County of Santa Barbara for residential  
9 and agricultural uses thereon, which could reasonably effectuate a global settlement of the within  
10 action and the companion case. Pursuant to said option, the developer has already acquired that  
11 portion of the Property located north of U.S. Highway 101 consisting of approximately 263 acres  
12 containing 72 Lots shown on the Official Map of Naples. The developer also acquired  
13 approximately 70 acres of the Property located south of U.S. Highway 101 consisting of  
14 approximately 222 acres on June 20, 2002. The developer has one final "take-down" to acquire the  
15 remainder of the Property located south of U.S. Highway 101 consisting of approximately 152 acres.  
16 The final "take-down" under the option is to occur on January 30, 2003. The requested continuance  
17 will allow the developer additional time to perform under the option agreement.

18           4.       The parties to this case prepared a Memorandum of Understanding ("MOU"), which  
19 was approved by the Santa Barbara County Board of Supervisors on January 24, 2000. That MOU  
20 expired by its own terms when a condition precedent could not be timely satisfied. Since then,  
21 plaintiffs and developer, on the one hand, and County representatives, on the other hand, have  
22 engaged in a number of confidential settlement discussions and negotiations regarding a new MOU.

23           5.       The parties to this case prepared a subsequent MOU which was unanimously  
24 approved by the Santa Barbara County Board of Supervisors on April 23, 2002, has been fully  
25 executed and is presently in full force and effect. The MOU provides a protocol for the settlement  
26 and compromise of the disputes in Case No. 203256 and Case No. 179265 in accordance with the  
27 provisions of the MOU and further establishes the framework for the submittal and review of  
28 development proposals for the Property which is the subject of the aforesaid Option Agreement.

1           6.       Section 6.6 of the MOU requires that the affected parties submit the MOU to the  
2       respective judges assigned to Case Nos. 179265 and 203256 for approval and for filing in the court  
3       files of said respective court cases. A copy of the executed MOU is attached as Exhibit "A" hereto.

4           7.       Section 6.1 of the MOU provides that the affected parties shall execute and file  
5       stipulations in Case Nos. 179265 and 203256 requesting that the court extend the pending stays in  
6       said cases indefinitely to allow performance by the parties of the matters set forth therein. Section  
7       6.1 of the MOU further provides that the affected parties shall report back to the judges assigned to  
8       said cases for periodic case management conferences as directed by said judges.

9           8.       Section 6.4 of the MOU provides that upon the developer's purchase of all of the  
10      Property which is the subject of the option, the plaintiffs shall dismiss with prejudice Case No.  
11      179265, which is the "takings" case. As stated above, the final "take-down" is to occur on January  
12      30, 2003.

13          9.       The parties to this case believe it would be in the best interests of all concerned that  
14      the active prosecution and defense of this action be further stayed so that the plaintiffs and the  
15      developer can pursue their respective rights under the aforesaid option and MOU. The parties  
16      therefore desire to continue the Case Management Conference now set for December 16, 2002 to  
17      April 21, 2003, at which time it is anticipated the final "take-down" shall have occurred and Case  
18      No. 179265 dismissed..

19          10.      The parties stipulate that all statutory deadlines, statutes of limitation or other  
20      deadlines or time limits applicable to Case No. 203256 or any party thereto (including the time limit  
21      within which to bring said case to trial) are waived, extended and tolled until a date which is thirty  
22      (30) days after the date any party gives prior written notice to the other parties of the termination of  
23      said Stipulation for Stay. As previously agreed, plaintiffs shall not be entitled to collect damages  
24      as alleged in the Complaint for the period of time between the entry of the original Standstill  
25      Agreement and termination of that Agreement.

26          11.      The parties through their respective attorneys of record stipulate that the Case

27      ///

28      ///

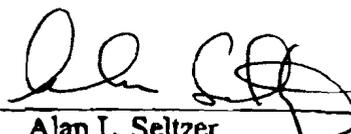
Click on "Bookmarks" for a Table of Contents of all Documents included.

1 Management Conference now scheduled for December 16, 2002 at 8:30 a.m. in Department Five of  
2 the Superior Court of Santa Barbara County before the Honorable J. William McLafferty may be  
3 continued to April 21, 2003 at 8:30 a.m. in Department Five of the Superior Court.

4 Respectfully submitted,

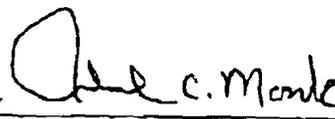
5 DATED: December 6, 2002

Stephen Shane Stark, County Counsel

6  
7 By   
8 Alan L. Seltzer,  
9 Assistant County Counsel  
10 Attorneys for Defendant  
County of Santa Barbara

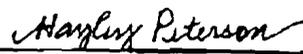
11 DATED: December 6, 2002

HOLLISTER & BRACE

12  
13 By   
14 Richard C. Monk  
15 Attorneys for Plaintiffs

16 DATED: December 6, 2002

BILL LOCKYER,  
Attorney General for the State of California

17  
18 By   
19 for Jamee Jordan Patterson  
20 Deputy Attorney General on behalf  
21 of Respondent California Coastal  
22 Commission

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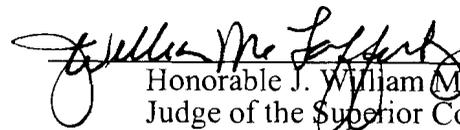
**ORDER**

The Court, having considered the stipulation to continue the Case Management Conference and GOOD CAUSE APPEARING THEREFOR, orders that the Case Management Conference be continued from December 16, 2002 at 8:30 a.m. in Department Five of the Superior Court to April 21, 2003 at 8:30 a.m. in Department Five of the Superior Court of the County of Santa Barbara.

Further, based on the foregoing stipulation of the parties, and good cause appearing therefor, it is ordered that all statutory deadlines, statutes of limitation, or other deadlines or time limits applicable to Case No. 203256 (including the time limit within which to bring said case to trial) or any party thereto are waived, extended and tolled until a date which is thirty (30) days after the date any party gives written notice to the other parties of the termination of said stipulation.

IT IS SO ORDERED.

DATED: 12-9-02

  
Honorable J. William McLafferty  
Judge of the Superior Court

Click on "Bookmarks" for a Table of Contents of all Documents included.

# Paving Paradise:

## A New Perspective on California Farmland Conversion



Edward Thompson, Jr.  
AFT California Director  
November 2007



## Paving Paradise: A New Perspective on California Farmland Conversion

Edward Thompson, Jr., AFT California Director  
November 2007

### Introduction

California is the leading agricultural state in America and one of the most important food production regions in the world – a food growing paradise. It is also the fastest-growing state, adding more than 400 thousand new residents per year. Between 1990 and 2004, the period covered by this report, over a half million acres of California's farmland were paved over, converted to urban uses. As long as the state's population continues to increase, the tide of development will not abate and the Golden State will continue to lose farmland to urban development. Given this state of affairs, the challenge for California is to assure that the best farmland remains available for agriculture and that urban development doesn't convert any more land than is truly necessary to accommodate its expanding population and economy. This challenge is made more difficult by the fact that most of the state's cities, where more than 90% of the population lives, are located in the midst of California's most productive farmland, generally in valleys and on coastal plains where the soil is deep, water is relatively abundant and the climate is mild. But it is a challenge we must successfully meet, if California is to continue to feed itself and the world.

The first step toward preserving California's best farmland is to understand what is happening to it and where. That is the purpose of this report. It contains the latest data and analysis of farmland conversion trends throughout the state of California. Its focus is the irreversible conversion of farmland to urban uses such as residential, commercial and industrial development. It does not document the conversion of farmland to other non-agricultural uses, for example, wildlife preserves, which also puts pressure on the food-producing resource base, but serves broader environmental goals that Californians support. Nor does it address changes in agricultural uses, for example, from cropland to grazing or vice versa. Data on these trends are available from the Farmland Mapping & Monitoring Program (FMMP) of the California Resources Agency, Department of Conservation, Division of Land Resource Protection, which is the source of all the land use data in this report, the contribution of which is gratefully acknowledged. Historic population data used in this report are from the U.S. Bureau of Census, while population forecasts are from the Demographic Research Unit of the California Department of Finance.

#### Source Data Links

Farmland Mapping & Monitoring Program  
Demographic Research Unit  
U.S. Bureau of Census

[www.consrv.ca.gov/dlrp/FMMP/index.htm](http://www.consrv.ca.gov/dlrp/FMMP/index.htm)  
<http://www.dof.ca.gov/Research/Research.asp>  
<http://www.census.gov/>

## How to Use This Report

This report is designed as an interactive information resource that will enable readers to extract data for their own purposes and, indeed, to conduct additional analysis of farmland trends. (We don't pretend to have all the answers and are eager to hear about insights you may glean from the wealth of data we have collected and organized.) The report consists of this Word document containing the Major Findings (below) and an Excel file that contains spreadsheets with statewide, regional and county-level data and analysis of farmland trends for the period 1990-2004, which is the longest and most recent period for which we have reliable, comprehensive data for the entire state of California. Both documents are also available as downloadable, printable pdf files at [www.farmland.org/california](http://www.farmland.org/california). The text and spreadsheets are copyrighted by AFT, but advance permission to use anything in the report is granted so long as appropriate credit is given in any derivative work or publication, e.g., "Data and Analysis from A New Perspective on California Farmland Conversion, © 2007 American Farmland Trust."

## Data Spreadsheet Contents

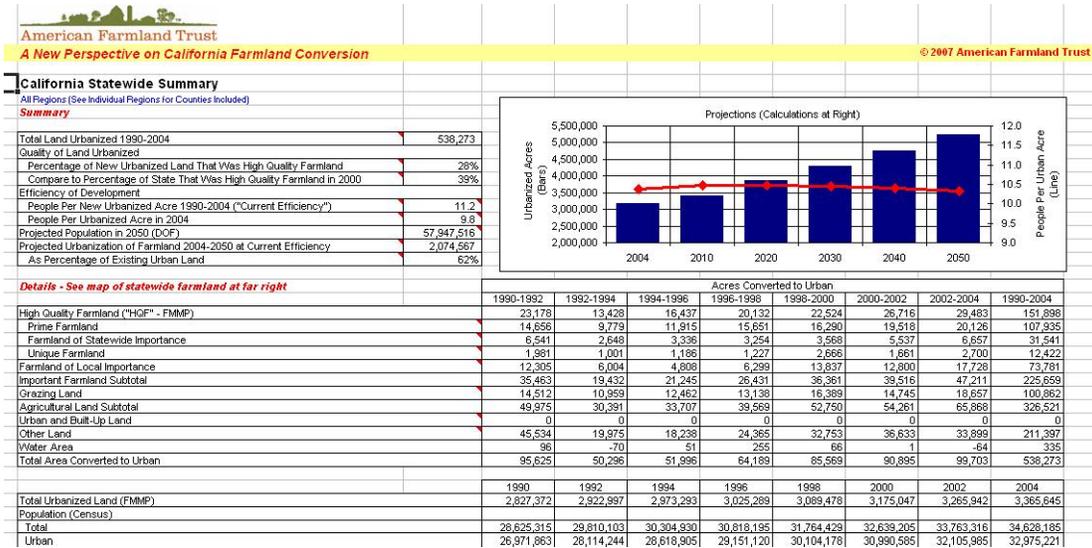
The Excel file includes 12 spreadsheets, listed below with descriptions of what each contains.

Guide to Data	Explains the layout of all spreadsheets.
State-Regional Land Profile	Existing total amount of land, agricultural land and high quality farmland in each of 7 regions of the state as of 2004.
Regions-All Counties	Summary data on major farmland conversion trends for the period 1990-2004: total land converted, agricultural land converted, quality of land converted and efficiency of land development for all regions and all counties mapped by FMMP. This sheet is especially helpful for comparing jurisdictions by re-sorting the data.
State-Top 10 Ag Counties	Summary and detailed data on farmland conversion trends 1990-2004, including every agricultural land classification, and projections of land conversion to 2050, for the state as a whole and for the top 10 producing agricultural counties,* plus a map of the state's agricultural land in 2000. Top 10 data are below the statewide data.
Northern Counties	Summary and detailed data on farmland conversion trends 1990-2004, including every agricultural land classification, and projections of land conversion to 2050, for each county within each region of the state. Individual counties can be viewed by scrolling down from the regional summary at the top. Rural residential data includes land devoted to urban and "ranchette" development in 2002 and 2004 for 4 counties in the San Joaquin Valley.
Bay Area	
Sierra Foothills	
Sacramento Valley	
San Joaquin Valley	
San Joaquin Rural Residential	
Central Coast	
Southern California	

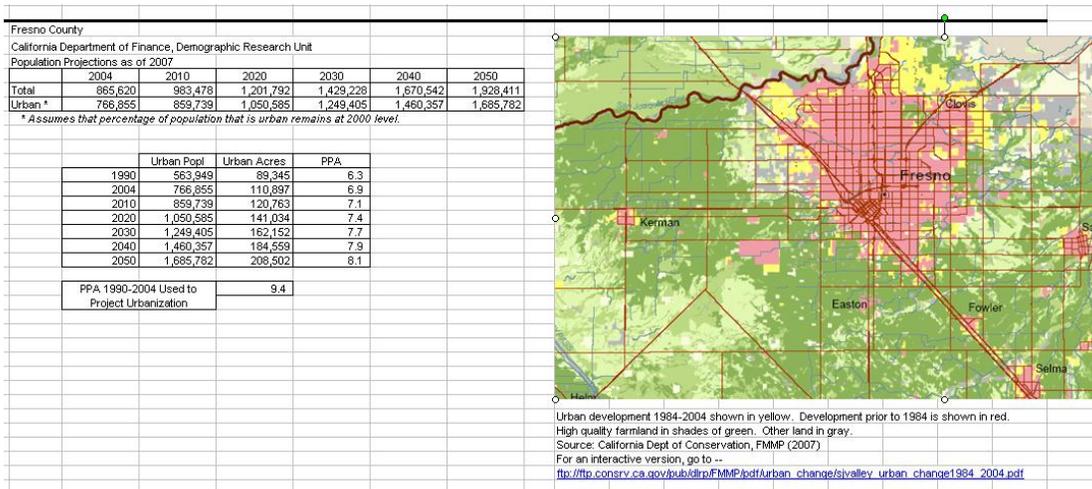
\* In order, the Top 10 counties are: Fresno, Tulare, Kern, Monterey, Merced, Stanislaus, San Joaquin, San Diego, Kings and Imperial, based on 2002 farm gate value of agricultural product sales according to U.S. Census of Agriculture.

## Explanation of Data and Analysis in Statewide and Regional Spreadsheets

All the spreadsheets in this file, except the State-Regional Land Profile and Regions-All Counties, use the same format shown below.



The top left of the initially visible screen contains summary data. Below that is detailed, biennial data on each type of agricultural, urban and other land. The official definitions of each type of land appear as a pop-up when you put the cursor over the cell containing the name of the type of land. Below the farmland data are population and urban land data, again in biennial increments. At the top right of the visible screen is a graph showing the projected loss of land through 2050 (note that the charts use different scales) and the change in development efficiency on which it is based. Alternative scenarios can be tested and graphed by changing the number of people per urban acre in the cell labeled "PPA 1990-2004 Used to Project Urbanization." (Be sure to change it back.) To the right of the visible screen (illustrated below) are the data used to project land conversion and, for counties where it is available, a map portraying all land types as of 2004 and the land developed 1990-2004. An interactive map of the region in which the county is located, enabling one to zoom in on specific areas, can be accessed by clicking on the active link below the map.



## Key Issues

The total amount of land urbanized or otherwise developed for non-agricultural use is only one measure of the potential impact of conversion on California agriculture. The quality of land urbanized and the efficiency of development are both key issues that shed more light on the subject. The impact of land conversion on agricultural production capacity is greater (other things being equal) when the quality of the land developed is higher and/or the efficiency of development is lower.

In California, the **quality of land** from an agricultural perspective, is attributable to the fertility of its soils, the availability of irrigation water and micro-climates that are uniquely suited for the production of specific crops (e.g., citrus). All of these are to some extent captured in the FMMP definitions of various categories of land. In general, the higher the percentage of land developed that was "high quality farmland" (our shorthand term for prime farmland, unique farmland and farmland of statewide importance), the greater the impact on agriculture. A comparison of the percentage of land developed that was high quality farmland with the percentage of all remaining non-urban land in the jurisdiction that is high quality farmland sheds additional light on this issue by suggesting the extent to which the available options for developing less productive land are being pursued. The maps of actual development patterns against the backdrop of the various types of remaining farmland help identify potential alternatives for future growth on less productive land.

The **efficiency of development** is another key issue – perhaps the most important, given that city-centered growth in California will almost inevitably convert high quality farmland, placing a premium on not wasting it. This report measures the efficiency of development with the ratio of the number of people in an urbanized area to the number of acres of land occupied by all of the urban uses that serve them, from residences to shopping and schools, workplaces and roads; in short the entire urban "footprint." The result is reported as "people per urban acre" or "PPA." (There is an unknown, but almost certainly very small, degree of error in this calculation because the area defined as urbanized by FMMP does not precisely match the definition of urban areas used by the U.S. Census Bureau. Especially for comparative purposes, we are confident that our calculations are accurate enough.)

The number of people per urban acre in any given year shows what is actually on the ground. The PPA trend for the period 1990-2004 indicates how efficiently – or, in most cases, inefficiently – land is being developed right now. Generally speaking, the efficiency trend is more encouraging (higher PPA) than the efficiency of the development that exists on the ground today. But, lest this give a false impression, notice that it takes a significantly larger PPA trend to increase the PPA by a smaller amount from one year to the next. For example, in the Top 10 agricultural counties, it took a PPA of 8.2 between 1990 and 2004 to increase the PPA from 7.2 in 1990 to 7.4 in 2004. You can also observe this relationship in the data and graphs showing projections of future growth.

The efficiency of development calculation does not include rural residential development ("**ranchettes**"), for which data exist only for four San Joaquin Valley Counties. If all rural residential development were included, the overall efficiency of development in terms of the ratio of people to land converted to nonagricultural uses would be lower. In the four counties for which we have data, including ranchettes in the calculation reduces the current (2004) development efficiency 15% from 6.6 to 5.6 people per acre.

However, the spread of ranchettes is troublesome for reasons that go beyond the inefficient conversion of land. They tend to make agricultural production more difficult and expensive with demands that routine agricultural practices be curtailed or modified to protect the health and security of new neighbors. And they create an additional market demand for rural land that in many regions is inflating its price to a level above what commercial agriculture can pay and still remain economically viable. In this sense, ranchettes are like the bow wave created ahead of a ship; long before the ship itself hits, anything in its path will be swamped by the wave.

It is important to look at each of these three key issues – the quality of farmland being converted, the efficiency of its conversion and the spread of rural ranchettes – to get a full appreciation of how farmland conversion is steadily eroding California’s agricultural capacity.

### **Acknowledgments**

American Farmland Trust wishes to acknowledge and thank all of those who contributed to this research. Funding was generously provided by the USDA Natural Resources Conservation Service, the Surdna Foundation, Bank of America, Wells Fargo, and AFT members, especially those in our Barnraisers Society. The essential farmland and development data, as well as insightful advice, were unselfishly provided by Molly Penberth, director of the Farmland Mapping & Monitoring Program, Division of Land Resource Protection, California Resources Agency. The U.S. Bureau of Census provided, not only the standard population data, but also a special recalculation of historic data based on a new definition of urban places to improve the accuracy of our calculations. Last but not least, we wish to thank all of our colleagues in the conservation and land use field who contributed their insights. Above all, we thank the agricultural producers of California without whose hard work and skill the land would not produce the bounty that it does. It isn’t “farmland” without farmers.

[Turn to the next page for Major Findings]



## Paving Paradise: A New Perspective on California Farmland Conversion

### Major Findings

#### Summary

One sixth of all the land developed in California since the Gold Rush was developed between 1990 and 2004. Urban development is disproportionately targeting the state's best farmland and is very inefficient, consuming an acre of land for every 9.4 people. In the state's most important agricultural regions, a larger percentage of high quality farmland is being developed, and development is less efficient, than in the state as a whole. Rural "ranchettes," the most inefficient kind of development, may account for a quarter of all the land devoted to developed uses in the Central Valley, the state's premier agricultural area. Though development efficiency is increasing, it is not happening fast enough to prevent the conversion of 2.1 million more acres of California land – much of it farmland – by 2050.

*To conserve farmland, California communities – for local governments have the most control over land use -- must do three things:*

- *Direct growth away from the highest quality farmland toward less productive land*
- *Develop land as efficiently as possible so as not to waste what we must convert*
- *Avoid rural ranchette development that fuels land speculation and drives up land costs*

This report offers a new perspective on how well California is meeting these objectives.

#### Total Land Urbanized

We are developing land for urban uses in California at an unprecedented rate. Between 1990 and 2004 – the period for which we have the most reliable data for the entire state – 538,273 acres of land were developed for urban uses. (Fig. 1) This represents one out of every 6 acres developed for urban uses in California since the Gold Rush. During the 1990-2004 period, the 38,448-acre annual rate of development was nearly twice as high as the 20,052-acre average for all years from 1849 to 1990. Rapid population growth, of course, is driving this trend. But the inefficiency of development in terms of the number of acres developed per person (below) is a strong contributing factor.

Fig. 1  
**Total Acres Urbanized 1990-2004  
By Region**

Southern California	220,033
San Joaquin Valley	115,196
Bay Area	74,473
Central Coast	44,358
Sierra Foothills	34,269
Sacramento Valley	33,849
Northern Counties	16,095
Statewide	538,273

Fig. 2  
**Total Acres Urbanized 1990-2004**  
**Top 10 Counties**

Riverside	70,150
San Diego*	50,978
San Bernardino	49,301
Kern*	30,111
Orange	30,086
Placer	22,643
Fresno*	21,552
San Joaquin*	19,676
Contra Costa	18,052
Sacramento	15,080

\* Indicates top 10 agriculture producer among California counties.

Most of the land developed for urban purposes from 1990 to 2004 was more or less contiguous to existing cities and other settlements. (Refer to the maps in the regional spreadsheets.) Though this may represent “orderly” growth, there is a downside that cannot be ignored. Because most of California’s cities are located in the midst of the best farmland, *city-centered growth inevitably targets high quality farmland. This, in turn, places a premium on developing land efficiently, so as to minimize the amount of land removed from agriculture for each new mouth to feed.* These issues are explored in greater detail below.

### Quality of Land Urbanized

Almost two-thirds (61%) of all the land urbanized in California from 1990 to 2004 – 326,521 acres – was agricultural land. (Fig. 3) In the most important agricultural regions, however, nearly three-quarters of all land developed was agricultural land. Moreover, it is likely that an even higher percentage of the total land developed was at one time used for agricultural purposes. This is because some of the rest of the land developed was formerly what the state Department of Conservation classifies as “other” land, including land that was once farmed but has been idled for a number of years in anticipation of being developed. Regrettably, the state does not quantify this transitional phenomenon, leaving a significant gap in our understanding of what is happening to California’s agricultural resources.

Fig. 3  
**Agricultural Land Urbanized 1990-2004**  
**By Region**

	Acres	As Pct of All Land Urbanized
Southern California	105,583	48%
San Joaquin Valley	70,231	74%
Bay Area	56,341	76%
Sacramento Valley	24,852	73%
Central Coast	24,757	56%
Sierra Foothills	22,574	66%
Northern Counties	6,764	42%
Statewide	326,521	61%

Not all agricultural land is equally important for food production. Farmland that has more fertile soils and more reliable water supplies tends to produce consistently higher crop yields at lower cost. This is the land agriculture can least afford to lose. In this report, we refer to this land as “high quality farmland,” and it includes lands classified by the state as prime farmland, unique farmland and farmland of statewide importance. (See the notes included in the spreadsheets. When you place the cursor over the red triangle in the corner of a cell containing a land type, e.g., “Prime farmland,” the official state definition will appear.)

Between 1990 and 2004, a total of 151,898 acres, or 28% of all land developed and 47% of the agricultural land developed, was high quality farmland. For comparison, in 2000 only about 22% of the approximately 40 million acres of California land mapped by FMMP was high quality farmland. High quality farmland accounts for only 9% of the state's total of about 101 million acres, much of which is desert and mountainous areas that are unsuitable for development.

Fig. 4  
**High Quality Farmland Urbanized  
 1990-2004 by Region (Acres)**

	Acres	As Pct of All Land Urbanized
San Joaquin Valley	70,231	61%
Southern California	37,883	17%
Bay Area	17,057	23%
Central Coast	12,933	29%
Sacramento Valley	11,521	34%
Northern Counties	1,272	8%
Sierra Foothills	1,001	3%
Statewide	151,898	28%

Thus, *high quality farmland is being disproportionately selected for development* in comparison to both its share of all land in the state and of the land suited for development. Again, this is largely because most California cities are located in the midst of high quality farmland, where our agrarian ancestors settled precisely because of the fecundity of the land.

The loss of high quality farmland for development is most worrisome in the San Joaquin Valley, the

Fig. 5  
**Most High Quality Farmland Urbanized  
 1990-2004 Top 10 Counties (Acres)**

San Joaquin*	14,888
Riverside	14,551
Fresno*	12,524
Kern*	12,025
Stanislaus*	10,189
Tulare*	8,758
San Bernardino	7,379
Orange	6,533
Santa Clara	6,233
Kings*	5,170

\* Indicates top 10 agriculture producer among California counties.

state's leading agricultural region that accounts for 55% of the state's total agricultural sales. This valley lost almost twice as much high quality farmland to urbanization than any other region between 1990 and 2004, and almost half the state's total loss of high quality farmland. (Fig. 4) Six of its eight counties, all of which are among the state's top 10 agricultural producers, were also among the top 10 in total acreage of high quality farmland developed. (Fig. 5) Sixty-one percent of all land developed in the San Joaquin Valley between 1990 and 2004 was high quality farmland, the greatest percentage of any region in the state by far. (Fig. 4) In half of the eight San Joaquin Valley counties, more than 70% of all the land developed was high quality farmland. (Fig. 6 below)

Even more so than on a statewide basis, development is disproportionately claiming high quality farmland in the San Joaquin Valley. The ratio of the percentage of development on high quality farmland (61%) to the percentage of high quality farmland in the region (40%) is 1.5, indicating that development is 1 ½ times more likely to consume high quality farmland than less productive land.

In the more populous coastal regions, where little high quality farmland remains and the less productive land in the hills is often unsuitable or unavailable for development, high quality farmland is 2.5 to 3 times as likely to be urbanized as other land. Particularly troublesome is the pattern in Monterey County, which includes the nation's "salad bowl," the uniquely productive Salinas Valley. There development was 4 times as likely to consume high quality farmland as other land, despite the fact that almost 90 percent of the county is not high quality farmland.

The main reason why high quality farmland is being disproportionately selected for urban developed is that most of California's cities are – or were – located in the midst of high quality farmland, which is generally found in the level bottomland valleys of the state. They are located there, of course, primarily because many began as market towns and shipping points for agricultural products from the surrounding farms, which themselves grew up on the most fertile, well-watered land. Because state and local land use policies have favored city-centered growth to make it easier and cheaper to service new development, the expansion of cities has disproportionately consumed high quality farmland.

### Inefficiency of Development

City-centered growth, with its disproportionate impact on high quality farmland, places a high premium on developing the land efficiently, consuming less acreage per person (for all urban uses, including commercial and civic as well as residential). Today, however, *development in California is generally very inefficient*, particularly in its premier agricultural areas.

As of 2004, there were only 7.2 people per urbanized acre on average in the state (omitting Los Angeles, which skews the analysis because it is far denser than other areas but has relatively little agriculture left). (Fig. 7) This does not include "ranchette" development, non-farm residences on very large rural lots, which are discussed below. There are even fewer people per urban acre in the state's most important agricultural areas. In the San Joaquin Valley, there were only 6.5 people per urban acre in 2004, while in the Sacramento

Fig. 6  
**High Quality Farmland as Percentage of All Land Urbanized 1990-2004**  
**Top 10 Counties**

Stanislaus*	83%
Kings*	78%
San Joaquin*	76%
Imperial*	74%
Tulare*	71%
Merced*	63%
Fresno*	58%
Sutter	57%
San Benito	50%
Yolo	50%

\* Indicates top 10 agriculture producer among California counties.

Fig. 7  
**Development Efficiency**  
**By Region**

	Per Per Urban Acre	
	1990-2004	In 2004
Sacramento Valley	12.3	6.3
Southern California*	11.0	8.0
Bay Area*	10.3	7.8
San Joaquin Valley	8.1	6.5
Central Coast	7.6	7.2
Sierra Foothills	5.2	4.0
Northern Counties	2.6	2.6
Statewide	9.4	7.2

\* Figures are with and without Los Angeles and San Francisco Counties

Valley it was 6.3 people per urban acre. In the top 10 agricultural counties, there were 7.4 people per urban acre in 2004, but if one excludes San Diego County, which accounts for half the population in these counties, the ratio falls to only 6.4.

The current development trend (1990-2004) shows the same pattern, with the state's major agricultural areas lagging behind the state as a whole in efficiency. (Fig. 7) In the San Joaquin Valley, new development between 1990 and 2004 consumed an acre for only 8.1 people, about 15% less efficient than for the state. (Imagine two four-person touch football teams playing on the gridiron in the Rose Bowl and you get an idea of how spread-out this is.) In the Sacramento Valley, new development consumed an acre for only 5.5 people outside of Sacramento County itself, which is among the state's leaders in the efficiency of new development. On the Central Coast, the people per acre developed ratio 1990-2004 was only 6.8 if one excludes San Mateo County, which during this period had the highest efficiency ratio of any county in the state except Los Angeles. On the whole, the top 10 agricultural counties consumed an acre of land for every 8.2 new residents 1990-2004. Only one top 10 agricultural county, Stanislaus, was among the 10 leading counties in terms of development efficiency. (Fig. 8)

Fig. 8  
**Development Efficiency 1990-2004  
Top Ten Counties\***

	People Per Urban Acre
San Mateo	27.4
Sacramento	20.6
Orange	19.1
Alameda	15.7
Santa Clara	13.4
Contra Costa	11.4
Stanislaus	10.8
San Bernardino	10.4
Riverside	9.9
San Benito	9.5

\* Excluding Los Angeles (78.9) and San Francisco (NA) Counties

The trend in development efficiency is positive. Statewide, from 1990 to 2004, an acre of land was urbanized for every 9.4 people. (Fig. 7) (Again, this omits Los Angeles County, which skews the analysis because the efficiency of new development there was 5 times the statewide average. LA has gotten the message – about a half century too late to save its agriculture, which as recently as

Fig. 9  
**Development Efficiency  
Improvement from 1990 to 2004  
By Region**

	People Per Urban Acre		Percent Improvement
	1990	2004	
Sierra Foothills	3.4	4.0	17%
Sacramento Valley	5.5	6.3	15%
San Joaquin Valley	6.1	6.5	8%
Bay Area	7.5	7.8	4%
Southern California	14.2	14.4	1%
Central Coast	7.2	7.2	0.7%
Northern Counties	2.6	2.6	0.5%
Statewide*	6.8	7.2	6%

\* Does not include Los Angeles or San Francisco Counties.

1960 led the nation in total farm production.) But this was enough to increase the current people per urban acre only 6% from 6.8 in 1990 to 7.2 in 2004. (Fig. 9) If this slow rate of improvement continues, another 2.1 million acres of California land will be urbanized by 2050. (See Projections below) Development efficiency in the premier agricultural areas appears to be

increasing somewhat faster than in the state as a whole. But this may be due, at least in part, to the relatively low development efficiency in these areas, which would tend to magnify any percentage improvement.

### Rural Ranchettes

The most inefficient – indeed, from an agricultural standpoint, downright wasteful – type of development is what are commonly called “ranchettes.” These are country estates, hobby farms and other rural residential uses on very large lots up to 40 acres. Some of these properties may be devoted to production agriculture, for

example, under lease to commercial growers. But typically they are residential in character, are too small or hemmed-in to be farmed for profit – as well as too expensive for commercial growers to afford – and, thus, have or all practical purposes been permanently removed from the state’s agricultural land base. A 1990 American Farmland Trust study found that ranchettes in the Central Valley averaged about 5 acres in size, which, if one assumes 3 people per household (a good general average in this region), would mean that ranchette development efficiency is only 0.6 people per acre – roughly one-tenth the “efficiency” of urban development in the Valley.

Despite their proliferation, reliable data on rural ranchettes in California are limited. The state Department of Conservation has mapped and compiled statistics on ranchettes in only four counties in the San Joaquin Valley: Stanislaus, Merced, Madera and Fresno. (The Farmland Mapping & Monitoring Program has apparently been limited in its ability to map more areas by budget constraints.) But what these data show is that *rural ranchette development is very troublesome – perhaps more so than urban development.*

In the four San Joaquin Valley counties mapped, ranchettes – and only those from 1.5 to 10 acres – comprised fully 26% of all land devoted to non-agricultural development in 2004. (Fig. 10) That is, one out of four acres of developed land was devoted to housing roughly 1.5% of the total population of those counties. New ranchettes established between 2002 and 2004 (the only period for which we have data) comprised 18% of all land developed for non-agricultural purposes, an improvement but still representing a very large amount of land accommodating very few people.

Fig. 10  
**Ranchette Development  
In The San Joaquin Valley by 2004**

	Urban Acres 2004	Ranchette Acres 2004	Ranchettes as Pct of All Developed Land
Stanislaus	61,171	6,623	10%
Merced	34,943	8,122	19%
Madera	24,975	27,106	52%
Fresno	110,897	38,690	26%
Total	231,986	80,543	26%

## Projections of Future Development

Statewide, there were about 3.4 million acres of urban land in 2004. *If we continue to develop as much land per person as during 1990-2004, California will urbanize close to another 2.1 million acres of land by 2050 – not counting additional land lost to ranchettes.* (Fig. 11) Forty percent or about 800,000 acres of this will occur in the Top 10 agricultural counties – some of which may no longer qualify for the top 10. The San Joaquin Valley, the state's foremost agricultural region, will experience by far the largest percentage increase in urbanization. Almost as much land will be urbanized in the San Joaquin as in all of Southern California. By contrast, from 1990 to 2004, almost twice as much land was urbanized in Southern California as in the San Joaquin Valley. The fears of those who worry that the San Joaquin could become the next LA appear to be justified – unless the state's premier agricultural region grows "smarter" than in the recent past.

Fig. 11  
**Projected Urbanization of Land by 2050  
At Current Development Efficiency  
By Region**

	Acres	Pct Increase
Southern California	710,038	53%
San Joaquin Valley	628,068	127%
Bay Area	233,671	35%
Sacramento Valley	192,978	84%
Central Coast	148,680	40%
Sierra Foothills	90,751	84%
Northern Counties	61,380	75%
Statewide	2,074,567	62%

## Observations

California is not performing very well at any of the three key indicators of farmland conservation. Urban development is targeting the state's best farmland, which surrounds most of its cities. Few alternatives are being pursued – for example, urban infill or new towns on less productive land – though they exist in almost every locality. New development is consuming far more land per person than is necessary comfortably to accommodate our needs, not just for housing, but for commercial and civic land uses as well. Community plans call for increasing urban densities, but the actual decisions of officials belie these good intentions. Meanwhile, rural ranchettes continue to proliferate, inflating farmland prices and conflicting with agriculture. While some progress is being made at increasing the efficiency of development, it isn't enough to make much of a difference in the amount of land that will be paved over within the next generation.

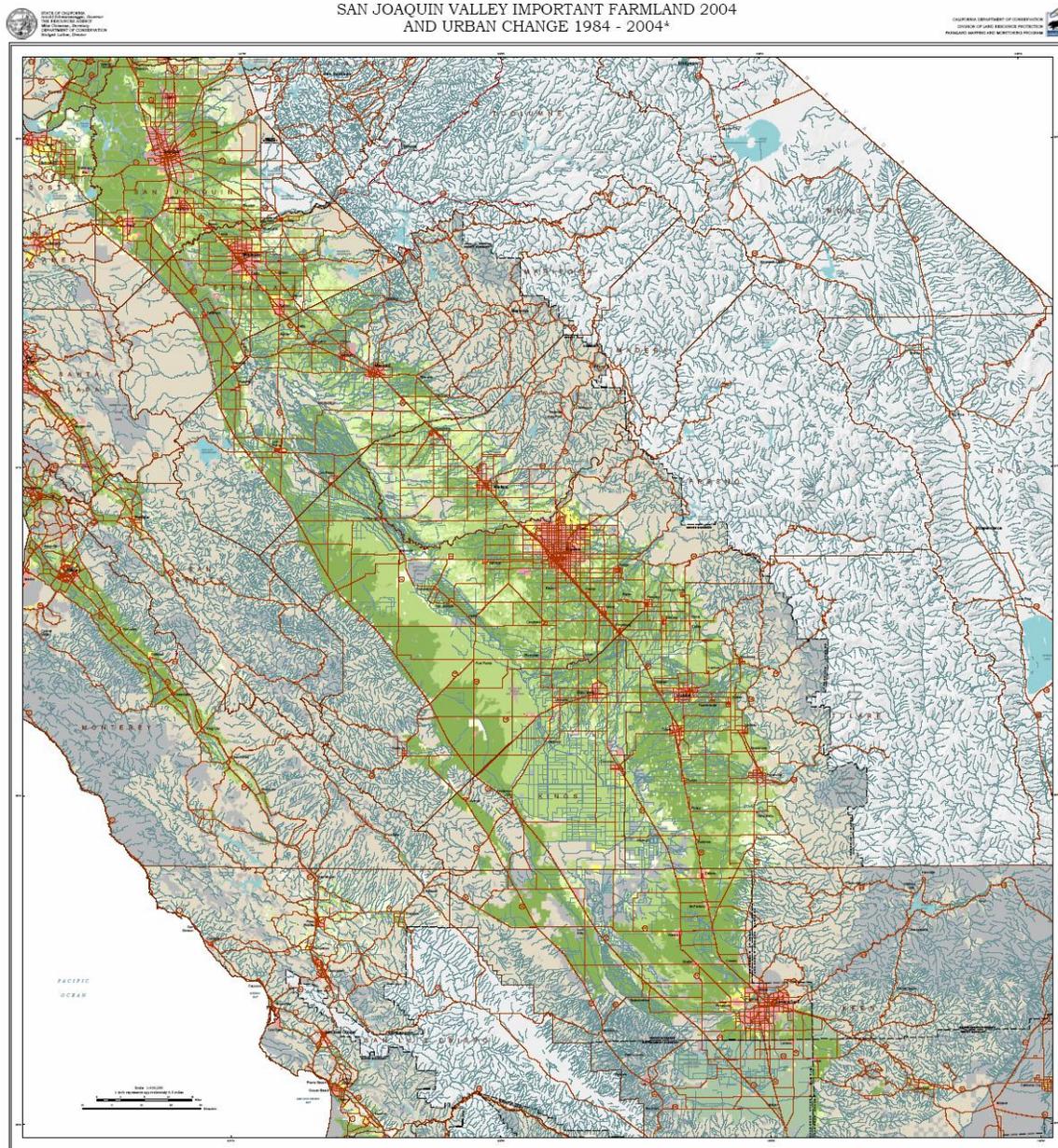
Given its relentless population growth and the apparent inevitability of city-centered growth, the key to saving farmland in California is to develop less land per person. It will take a concerted and sustained effort to promote urban infill, to increase residential densities and commercial floor-to-area ratios, to reduce the amount of land devoted to roads and parking lots, and to curb the spread of ranchettes. But the task is not as daunting as it might first appear. *If the state as a whole develops as efficiently as Sacramento County or the Bay Area did from 1990 to 2004, a million acres of California land could be saved within the next generation.*

That is the challenge that emerges from this new perspective on farmland conversion in California. The longer we wait to embrace it by taking effective action, the more difficult it will be to achieve the goal of securing the land resources on which California's unparalleled agriculture depends.

## Summary Table from Database Spreadsheet

		© 2007 American Farmland Trust													
		Regions & All Counties: Comparative Summary Data													
		Market Value of Agricultural Production 2002 (\$ Million)	Total Urbanized Land 2004 (Acres)	Total Land Urbanized 1990-2004 (Acres)	Average Annual Urbanization of Land (Acres)	Total Agricultural Land Urbanized 1990-2004 (Acres)	Total High Quality Farmland Urbanized 1990-2004 (Acres)	Percentage of Land Urbanized 1990-2004 That Was High Quality Farmland	Percentage of All Non-Urban Land in Region Developed 1990-2004 (Current Efficiency)	People per Urban Acre for New Development 1990-2004	People per Urban Acre 1990	Percentage Increase in People Per Urban Acre 1990-2004	Projected Urbanization of Land 2004-2050		
Bay Area	BA	\$ 1,860	673,743	74,473	5,320	56,341	17,057	23%	8%	10.3	7.5	7.8	4%	233,671	
Central Coast	CC	\$ 6,960	370,633	44,358	3,168	24,757	12,933	29%	10%	7.6	7.2	7.2	0.7%	148,680	
Southern California	SC	\$ 5,141	1,347,356	220,033	15,717	105,583	37,883	17%	7%	15.1	14.2	14.4	1.1%	719,038	
San Joaquin Valley	SJ	\$ 21,079	494,695	115,196	8,228	85,550	70,231	61%	40%	8.1	6.1	6.5	8%	628,068	
Northern Counties	NC	\$ 554	81,518	16,095	1,150	6,764	1,272	8%	8%	2.6	2.6	2.6	0.5%	61,380	
Sacramento Valley	SV	\$ 2,332	289,755	33,849	2,418	24,852	11,521	34%	41%	12.3	5.5	6.3	15%	192,978	
Sierra Foothills	SF	\$ 123	107,945	34,269	2,448	22,674	1,001	3%	4%	5.2	3.4	4.0	17%	90,751	
State		\$ 38,049	3,365,645	538,273	38,448	326,521	151,898	28%	22%	11.2	9.5	9.8	3%	2,074,567	
County	Region														
Alameda	BA	\$ 44	144,326	11,276	805	8,657	1,907	17%	2%	15.7	9.5	10.0	5%	37,670	
Contra Costa	BA	\$ 87	147,441	18,052	1,289	15,668	4,552	25%	11%	11.4	6.1	6.7	11%	69,016	
Marin	BA	\$ 53	41,903	2,976	213	942	9	0%	0%	4.7	5.6	5.5	-1%	12,450	
Napa	BA	\$ 548	22,245	2,884	206	1,625	313	11%	11%	6.0	4.8	5.0	3%	16,676	
Santa Clara	BA	\$ 251	187,176	14,337	1,024	11,996	6,233	43%	4%	13.4	8.5	8.9	4%	68,993	
Solano	BA	\$ 239	57,717	11,620	830	8,706	2,218	19%	29%	6.4	7.0	6.9	-2%	59,920	
Sonoma	BA	\$ 638	72,935	13,328	952	8,747	1,825	14%	8%	6.5	5.4	5.6	4%	37,939	
Monterey	CC	\$ 3,273	54,293	8,964	640	5,469	3,904	44%	11%	6.3	6.9	6.8	-1%	32,327	
San Benito	CC	\$ 269	7,644	2,191	157	2,013	1,103	50%	5%	9.5	4.5	6.0	32%	7,031	
San Luis Obispo	CC	\$ 597	42,124	7,463	533	5,448	694	9%	7%	4.0	5.1	4.9	-4%	22,360	
San Mateo	CC	\$ 158	71,282	1,827	131	175	5	0%	2%	27.4	9.2	9.7	5%	4,333	
Santa Barbara	CC	\$ 998	62,028	5,401	386	2,575	1,605	30%	11%	6.3	6.2	6.2	0%	19,808	
Santa Cruz	CC	\$ 412	31,421	4,378	313	600	496	11%	9%	4.2	7.2	6.8	-6%	16,674	
Ventura	CC	\$ 1,253	101,841	14,134	1,010	8,477	5,126	36%	20%	9.1	7.4	7.6	3%	46,148	
Lake	NC	\$ 62	14,442	1,776	127	642	76	4%	3%	4.8	2.2	2.5	15%	4,801	
Modoc	NC	\$ 88	3,235	95	7	30	17	18%	14%	(5.1)	1.0	0.8	-17%	5,274	
Shasta	NC	\$ 84	35,524	8,352	597	1,591	397	5%	2%	3.4	3.6	3.5	-1%	30,971	
Siskiyou	NC	\$ 148	15,377	2,748	196	2,771	133	5%	12%	(0.8)	1.4	1.0	-28%	8,362	
Tehama	NC	\$ 172	12,940	3,124	223	1,730	649	21%	6%	2.7	2.4	2.4	3%	11,973	
Imperial	SC	\$ 1,286	26,357	5,962	426	5,111	4,391	74%	51%	7.4	4.3	5.0	16%	26,725	
Los Angeles	SC	\$ 278	163,435	13,556	968	5,039	1,274	9%	3%	78.9	58.6	60.3	3%	39,496	
Orange	SC	\$ 312	282,180	30,086	2,149	10,667	6,533	22%	3%	19.1	9.5	10.6	11%	52,414	
Riverside	SC	\$ 1,169	277,273	70,150	5,011	36,764	14,551	21%	12%	9.9	5.1	6.3	23%	268,784	
San Bernardino	SC	\$ 565	259,266	49,301	3,522	26,307	7,379	15%	3%	10.4	6.2	7.0	13%	156,782	
San Diego	SC	\$ 1,531	338,845	50,978	3,641	21,695	3,755	7%	4%	8.6	8.3	8.3	1%	174,837	
Amador	SF	\$ 28	7,926	1,478	106	1,478	273	18%	3%	1.5	1.8	1.8	-3%	8,250	
El Dorado	SF	\$ 26	30,670	6,895	493	3,947	124	2%	1%	5.5	3.1	3.7	17%	15,666	
Nevada	SF	\$ 9	17,168	3,253	232	436	67	2%	1%	3.8	3.1	3.2	4%	5,619	
Placer	SF	\$ 60	52,181	22,643	1,617	17,468	537	2%	9%	5.6	4.2	4.8	14%	61,217	
Fresno	SJ	\$ 4,640	110,897	21,552	1,539	16,867	12,524	58%	31%	9.4	6.3	6.9	10%	97,605	
Kern	SJ	\$ 3,457	94,604	30,111	2,151	13,535	12,025	40%	19%	6.2	7.3	6.9	-5%	194,514	
Kings	SJ	\$ 1,407	30,768	6,666	476	5,326	5,170	78%	67%	6.1	3.5	4.1	16%	29,562	
Madera	SJ	\$ 1,105	24,975	5,315	380	4,713	2,136	40%	41%	9.1	2.5	3.9	56%	19,312	
Merced	SJ	\$ 2,388	34,943	7,224	516	6,898	4,541	63%	43%	8.0	5.1	5.7	12%	42,636	
San Joaquin	SJ	\$ 1,743	83,409	19,676	1,405	17,748	14,888	76%	63%	8.7	6.6	7.1	7%	117,189	
Stanislaus	SJ	\$ 1,978	61,171	12,277	877	12,277	10,189	83%	41%	10.8	6.7	7.5	12%	57,930	
Tulare	SJ	\$ 4,361	53,928	12,375	884	9,407	8,758	71%	48%	7.2	5.8	6.1	6%	69,320	
Butte	SV	\$ 432	43,819	7,412	529	4,020	1,660	22%	27%	4.0	4.0	4.0	0%	46,899	
Colusa	SV	\$ 393	4,624	1,193	85	1,148	535	45%	45%	5.2	1.6	2.6	56%	1,829	
Glenn	SV	\$ 394	6,080	854	61	659	313	37%	31%	2.7	2.6	2.6	0%	7,622	
Sacramento	SV	\$ 349	165,629	15,080	1,077	11,728	4,502	30%	31%	20.6	6.7	8.0	19%	38,872	
Sutter	SV	\$ 299	12,581	3,453	247	2,864	1,973	57%	77%	6.8	5.7	6.0	5%	24,484	
Yolo	SV	\$ 332	28,511	4,514	322	3,670	2,247	50%	51%	9.0	5.3	5.9	11%	14,413	
Yuba	SV	\$ 133	28,511	1,343	96	763	291	22%	22%	1.6	1.6	1.6	0%	58,859	

## Sample Map from Database Spreadsheet



**URBAN CHANGE 1984 - 2004\***  
 URBAN CHANGE AND AN INCREASING COUNTY POPULATION ARE CORRELATED TO LAND CONVERSION FROM AGRICULTURE TO URBAN USE. THE GROWING URBAN POPULATION, WHICH IS IN THE NEARLY 50% OF THE COUNTY'S LAND AREA, HAS CAUSED A SIGNIFICANT LOSS OF FARM AND FORESTLAND RESOURCES.

**Important Farmland Definitions for areas within soil surveys**

- PRIME FARMLAND**  
 THESE AREAS ARE THE MOST PRODUCTIVE OF AGRICULTURAL AND FORESTLAND RESOURCES IN THE COUNTY. THEY ARE THE MOST VALUABLE FARMLAND RESOURCES IN THE COUNTY AND ARE THE MOST SENSITIVE TO URBAN CHANGE AND DEVELOPMENT. THESE AREAS ARE THE MOST VALUABLE FARMLAND RESOURCES IN THE COUNTY AND ARE THE MOST SENSITIVE TO URBAN CHANGE AND DEVELOPMENT.
- FARMLAND OF STATEWIDE IMPORTANCE**  
 THESE AREAS ARE THE MOST PRODUCTIVE OF AGRICULTURAL AND FORESTLAND RESOURCES IN THE COUNTY. THEY ARE THE MOST VALUABLE FARMLAND RESOURCES IN THE COUNTY AND ARE THE MOST SENSITIVE TO URBAN CHANGE AND DEVELOPMENT.
- UNIQUE FARMLAND**  
 THESE AREAS ARE THE MOST PRODUCTIVE OF AGRICULTURAL AND FORESTLAND RESOURCES IN THE COUNTY. THEY ARE THE MOST VALUABLE FARMLAND RESOURCES IN THE COUNTY AND ARE THE MOST SENSITIVE TO URBAN CHANGE AND DEVELOPMENT.
- FARMLAND OF LOCAL IMPORTANCE**  
 THESE AREAS ARE THE MOST PRODUCTIVE OF AGRICULTURAL AND FORESTLAND RESOURCES IN THE COUNTY. THEY ARE THE MOST VALUABLE FARMLAND RESOURCES IN THE COUNTY AND ARE THE MOST SENSITIVE TO URBAN CHANGE AND DEVELOPMENT.

**Interim Definitions for areas outside of soil surveys**

- IRRIGATED FARMLAND**  
 THESE AREAS ARE THE MOST PRODUCTIVE OF AGRICULTURAL AND FORESTLAND RESOURCES IN THE COUNTY. THEY ARE THE MOST VALUABLE FARMLAND RESOURCES IN THE COUNTY AND ARE THE MOST SENSITIVE TO URBAN CHANGE AND DEVELOPMENT.
- NONIRRIGATED FARMLAND**  
 THESE AREAS ARE THE MOST PRODUCTIVE OF AGRICULTURAL AND FORESTLAND RESOURCES IN THE COUNTY. THEY ARE THE MOST VALUABLE FARMLAND RESOURCES IN THE COUNTY AND ARE THE MOST SENSITIVE TO URBAN CHANGE AND DEVELOPMENT.

**Definitions used in both areas**

- GRAZING LAND**  
 CONSIDERED LAND OR WATER THAT SUPPORTS VEGETATION SUITABLE FOR THE GRAZING OF LIVESTOCK.
- URBAN AND BUILT-UP LAND**  
 THESE AREAS ARE THE MOST PRODUCTIVE OF AGRICULTURAL AND FORESTLAND RESOURCES IN THE COUNTY. THEY ARE THE MOST VALUABLE FARMLAND RESOURCES IN THE COUNTY AND ARE THE MOST SENSITIVE TO URBAN CHANGE AND DEVELOPMENT.
- OTHER LAND**  
 CONSIDERED LAND NOT INCLUDED IN ANY OTHER MAPPING CATEGORY. COMMON EXAMPLES INCLUDE LOW PRODUCTIVITY, OPEN SPACE, WOODS, SWAMP, BAYOU, AND OTHER WETLANDS OR WATERSHEDS.
- WATER**  
 PERMANENT WATER BODIES WITH AN AVERAGE DEPTH OF AT LEAST 6 FEET.

**Other Features**

- NOT MAPPED**
- COUNTY LINE**
- MAJOR ROAD**
- COUNTY SEAT**

**THE FARMLAND SURVEY AND MAPPING PROGRAM**  
 The Farmland Survey and Mapping Program is a joint effort of the California Department of Conservation and the California Department of Agriculture. The program is designed to identify and protect the state's most valuable farmland resources. The program is designed to identify and protect the state's most valuable farmland resources.

**ACKNOWLEDGMENTS**  
 The Farmland Survey and Mapping Program is a joint effort of the California Department of Conservation and the California Department of Agriculture. The program is designed to identify and protect the state's most valuable farmland resources. The program is designed to identify and protect the state's most valuable farmland resources.

**CONTACT INFORMATION**  
 California Department of Conservation, Office of Land Resource Protection, 2001

**MAP SOURCE**  
 The map was prepared by the California Department of Conservation, Office of Land Resource Protection, 2001.



## City of Santa Barbara Fire Prevention Bureau High Fire Hazard Area Landscape Guidelines

The following landscape guidelines should be utilized to incorporate fire resistant landscaping on all parcels within the High Fire Hazard area. The guidelines meet the requirements for the Fire Department "Minimum Brush Clearance Standards," per Uniform Fire Code, Ordinance #5100. These standards apply to all parcels within the High Fire Hazard area (See "Minimum Brush Clearance Standards" handout). Fire resistant landscaping with proper plant spacing and maintenance can impede the progress of a wildfire, reduce its intensity, and provide a safe buffer to protect a structure.

Incorporation of the High Fire Hazard Area Landscape Guidelines into the review process will assist the City in complying with existing regulations for vegetation modification, balance the aesthetic beauty of our area, protect our resources, and reduce the risk associated with wildfire and habitat resources.

### ***Guidelines***

Landscape plans submitted for review shall include the following:

- A vegetation plan that details existing native vegetation with species name and locations.
- Include on the vegetation plan which plants will be removed or retained.
- Include the method used to remove vegetation (for example: mechanical or hand cutting).
- Landscape plans should include new plantings with species name and specific location of plantings to scale.
- Recommendations for plant placement should be followed as outlined in Table 1.
- Landscape plans must delineate landscape zones around all structures for a distance of 100 feet as follows:

Zone 1 - (0-30 feet from structure)

Zone 2 - (30 to 50 feet from structure)

Zone 3 - (50 to 70 feet from the structure)

Zone 4 - (70 to 100 feet or greater from the structure)

All landscape plant species must be fire resistant (See enclosed Desirable Qualities for Fire Resistant Landscape Plants, Table 2). Certain plant species are considered to be undesirable in the High Fire Hazard area landscape. The enclosed list of Undesirable Plant Species (Table 3) should not be planted within 100 feet of any structure, unless listed otherwise.

Slopes over 20% are at increased risk from wildfire, therefore the Fire Department recommends additional vegetation modification for a total distance of 150-200 feet from any structure.

Many homes in the High Fire Hazard area do not have the space surrounding their property to obtain the 100-foot clearance. Using the above zone concept becomes critical on these properties.

**Table 1: Recommendations for Plant Placement**

<p>ZONE 1 0 – 30 feet</p>	<p>This area is closest to a structure. It provides the best protection against the high radiant heat that result during a wildfire. Plants should be low growing, irrigated plants. Focus should be on ground covers not more than 12 inches in height or succulents. Use non-flammable materials for paths, patios, and mulch. Trees should not be planted closer than 15 feet from a structure.</p>
<p>ZONE 2 30 – 50 feet</p>	<p>Maintain a reasonably open character in this area. Plant low growing ground covers and succulents resistant to fire. Shrubs up to 3 feet can be planted but should have at least 18 feet spacing between other shrubs or other trees. Shrubs can be planted in clusters not more than 10 feet in diameter, but should have at least 18 feet between clusters. Do not plant shrubs underneath canopy of trees. Trees should be spaced at least 30 feet apart to prevent crowns from touching once fully grown.</p>
<p>ZONE 3 50 – 70 feet</p>	<p>This area should have native and Mediterranean plantings that require irrigation and should not be higher than 4 to 6 feet. Shrubs should be spaced at least 18 feet away from each other. Shrubs can be planted in clusters not more than 10 feet in diameter, but should have at least 18 feet between clusters. Trees should be spaced at least 30 feet apart to prevent crowns from touching once fully grown.</p>
<p>ZONE 4 70 – 100 feet or greater</p>	<p>This zone is furthest from the structure. Plantings once established need no irrigation. There is no limit to height. Shrubs planted in this area should have 18 feet spacing or be planted in clusters with at least 18 feet spacing. Trees can be planted in groups or with individual spacing at least 30 feet from other trees.</p>
<p>SLOPES &gt; 20%</p>	<p>If additional vegetation modification is required on slopes over 20% vegetation should be reduced through thinning of existing plants, pruning, removal of dead material, and removal of fire ladders (Fire ladders exist if a fire’s flames can spread from the ground into shrubs and trees up to a house).</p>

**TABLE 2 - Desirable Qualities for Fire Resistant Landscape Plants**

Plant qualities that are desirable for fire resistant plants are:

- Ability to store water in leaves or stems.
- Produces limited dead and fine material.
- Extensive root systems for controlling erosion.
- Plant has high levels of salt or other non-resinous compounds within its tissues that can contribute to fire resistance.
- Ability to withstand drought.
- Plants that are low growing in form.
- Ability to withstand severe pruning.
- Low levels of volatile oils or resins.
- Ability to resprout after a fire.

### Table 3: Undesirable Plant List

Certain plants are considered to be undesirable in the landscape due to characteristics that make them highly flammable. These characteristics can be either physical or chemical. Physical properties would include large amounts of dead material retained within the plant, rough or peeling bark, and the production of profuse amounts of litter. Chemical properties include the presence of volatile substances such as oils, resins, wax, and pitch. Certain native plants are notorious as species containing these volatile substances.

Plants with these characteristics should not be planted in High Fire Hazard areas. They are referred to as target species since their partial or complete removal is a critical part of hazard reduction. The following is a list of plants that should be avoided within the landscape zones defined in Table 1.

#### *Undesirable Plant Species*

Natives	Domestics
<i>Adenostoma fasciculatum</i> – Chamise	<i>Acacia</i> species
<i>Adenostoma sparsifolium</i> – Red Shank	<i>Casuarina</i> species - Beefwood
<i>Artemisia californica</i> – California Sagebrush	<i>Cortadera</i> species – Pampas Grass
<i>Baccharis</i> species (low growing form OK)	<i>Cupressus</i> species – Cypress
<i>Eriogonum fasciculatum</i> – Common Buckwheat	<i>Eucalyptus</i> species – Eucalyptus
<i>Olneya tesota</i> - Iron wood	<i>Juniperous</i> species – Juniper (except species which grow less than 1 foot)
	<i>Melaleuca</i> species
	<i>Pennisetum</i> - Fountain Grass
	<i>Pinus</i> species – Pine
	<i>Schinus molle</i> – California pepper tree (within 50 feet of structure)

Other plants may be considered undesirable because of their ability to naturalize and become a pest. These types of plants should be avoided, especially in sensitive riparian or coastal areas where they could become established and compete with native vegetation.

On steep slopes care should be taken to avoid erosion problems created or enhanced by vegetation removal. Deep rooted ground covers and landscape plants should be utilized to hold soil in place. Avoid shallow rooted ground covers. For example, iceplant while an effective ground cover on flat surfaces would be undesirable on a steep slope because its shallow rooted nature may increase erosion when the root zone becomes saturated during heavy rains, exposing bare soil. In areas where target species compromise the total vegetation, partial removal is recommended to obtain Fire Department “Minimum Brush Clearance Requirements.”

# The Eucalyptus of California

## Section Three: Problems, Cares, Economics, and Species

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by **Robert L. Santos**  
**California State University, Stanislaus**  
**Librarian/Archivist**  
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### A Fire Hazard?

Who can forget the recent October 1991 fire in the Berkeley-Oakland hills where 3,000 homes were lost and 24 people died. Temperatures got up to 2,000 degrees F. as the firestorm swept the hills. There are those who blame the eucalyptus for the fire. There are others who disagree saying that eucalyptus was at fault just as much as any other tree. Who is right? To answer this question, one must look first at the historical facts in regard to eucalyptus and fires.

The eucalyptus is regarded generally as a "dirty tree" because if its litter is left untouched it can pile up to several feet on a grove's floor. This litter consists of falling bark, leaves, branches, and seed pods. They all contain oil which increases the litter's flammability.<sup>347</sup> The oil also slows the decomposition process so the litter remains nearly whole and a fire hazard longer.<sup>348</sup>

When trees grow closely together, they form a canopy which doesn't allow light to penetrate; consequently, ground vegetation doesn't grow. This is the case in eucalyptus groves. No vegetation means no dry grass, and hence, not a source of fire.<sup>349</sup> Therefore, one can rule out dry grass as a facilitator in the 1991 fire.

No question eucalyptus litter is a fire hazard. In 1907, the U.S. Forest Service warned about eucalyptus litter: "The large quantity of litter -- which accumulates beneath a stand is extremely inflammable . . .<sup>350</sup> When fire gains access to a plantation the oily litter burns so fiercely that it can scarcely be extinguished before the whole grove is burned."<sup>351</sup>

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Historically, the East Bay has had numerous grass and forest fires. In October 1887, before large groves of eucalyptus were planted 8,300 acres of primarily grass were burned in the Chabot area. In 1897, near Berkeley, 7,000 acres burned. Eucalyptus groves were planted in the first decade of the twentieth century. In September 1923 a fire destroyed 640 homes in Berkeley. Thirty-six homes and 250 acres were burned in September 1973. One would have to conclude that there seems to be a natural tendency for this area to generate fire from some sort of dried vegetation.<sup>352</sup>

Eucalyptus planting in the East Bay hills began in the 1880's when the Judson Dynamite and Powder Company planted trees to muffle the sound of dynamite and to hide an ugly landscape created by the blasts. Large scale planting of eucalyptus occurred during the first decade this century. It was for timber and real estate investment, and to control fires that hampered the area.

The Oakland Tribune writing at that time noted the problem of fires and the value of the new eucalyptus: ". . . (eucalyptus is) primarily a measure against recurring fires that almost every year swept over the hills . . ." <sup>353</sup>

The State Board of Forestry in its Ninth Biennial Report (1923) commented: " Not more than fifteen years ago the hills lying along the easterly portions of the cities of Oakland and Berkeley were not as now covered with groves of forest trees, but were practically bare on the western slope . . . During that time to planting of trees, grass fires were of common occurrence during the summer months . . ." <sup>354</sup>

Winter freezes compound the fire problem by killing back trees that then drop the dead wood and foliage to the grove floor. Blue gum is by far the most common California eucalyptus and is intolerant of below freezing weather. The fires in the East Bay hills of 1923, 1973, and 1991 were preceded by a freeze. Very few eucalyptus actually die from frost because their root systems are unaffected. They merely shed the frost-burned foliage and wood, and resprout. But the amount of litter dropped to the ground is enormous.<sup>355</sup>

Just after the 1972 freeze, the people of the area were frantic, fearing the possibility of a fire if the litter from the freeze was not removed. Legislation for relief refunds was introduced in Congress and hearings were held. At the hearing before the Subcommittee on Forests of the Committee of Agriculture this was said: "Forest Service's leading expert on this eucalyptus disaster (the freeze) has stated that the fire threat posed by these dead trees 'is unique in that a sudden and widespread kill of such highly flammable species in a urban area of normally severe fire hazard has never been experienced before in the United States.'" <sup>356</sup>

It was estimated that two million trees had been killed in the 1972 freeze which amounted to about 50 tons of debris per acre and covered 3,000 acres. The debris lying on the ground was one to two feet deep. Again the prophetic voice of the Subcommittee on Forests: "A small fire could easily become a major holocaust before the necessary equipment could get into the area, as there is no real access road into the Berkeley-Oakland Hills."<sup>357</sup>

H.H. Biswell, Professor of Forestry and Conservation at the University of California, Berkeley made a prophetic statement too on March 1973:

*When eucalyptus waste catches fire, an updraft is created and strong winds may blow flaming bark for a great distance. I think the eucalyptus is the worst tree anywhere as far as fire hazard is concerned. If some of that flaming bark should be flown on to shake roofs in the hills we might have a fire storm that would literally suck the roofs off the houses. People might be trapped.*<sup>358</sup>

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Federal disaster funding for the removal of the litter from the 1972 freeze was only \$1 million instead of the \$11 million requested. Without federal support, property owners had to pay for litter and tree removal themselves costing \$100 or more a tree.<sup>359</sup> Only part of the damaged trees were removed, and a 12 mile, 200 foot firebreak was carved in the hills.<sup>360</sup> This was inadequate as seen by the quick-moving 1991 firestorm.

Conclusively the 1990 freeze led to the 1991 firestorm. The eucalyptus got the blame for spreading the fire as seen in this San Francisco Chronicle article with the headline "Eucalyptus trees getting blamed for East Bay fire."

Eucalyptus globulus, the tall, aromatic trees dropped yet another notch in public esteem in the great East Bay hills fire of 1991. Like giant matchsticks and loaded with freeze-dried fuel, the East Bay's eucalyptus trees acted like a torch that spread the conflagration by exploding into flames almost instantly -- Experts who otherwise couldn't agree on whether the fire began by arson, official foul-up or act of God declared that the Australian imports bore heavy blame. And while her press aide derided the trees as "weeds," Berkeley Mayor Lori Hancock proposed chain-sawing thousands of them in hopes of forever preventing a repeat of the deadly events of Oct. 20, 1991.<sup>361</sup>

Blaming the eucalyptus was labeled by some as "hysterical." Alexander Kerr, a El Centro writer who spent seven years in Australia in wildfire control, called the assertions exaggerations. He and others passionately explained that the spread of the fire was not caused by trees but by dry grass, unkempt lots, and exploding wooden houses. He explained that litter and dead grass must be removed continuously to avoid such a thing from happening again. To logoff all of the trees, as has been suggested, would invite terrible soil erosion and the destruction of wildlife.<sup>362</sup>

Blaming the eucalyptus continued though. The eucalyptus trees were called "weeds" and "trash trees," "immigrants," and "mongrelizations of the species."<sup>363</sup> One year after the fire, the garden editor of Sunset Magazine and an eucalyptus supporter, wrote: "With this tree, it seems you either love it or fear and hate it. And I've noticed that those who fear the tree seem almost irrational about it . . . A few messy types of eucalyptus need to have their debris cleaned every year or two, but scores of other kinds are as orderly and as safe as any other broadleafed evergreen."<sup>364</sup>

The native home of the eucalyptus, Australia, has eucalyptus forest fires generally every year. In January 1994 a large fire broke out near Sydney and was in the international news. This was said about the eucalyptus:

The explosive nature of the eucalyptus and the abundance of fuel produces a very intense fire that 'crowns' - - leaps from tree top to tree top . . . The fierce blazes have been stoked by the highly volatile oils of the eucalyptus tree, which vaporize under intense radiative heat as the fire approaches and explode, with flames sometimes towering as high as 230 feet.<sup>365</sup>

Another report:

*One reason Australia is so fire prone is the eucalyptus have aromatic oils in their leaves that adds to flammability . . . Eucalyptus trees are one of the world's most inflammable trees. It bursts into flames when fire reaches a certain temperature because there is rapid vaporization of the oils and that causes rapid ignition.*<sup>366</sup>

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In 1962, the Australian Forestry and Timber Bureau published "Control Burning in Eucalyptus Forests." It said that controlled burning does not kill eucalyptus trees, but it burns off the litter that collects on the forest floor which is 10 tons per acre. It recommends controlled burning every five years.<sup>367</sup>

In his book, *Burning Bush: A Fire History of Australia*, published in 1991, Stephen Pyne told the story of an Australian firefighting expert who attended a conference in Berkeley. The expert visited the hills in and around Berkeley and saw how the eucalyptus forests in the area were allowed to grow. He was struck with terror by their volatile nature and fled back to Australia.<sup>368</sup> This occurred just prior to the 1991 firestorm.

Kevin Starr, USC historian and current California State Librarian, said it best about our artificial and fragile environment:

*Newcomers built their California dream, landscaping barren neighborhoods with eucalyptus and Monterey pines, trees never intended to grow in such an arid place, and planted shrubs near their homes -- all fine fuel for fires. They built a natural environment that was not all natural. It was as beautiful as it was artificial, fragile and dangerous. We are constantly reminded what an artificially engineered construct . . . and consequently how fragile.*<sup>369</sup>

## BEETLE PROBLEM

Eucalyptus trees grown in California had no natural enemy as is found in Australia. This was because the genus was transplanted by seed and not by seedling. Seedlings carry parasites while the seeds do not.

In 1984, the introduction of a natural enemy occurred. *Phoracanta semipunctata*, or longhorned beetle, either came from Chile buried in an eucalyptus pallet, or was transported to the Lake Forest lumberyard in timbers from Australia.<sup>370</sup> Regardless of how or where the beetle was introduced, the first infestation was discovered near El Toro, California in October 1984 much to the consternation of eucalyptus growers and lovers of the tree.<sup>371</sup>

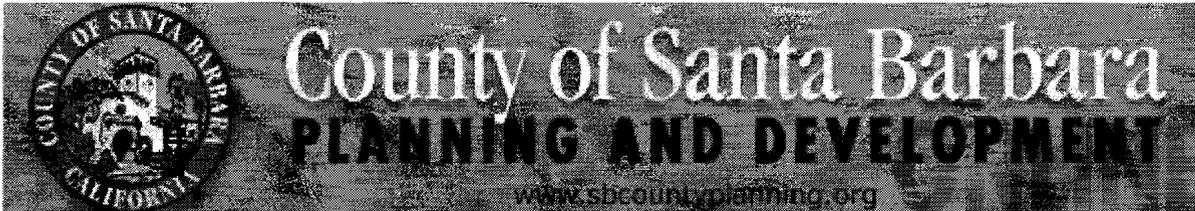
Upon discovery, a representative of the California Department of Forestry sadly announced, "The insect is loose and it's just a matter of time before it infests every eucalyptus stand we have in California . . . the bug may be deliberately spread by ecological zealots who would like to rid the California landscape of the ubiquitous eucalyptus."<sup>372</sup> By 1986, the beetle could be found in southern California from Long Beach to San Diego, and from Van Nuys to Hemet.<sup>373</sup> In 1987, it was destroying eucalyptus trees at the Scripps Ranch,<sup>374</sup> and later in 1989 at Rancho Santa Fe.<sup>375</sup>

The longhorned beetle is one inch in length and is black in color with a small yellow around its body. It is a strong flier covering several miles in one flight. It lays its eggs deep into the eucalyptus bark.<sup>376</sup> When it bores into the inner bark, it cuts off the supply of nutrients the tree needs and thereby killing it.<sup>377</sup>

The beetle makes an immense amount of noise as it eats its way through the bark as testified in this account: "All over Rancho Santa Fe you can hear the sound -- the clatter of insatiable little insect mandibles devouring another tasty meal of bark and wood. Some say the racket resembles falling rain. Or the crackle of Rice Krispies once the milk's been poured on." In 1991, it was estimated that 20,000 of the 100,000 trees at Rancho Santa Fe had been destroyed by the crunching beetle.<sup>378</sup>

The longhorned beetle quickly kills blue and manna gums and the other gums less quickly.<sup>379</sup> It attacks old

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Case / Application / Permit Number:	08COC-00000-00004
Type / Classification:	Certificate of Compliance
Address:	0 LOT 4 DOS PUEBLOS RANCH
Application Date:	06/13/2008
Current Status:	Application Submittal - DISCRE Accepted 06/13/2008
Description:	Conditional Certificate of Compliance associated with Santa Barbara Ranch Project, Alternative 1

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Application Submittal - DISCRE	Complete		Accepted By: PETRA LEYVA
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Comp Planner Assignment	Pending		No Progress
Decision Maker Jurisdiction	Pending		No Progress
Completeness Review	Pending		No Progress
Environmental Review	Pending		No Progress
Project Review - DISCRE	Pending		No Progress
Decision Maker Action	Pending		No Progress
Appeal Period - DISCRE	Pending		No Progress
Board of Supervisors	Pending		No Progress
Final Decisions	Pending		No Progress
Post-Decision Followup	Pending		No Progress
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00000-000xx, 08DVP-00000-00024 through 08DVP-00000-00025, 03DVP-00000-00041, 08CUP-00000-00042 through 08CUP-00000-000045, 03CUP-00000-00065 through 03CUP-00000-00083, 08CDP-00000-000080 through 08CDP-00000-000123, 08LUP-00000-00344, 03LUP-00000-01188 through 03LUP-00000-01203 and 03LUP-00000-00739. (*Note: "xx" denotes cases for which specific number assignments are pending. Case nos. may also change pending the outcome of project deliberations.*) All actions of the Planning Commission are advisory to the Board of Supervisors, and portions of the project are appealable to the California Coastal Commission following Board action. Appeal procedures will be described in conjunction with hearings conducted by the Board. (Continued from 6/30/08, 7/10/08, 7/21/08, 8/13/08)

**ACTION:** Accepted staff's recommendations, as amended at the hearing of August 20, 2008, by County Counsel and the Commission.

Jackson/Blough

Vote: 4-1 (Brown no)

Appeal process not applicable.

**ACTION:** Recommended to the Board of Supervisors to allow the applicant to separate the inland project from the coastal project so they can process the inland project through the County separately without approval from the Coastal Commission.

Blough/Valencia

Vote: 3-2 (Brown/Cooney no)

Appeal process not applicable.

The Planning Commission Agenda, Marked Agenda and Staff Reports are available on the Planning and Development Web Site at [www.sbcountyplanning.org](http://www.sbcountyplanning.org)

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Dianne M. Black  
Secretary to the Planning Commission



# COUNTY OF SANTA BARBARA

## PLANNING COMMISSION MARKED AGENDA

Special Hearing of August 13, 2008  
9:00 a.m.

C. MICHAEL COONEY	1st District	County of Santa Barbara Engineering Building, Room 17 123 East Anapamu Street Santa Barbara, CA 93101 805 568-2000 (Planning & Development)
CECILIA BROWN	2nd District	
C.J. JACKSON	3rd District, Chair	
JOE H. VALENCIA	4th District	
DANIEL BLOUGH	5th District, Vice Chair	

**TV COVERAGE ANNOUNCEMENT:** *The special hearing of August 13, 2008 will be televised live on County Santa Barbara Television (CSBT) Channel 20 at 9:00 a.m. in the South Coast, Lompoc, Santa Ynez Valley, Santa Maria and Orcutt areas. Rebroadcast of this special hearing will be on Friday at 5:00 p.m. on CSBT Channel 20.*

### ADMINISTRATIVE AGENDA:

- I. PLEDGE OF ALLEGIANCE
- II. TV COVERAGE ANNOUNCEMENT: by Jessica Opland.
- III. ROLL CALL: All Commissioners were present.
- IV. PUBLIC COMMENT: None.
- V. STANDARD AGENDA:

1. 03DVP-00000-00041 Santa Barbara Ranch Naples  
Dianne Black, Director, Development Services (805) 568-2000  
Tom Figg, Planner (805) 377-9116

The proposed project involves the request of Santa Barbara Ranch LLC, as applicant, for approval of various legislative actions and land use entitlements allowing the development of between 54 and 72 new residential dwellings, equestrian center, agricultural support facilities, a worker duplex, public amenities (including access road, parking and restroom, hiking, biking, equestrian trails near the coastal bluff, an educational kiosk and a coastal access stair structure), and creation of conservation easements for permanent protection of open space and agriculture. The proposed site encompasses Santa Barbara Ranch and Dos Pueblos Ranch, together totaling 3,254 acres and 85% of the lots comprising the Official Map of Naples Townsite. The two ranches are zoned for AG-II-100 and Unlimited Agriculture, two miles west of the City of Goleta, AP Nos. 079-040-005 to 081-240-018, Third Supervisorial District. As part of its deliberations, the Planning Commission will consider a Final Environmental Impact Report ("FEIR") for the proposed project and make a recommendation on the document's certification to the Board of Supervisors. Subject to meeting protocol and agenda format adjustments as the Planning Commission may deem appropriate, it is expected that the following topics will be considered in the order listed: (i) Project Description; (ii) Final EIR; (iii) Issue Analysis; and (iv) Project Deliberation.

Initial application was filed on November 4, 2003, and accepted as complete on September 3, 2004, encompasses areas both within and outside of the Coastal Zone, and includes the following Case Nos.: 04EIR-00000-00014, 03GPA-00000-00005, 03GPA-00000-00006, 03GPA-00000-00007, 08ORD-00000-00009, 03RZN-00000-00005, 03RZN-00000-00006, 03ORD-00000-00012, 03ORD-00000-00013, 05AGP-00000-00011, 08COC-00000-00001 through 08COC-00000-00004, 08LLA-00000-000xx through 08LLA-00000-000xx, 08TRM-

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Special Hearing of August 13, 2008

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00000-000xx, 08DVP-00000-00024 through 08DVP-00000-00025, 03DVP-00000-00041, 08CUP-00000-00042 through 08CUP-00000-00045, 03CUP-00000-00065 through 03CUP-00000-00083, 08CDP-00000-00080 through 08CDP-00000-000123, 08LUP-00000-00344, 03LUP-00000-01188 through 03LUP-00000-01203 and 03LUP-00000-00739. (*Note: "xx" denotes cases for which specific number assignments are pending. Case nos. may also change pending the outcome of project deliberations.*) All actions of the Planning Commission are advisory to the Board of Supervisors, and portions of the project are appealable to the California Coastal Commission following Board action. Appeal procedures will be described in conjunction with hearings conducted by the Board. (Continued from 6/30/08, 7/10/08, 7/21/08)

**ACTION:** Continued the item to the Special Hearing of August 20, 2008, at the request of the Commission.

**Blough/Valencia**

**Vote: 5-0**

**Appeal process not applicable.**

The Planning Commission Agenda, Marked Agenda and Staff Reports are available on the Planning and Development Web Site at [www.sbcountyplanning.org](http://www.sbcountyplanning.org)

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Dianne M. Black  
Secretary to the Planning Commission



# COUNTY OF SANTA BARBARA

## PLANNING COMMISSION MARKED AGENDA

Special Hearing of July 21, 2008  
9:00 a.m.

C. MICHAEL COONEY	1st District	County of Santa Barbara
CECILIA BROWN	2nd District	Engineering Building, Room 17
C.J. JACKSON	3rd District, Chair	123 East Anapamu Street
JOE H. VALENCIA	4th District	Santa Barbara, CA 93101
DANIEL BLOUGH	5th District, Vice Chair	805 568-2000 (Planning & Development)

**TV COVERAGE ANNOUNCEMENT:** The special hearing of July 21, 2008 will be televised live on County Santa Barbara Television (CSBT) Channel 20 at 9:00 a.m. in the South Coast, Lompoc, Santa Ynez Valley, Santa Maria and Orcutt areas. Rebroadcast of this special hearing will be on Saturday, July 26, 2008 and Sunday, July 27, 2008 at 5:00 P.M. on CSBT Channel 20.

### ADMINISTRATIVE AGENDA:

- I. **PLEDGE OF ALLEGIANCE**
- II. **TV COVERAGE ANNOUNCEMENT:** by Jessica Opland.
- III. **ROLL CALL:** All Commissioners were present.
- IV. **PUBLIC COMMENT:** None.
- V. **STANDARD AGENDA:**

1. **03DVP-00000-00041** Santa Barbara Ranch Naples  
Dianne Black, Director, Development Services (805) 568-2000  
Tom Figg, Planner (805) 377-9116

The proposed project involves the request of Santa Barbara Ranch LLC, as applicant, for approval of various legislative actions and land use entitlements allowing the development of between 54 and 72 new residential dwellings, equestrian center, agricultural support facilities, a worker duplex, public amenities (including access road, parking and restroom, hiking, biking, equestrian trails near the coastal bluff, an educational kiosk and a coastal access stair structure), and creation of conservation easements for permanent protection of open space and agriculture. The proposed site encompasses Santa Barbara Ranch and Dos Pueblos Ranch, together totaling 3,254 acres and 85% of the lots comprising the Official Map of Naples Townsite. The two ranches are zoned for AG-II-100 and Unlimited Agriculture, two miles west of the City of Goleta, AP Nos. 079-040-005 to 081-240-018, Third Supervisorial District. As part of its deliberations, the Planning Commission will consider a Final Environmental Impact Report ("FEIR") for the proposed project and make a recommendation on the document's certification to the Board of Supervisors. Subject to meeting protocol and agenda format adjustments as the Planning Commission may deem appropriate, it is expected that the following topics will be considered in the order listed: (i) Project Description; (ii) Final EIR; (iii) Issue Analysis; and (iv) Project Deliberation.

Initial application was filed on November 4, 2003, and accepted as complete on September 3, 2004, encompasses areas both within and outside of the Coastal Zone, and includes the following Case Nos.: 04EIR-00000-00014, 03GPA-00000-00005, 03GPA-00000-00006, 03GPA-00000-00007, 08ORD-00000-00009, 03RZN-00000-00005, 03RZN-00000-00006, 03ORD-00000-00012, 03ORD-00000-00013, 05AGP-00000-00011, 08COC-00000-00001 through 08COC-00000-00004, 08LLA-00000-000xx through 08LLA-00000-000xx, 08TRM-

00000-000xx, 08DVP-00000-00024 through 08DVP-00000-00025, 03DVP-00000-00041, 08CUP-00000-00042 through 08CUP-00000-00045, 03CUP-00000-00065 through 03CUP-00000-00083, 08CDP-00000-00080 through 08CDP-00000-000123, 08LUP-00000-00344, 03LUP-00000-01188 through 03LUP-00000-01203 and 03LUP-00000-00739. (*Note: "xx" denotes cases for which specific number assignments are pending. Case nos. may also change pending the outcome of project deliberations.*) All actions of the Planning Commission are advisory to the Board of Supervisors, and portions of the project are appealable to the California Coastal Commission following Board action. Appeal procedures will be described in conjunction with hearings conducted by the Board. (Continued from 6/30/08, 7/10/08)

**ACTION:** Accepted the late submittal letters from Environmental Defense Center, dated July 18, 2008, Barry Keller, dated July 9, 2008 and Elizabeth L. Painter, dated July 17, 2008 into the record.

**Blough/Brown**                      **Vote: 5-0**

**ACTION:** Continued the item to the special hearing of August 13, 2008.

**Jackson/Brown**                      **Vote: 4-0 (Blough absent)**

The Planning Commission Agenda, Marked Agenda and Staff Reports are available on the  
Planning and Development Web Site at [www.sbcountyplanning.org](http://www.sbcountyplanning.org)

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Dianne M. Black  
Secretary to the Planning Commission



# COUNTY OF SANTA BARBARA

## PLANNING COMMISSION MARKED AGENDA

Special Hearing of July 10, 2008  
9:00 a.m.

C. MICHAEL COONEY	1st District	County of Santa Barbara Engineering Building, Room 17 123 East Anapamu Street Santa Barbara, CA 93101 805 568-2000 (Planning & Development)
CECILIA BROWN	2nd District	
C.J. JACKSON	3rd District, Chair	
JOE H. VALENCIA	4th District	
DANIEL BLOUGH	5th District, Vice Chair	

**TV COVERAGE ANNOUNCEMENT:** *The special hearing of July 10, 2008 will be televised live on County Santa Barbara Television (CSBT) Channel 20 at 9:00 a.m. in the South Coast, Lompoc, Santa Ynez Valley, Santa Maria and Orcutt areas. Rebroadcast of this special hearing will be on Monday, July 14, 2008 at 5:00 p.m. on CSBT Channel 20.*

### ADMINISTRATIVE AGENDA:

- I. **PLEDGE OF ALLEGIANCE**
- II. **TV COVERAGE ANNOUNCEMENT:** by Jessica Opland.
- III. **ROLL CALL:** All Commissioners were present.
- IV. **PUBLIC COMMENT:** Marc Chytilo discussed the interference in the Environmental Review process concerning the Ballyentine Appeal scheduled to be heard at the Board of Supervisors next Tuesday.

### V. **STANDARD AGENDA:**

1. **03DVP-00000-00041** **Santa Barbara Ranch** **Naples**  
Dianne Black, Director, Development Services (805) 568-2000  
Tom Figg, Planner (805) 377-9116

The proposed project involves the request of Santa Barbara Ranch LLC, as applicant, for approval of various legislative actions and land use entitlements allowing the development of between 54 and 72 new residential dwellings, equestrian center, agricultural support facilities, a worker duplex, public amenities (including access road, parking and restroom, hiking, biking, equestrian trails near the coastal bluff, an educational kiosk and a coastal access stair structure), and creation of conservation easements for permanent protection of open space and agriculture. The proposed site encompasses Santa Barbara Ranch and Dos Pueblos Ranch, together totaling 3,254 acres and 85% of the lots comprising the Official Map of Naples Townsite. The two ranches are zoned for AG-II-100 and Unlimited Agriculture, two miles west of the City of Goleta, AP Nos. 079-040-005 to 081-240-018, Third Supervisorial District. As part of its deliberations, the Planning Commission will consider a Final Environmental Impact Report ("FEIR") for the proposed project and make a recommendation on the document's certification to the Board of Supervisors. Subject to meeting protocol and agenda format adjustments as the Planning Commission may deem appropriate, it is expected that the following topics will be considered in the order listed: (i) Project Description; (ii) Final EIR; (iii) Issue Analysis; and (iv) Project Deliberation.

Initial application was filed on November 4, 2003, and accepted as complete on September 3, 2004, encompasses areas both within and outside of the Coastal Zone, and includes the following Case Nos.: 04EIR-00000-00014, 03GPA-00000-00005, 03GPA-00000-00006, 03GPA-00000-00007, 08ORD-00000-00009, 03RZN-00000-00005, 03RZN-00000-00006,





# COUNTY OF SANTA BARBARA

## **PLANNING COMMISSION REVISED MARKED AGENDA**

**Special Hearing of June 30, 2008  
9:00 a.m.**

C. MICHAEL COONEY	1st District	County of Santa Barbara
CECILIA BROWN	2nd District	Engineering Building, Room 17
C.J. JACKSON	3rd District, Chair	123 East Anapamu Street
JOE H. VALENCIA	4th District	Santa Barbara, CA 93101
DANIEL BLOUGH	5th District, Vice Chair	805 568-2000 (Planning & Development)

**TV COVERAGE ANNOUNCEMENT:** *The special hearing of June 30, 2008 will be televised live on County Santa Barbara Television (CSBT) Channel 20 at 9:00 a.m. in the South Coast, Lompoc, Santa Ynez Valley, Santa Maria and Orcutt areas. Rebroadcast of this special hearing will be on Wednesday, July 2, 2008 at 9:00 a.m., Saturday, July 5, 2008 and Sunday, July 6, 2008 at 5:00 p.m. on CSBT Channel 20.*

### **ADMINISTRATIVE AGENDA:**

- I. **PLEDGE OF ALLEGIANCE**
- II. **TV COVERAGE ANNOUNCEMENT:** by Jessica Opland.
- III. **ROLL CALL:** All Commissioners were present.
- IV. **PUBLIC COMMENT:** None.
- V. **STANDARD AGENDA:**

1. **03DVP-00000-00041** **Santa Barbara Ranch** **Naples**  
Dianne Black, Director, Development Services (805) 568-2000  
Tom Figg, Planner (805) 377-9116

The proposed project involves the request of Santa Barbara Ranch LLC, as applicant, for approval of various legislative actions and land use entitlements allowing the development of between 54 and 72 new residential dwellings, equestrian center, agricultural support facilities, a worker duplex, public amenities (including access road, parking and restroom, hiking, biking, equestrian trails near the coastal bluff, an educational kiosk and a coastal access stair structure), and creation of conservation easements for permanent protection of open space and agriculture. The proposed site encompasses Santa Barbara Ranch and Dos Pueblos Ranch, together totaling 3,254 acres and 85% of the lots comprising the Official Map of Naples Townsite. The two ranches are zoned for AG-II-100 and Unlimited Agriculture, two miles west of the City of Goleta, AP Nos. 079-040-005 to 081-240-018, Third Supervisorial District. As part of its deliberations, the Planning Commission will consider a Final Environmental Impact Report ("FEIR") for the proposed project and make a recommendation on the document's certification to the Board of Supervisors. Subject to meeting protocol and agenda format adjustments as the Planning Commission may deem appropriate, it is expected that the following topics will be considered in the order listed: (i) Project Description; (ii) Final EIR; (iii) Issue Analysis; and (iv) Project Deliberation.

Initial application was filed on November 4, 2003, and accepted as complete on September 3, 2004, encompasses areas both within and outside of the Coastal Zone, and includes the following Case Nos.: 04EIR-00000-00014, 03GPA-00000-00005, 03GPA-00000-00006, 03GPA-00000-00007, 08ORD-00000-00009, 03RZN-00000-00005, 03RZN-00000-00006,

03ORD-00000-00012, 03ORD-00000-00013, 05AGP-00000-00011, 08COC-00000-00001 through 08COC-00000-00004, 08LLA-00000-000xx through 08LLA-00000-000xx, 08TRM-00000-000xx, 08DVP-00000-000xx through 08DVP-00000-000xx, 03DVP-00000-00041, 08CUP-00000-000xx through 08CUP-00000-0000xx, 03CUP-00000-00065 through 03CUP-00000-00083, 08CDP-00000-0000xx through 08CDP-00000-0000xx, 08LUP-00000-000xx through 08LUP-00000-000xx, 03LUP-00000-01188 through 03LUP-00000-01203 and 03LUP-00000-00739. *(Note: "xx" denotes cases for which specific number assignments are pending. Case nos. may also change pending the outcome of project deliberations.)* All actions of the Planning Commission are advisory to the Board of Supervisors, and portions of the project are appealable to the California Coastal Commission following Board action. Appeal procedures will be described in conjunction with hearings conducted by the Board.

**ACTION:** Accepted the late submittal letters from Michael Vincent McGinnis, the Center for Archaeological Research (California State University, Bakersfield) and the Office of Historic Preservation into the record.

**Blough/Brown**

**Vote: 5-0**

**Appeal process not applicable.**

**ACTION:** Continued the item to the hearing of July 10, 2008, at the request of the Commission.

**Brown/Valencia**

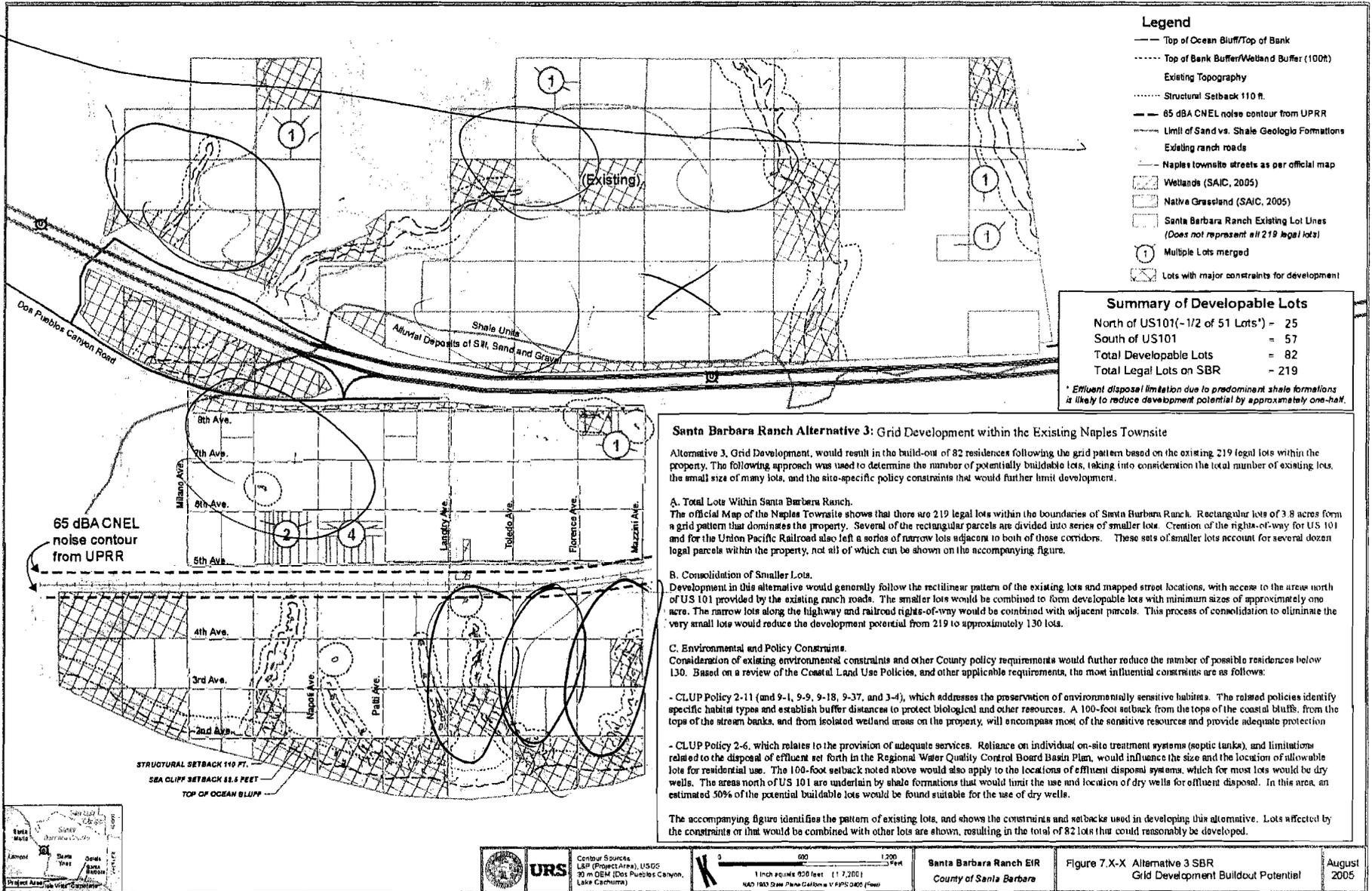
**Vote: 5-0**

**Appeal process not applicable.**

The Planning Commission Agenda, Marked Agenda and Staff Reports are available on the Planning and Development Web Site at [www.sbcountyplanning.org](http://www.sbcountyplanning.org)

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Dianne M. Black  
Secretary to the Planning Commission



**Ana Citrin**

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**From:** Marc Chytilo [airlaw5@cox.net]  
**Sent:** Tuesday, June 17, 2008 1:23 PM  
**To:** anacitrin@cox.net  
**Subject:** FW: Admin Drafts of EIRs

-----Original Message-----

From: Figg, Tom [mailto:Tffigg@co.santa-barbara.ca.us]  
Sent: Tuesday, June 17, 2008 12:50 PM  
To: 'Marc Chytilo'  
Subject: RE: Admin Drafts of EIRs

Correct.

-----Original Message-----

From: Marc Chytilo [mailto:airlaw5@cox.net]  
Sent: Tuesday, June 17, 2008 8:31 AM  
To: Figg, Tom  
Subject: RE: Admin Drafts of EIRs

Thanks Tom. And they did not review administrative drafts of the draft EIRs either, correct?

Marc

-----Original Message-----

From: Figg, Tom [mailto:Tffigg@co.santa-barbara.ca.us]  
Sent: Tuesday, June 17, 2008 5:36 AM  
To: Marc Chytilo  
Subject: RE: Admin Drafts of EIRs

Hi Marc.....no, the applicant did not review the Admin. Draft of the FEIR.

Tom

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From: Marc Chytilo [airlaw5@cox.net]  
Sent: Monday, June 16, 2008 4:25 PM  
To: Figg, Tom  
Subject: Admin Drafts of EIRs

Tom - did the Applicant review the Administrative Draft of the final EIR for SB Ranch?

I recall that you told me previously that the Applicant did not review the Administrative draft of either of the Draft EIR's for this project - is that correct?

Will get back to you shortly on the process question

Thanks

Marc

\* \* \* \* \*

If you believe you have received this message in error, please notify sender immediately.

\* \* \* \* \*

Marc Chytilo  
Law Office of Marc Chytilo  
Post Office Box 92233  
Santa Barbara, California 93190  
Phone: (805) 682-0585 \* Fax: (805) 682-2379



## LAW OFFICE OF MARC CHYTILO

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### ENVIRONMENTAL LAW

October 10, 2008

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

RE: October 13, 2008 Board of Supervisors Hearing on the Santa Barbara Ranch Project;  
Proposed Development Agreements

*Dear Chair Carbajal and Honorable Members of the Board,*

This letter is submitted by the Law Office of Marc Chytilo on behalf of the Naples Coalition and by the Environmental Defense Center on behalf of the Surfrider Foundation.

The Coalition, Surfrider and other community organizations and individual members of the public, State agencies including the State Historic Preservation Office (SHPO), the Department of Fish and Game, U.S. Fish and Wildlife Service and the Coastal Commission have all expressed substantive concerns regarding the current iteration of the Santa Barbara Ranch Project. Rather than address these concerns, the County has forged ahead in the processing of a deeply flawed project, weakening the County's hand in the process. The proposed Development Agreements further weaken the County's ability to protect the resources of Naples and the Gaviota Coast. The Board has an obligation to protect the public interest, not merely Matt Osgood's interests, and for this reason we urge the Board not to enter any development agreement, with Santa Barbara Ranch or Dos Pueblos Ranch (DPR). If the Board elects to enter development agreements, we strongly urge the Board negotiate their terms more forcefully and to exact more substantial public benefits in exchange for the extraordinary protection from changes in the law that the developer would receive through the agreement.

On October 7, 2008, the Board amended the Memorandum of Understanding (MOU) to allow the development of inland lots before the final configuration of the coastal lots is known. If the Coastal Commission denies Local Coastal Plan amendments, certain CDPs or the entire coastal project, or if the Coastal Commission conditions DPR's development in a way that causes DPR to pull out of the project, as Coastal Commission staff have indicated they must do, the project will look very, very different. Granting the Developer a "vested right to develop" based on the assumption that the Coastal Commission will not deny or condition Dos Pueblos Ranch's

development at this early stage in project development in the face of such probabilities and uncertainties will tie the County's hands in shaping a project that works best for Naples, the County, and the public. For this additional reason that the MOU amendment introduces substantial uncertainty regarding the future of this project, we strongly urge the Board to postpone consideration of any development agreement until the Coastal Commission has completed its review of the Coastal portions of the project.

Please consider these comments on specific sections of the proposed Coastal Development Agreement:

- A. The Agreement does not strengthen the public planning process. Rather it ties the County's hands in applying new protections, and in achieving a comprehensive solution for the Gaviota Coast (see discussion of § 1.02, below).
- B. The Agreement in fact has not been processed, considered and executed in accordance with the Development Agreement Statute. Specifically, this statute requires the Board find that it is consistent with the general plan (Gov. Code § 65867.5). Discussed in response to paragraph K below, this development agreement is not consistent with the General Plan as it currently exists. Further, the statute provides that development agreements shall not apply to any project located in an area without a certified Local Coastal Plan (LCP). (Gov. Code § 65869). As part of the Project, the County has proposed amendments to the Local Coastal Plan that are not effective until accepted by the Coastal Commission. The County may not make the findings of consistency for either the coastal development agreements or CDPs to proceed until the LCP amendments are accepted in final form. The amendment process may introduce significant changes which affect development of the site. In light of this, no development agreement should be entered prior to the County's final adoption of the General Plan and zoning ordinance changes and the Coastal Commission's final approval of the LCP amendments.
- C. The status of DPR in this process is ambiguous. They are not a project applicant, yet they control the majority of the project site. The coastal development agreement provides that Santa Barbara Ranch "intends to cause the DPR Coastal site to be developed," as compared with Santa Barbara Ranch's role on the SBR lands where it "intends to develop." Coastal development agreement p. 1. The Coalition has repeatedly stated that DPR should be a project applicant and be subject to the same rules as SBR. In the context of the Development Agreements, it is clear that most of the benefits sought (creek restoration, Tribal consultation, spur trail) rely on DPR's willing participation. This situation is untenable and places the public's benefits at substantial risk.
- D. The Board recently amended the MOU in closed session, removing the protection against project fragmentation and loss of public benefits and required mitigation. Because of this, the Project as a whole, Alt. 1B, is likely to look very different from how it looks today (note: the Draft EIR, Revised EIR, and Final EIR all regarded the Project as ONE project, not two. The environmental impacts associated with splitting the project into two have not been

analyzed and may fundamentally alter aspects of the project. We reiterate our view that the MOU amendment was a terrible mistake. As stated in the introduction to this letter, no development agreement should be entered prior to final approval (Coastal Commission).

- F. The Agreement is to be “construed and interpreted in such a manner as shall give full effect to [the] purpose [, that the Developer will have a full and vested right to develop.]” Stated previously, granting the Developer a full and vested right to develop is premature given the substantial uncertainty introduced by the amendment to the MOU and the pending nature of underlying Local Coastal Plan revisions.
  - G. The environmental impacts of the Coastal project have not in fact been properly reviewed and assessed by the County pursuant to CEQA. We have identified numerous CEQA violations, which are discussed in a separate letter submitted on October 10, 2008. Further, as stated previously, the SBR EIR analyzed the project as a whole, not as separate coastal and inland projects.
  - I. Among the purported public benefits of the project is the “long term preservation of agricultural land on the DPR Coastal Site.” If the Coastal Commission conditions the DPR coastal component in such a way that causes DPR to pull out of the project, this public benefit will be erased.
  - J. The benefits of the Project are exacted by the County during permit processing and environmental review. Benefits such as agricultural preservation are not merely ‘benefits’ of the project, they are *required mitigation*, identified in the EIR as necessary to mitigate the significant agricultural impacts of the project. It is inappropriate, and indeed contrary to Contract law to include these already-promised and/or required components of the project as consideration for the Development Agreement. The Development Agreements provide the Developer with extraordinary protections from new laws—this is the new benefit conferred by the County on the Developer by the Development Agreement. Only those additional commitments, above and beyond the commitments required to obtain project approval, should be the purported ‘benefits’ of the development agreement itself.
  - K. The agreement’s consistency with the General Plan is not established. The Coalition has identified numerous ways in which the SBR project conflicts with the General Plan, detailed in a separate letter from this office. The Development Agreement would grant the developer a vested right to develop a project that is inconsistent with the General Plan. Because of this, the Development Agreements themselves are fundamentally inconsistent with the General Plan.
- § 1.02: The 20 year term of the agreement is excessive (particularly given the extension for litigation and other delays, see comment on § 6.03, below). It is our hope and expectation that within the next 20 years, the County will have instituted a comprehensive resource protection program for the Gaviota Coast, and will have made substantial progress towards

reaching a long-term solution whereby the rural agricultural nature of the Gaviota Coast is preserved, not only because it keeps land in open space and retains the rural heritage of the area, but because local food supplies will become increasingly important as global climate change, fuel costs, and hereto unknown contingencies affect our food supply and distribution network. Locking in current laws to help an out-of-town developer realize his dream of a luxury equestrian village on the Gaviota Coast is contrary to sound planning principles, and to recent actions by *this* Board in striving to reach a comprehensive solution for the Gaviota Coast. Obviously these agreements cause a discharge of future Boards of Supervisor's authority to respond to changed circumstances, and given the paucity of real benefits, are tantamount to a gift of public funds.

§ 2.02 (a): Discussed previously, the ambiguous nature of DPR's role in the project introduces substantial uncertainty into the process. This conditional requirement ('if DPR doesn't, SBR must') is problematic in several regards; first it requires nothing of SBR if DPR completes a Cultural Agreement. The SBR lands also contain significant cultural resources. SBR should be required, independent of DPR, to engage in negotiations with the Chumash.<sup>1</sup> And if neither is successful, as has been the experience to date, what possible incentive is there to make more concessions in the future? Since DPR's participation is conditional on Coastal Commission approval that will not be certain until appeals of Dos Pueblos Ranch's CDPs are resolved, the period for DPR's negotiating will expire before their entitlements, if any, are perfected. The development agreement is designed to fail.

§ 2.02 (b): The statement that the Project is somehow exempt from the affordable housing requirements is raised for the first time here, and lacks legal support. The provision of affordable housing is entirely contingent upon the Morehart's willingness to sell lot 76, and therefore is not a tangible benefit.

§ 2.02 (c): The 'Coastal Trail' is, frankly, a freeway trail. True coastal access opportunities are lacking from the Alt. 1B project. The Coalition, the Environmental Defense Center (EDC) and Surfrider Foundation and other organizations have argued vigorously throughout this process for a true coastal trail, that is, one that traverses the coastal bluff, as is clearly required by local and state policy. EDC put forward a proposed trail alignment for a coastal trail extending the length of the coastal bluff, which weaves back and forth to avoid sensitive drainages and other biological resources. We urge the Board to revisit that proposal in earnest, as public access along the coast is too critical a benefit to let slide by. High tide lateral access, on top of the bluff, is mandatory, not an extracurricular benefit.

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<sup>1</sup> The Coalition has argued that cultural impacts as presented in the FEIR are Class I. This position is supported by SHPO, as reflected in letter(s) sent to the Planning Commission. Because of this, additional mitigation measures, possibly including a Cultural Agreement of some sort, is required under CEQA. In this respect, the Development Agreement is an inappropriate vehicle to exact this commitment from the developer; it should be required as a precondition to project approval.

§ 2.02 (d): The revegetation plans for native grasslands and coastal sage are required mitigation pursuant to CEQA, to mitigate significant impacts to native grassland species and habitats. On October 7, 2008, less than one week before the Board is set to hear the project and less than two days before public comment letters are due to the Board, the County substantially weakened the revegetation plans for native grasslands and coastal sage. (see F-6 Supplement, pp. 3-4) This weakening reduces the efficacy of required mitigation measures, violating CEQA's requirement that impacts be mitigated to the maximum extent feasible. Again, the Development Agreement is used to achieve mitigation that is required pursuant to CEQA. This is an inappropriate use of the Development Agreements, and a violation of CEQA.

§ 2.02 (e): Avoidance of cultural resources should be prioritized above mitigation, consistent with the requirements of the County's CEQA Thresholds and the Native American Heritage Commission's guidelines.

§ 3.03: This provision evinces the extraordinary protections conferred upon the developer by this development agreement. We urge the Board not to offer these extraordinary protections, and instead protect the public interest and the rural character of the Gaviota Coast by maintaining flexibility in future planning.

§ 3.05: Excluding the developer from all collection agreements regarding fees is an additional, substantial benefit conferred on the Developer by entering this development agreement. The County is relinquishing not only regulatory power but also revenue. In these tough economic times, when local governments including Santa Barbara's are making painful cuts, this give-away is irresponsible and the Board should not agree to it.

§ 4.02: In exchange for the extraordinary benefit the Developer gains from entering into this Development Agreement, he should have to forgo developing a guest house on Lot 132. The Coalition and Surfrider have consistently argued that guest houses are inappropriate and should be eliminated from the project. Because the home on Lot 132 is already approved, this Development Agreement, if the Board elects to pursue it, is the perfect mechanism for avoiding construction of an additional residential structure at Naples. Further, allowing interim treatment methods for waste from the unnecessary guest house is simply unacceptable and any guest house construction should wait until the waste treatment plant(s) is constructed and operational.

§ 4.02(b): The discussion of Coastal Project timing improperly omits any reference to TDR. Allowing the Developer to develop the Coastal Project "in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment" severely hampers the effectiveness of the already-toothless TDR program. It is essential that the TDR Authority have a set and predictable period of time during which to exercise the opportunity to purchase rights from priority lots. Priority lots include coastal

bluff lots, viewshed lots, culturally sensitive lots, and others. The Development Agreement, if the Board enters one, should expressly provide that the Developer must not develop priority lots before non-priority lots. This would give the TDR Authority additional time to secure the funding necessary to purchase development rights for priority lots. The Board's failure to approve a robust TDR program that would satisfy the requirements of Policy 2-13 can be remedied, in part, if the Board were to include such prioritization and other requirements via a Development Agreement.

§ 4.02 (c): This express rejection of any moratorium or other limitation on the Developer's ability to commence construction severely undercuts the Board's ability to further the TDR program in compliance with Policy 2-13.

§5.02: Requiring the County to provide "reasonable overtime staff assistance" to process approvals for subsequent coastal approvals of ministerial projects associated with Naples is an unreasonable provision, particularly given the scarcity of County resources and planning staff. The SBR Project, largely due to the Applicant's resubmission of two major project revisions, has occupied a massive amount of Planning and Development's resources for several years. In obtaining ministerial approvals associated with this project, the Developer should wait his turn.

§5.03: The County further ties its hands via this provision, which prevents the County from denying or imposing conditions on subsequent approvals that "conflict with the Coastal Project Approvals or would prevent development of the Coastal Project Site for the uses and to the density or intensity of development set for the in the Project Approvals. The County should not agree to this further restriction on its powers.

§6.03: This provision extends the life of the Development Agreement by a potentially substantial amount, by excluding from the 20 year term any period of time during which a development moratorium is in effect, during regulatory delays and litigation. Regulatory delay at the Coastal Commission, and litigation, are likely for this project. In effect, the Development Agreement may insulate the Developer from changes in the law for a quarter century or more.

§ 12.03: The finding that the Development Agreement furthers public health, safety and general welfare simply cannot be sustained. Assuring that all entities comply with the law *does* further the public health, safety and general welfare, and this agreement in essence gives the Developer immunity from the law. New laws protecting the environment, ensuring sound planning for the Gaviota Coast will not apply to Naples, and this emphatically does not further the public health, safety or general welfare.

### **Comments on specific sections of the Inland Development Agreement**

Most of the above comments regarding the Coastal Development Agreement are also applicable to the Inland Development Agreement. Section 2.02 is an important exception, and this section of the Inland Development Agreement is discussed in detail below.

§ 2.02: There are two purported public benefits of the Inland Development Agreement, and one, creek restoration, is largely illusory, as discussed below. By entering into this Development Agreement the County is all but making an outright gift to the developer. Given this, and the numerous ways in which the County has capitulated to the Developer's requests throughout the processing of this project, it is very difficult to reach any conclusion other than this: the Board has ignored the public interest – a very unfortunate conclusion indeed.

§ 2.02 (a): Restoration of the Creek Corridor is not guaranteed by the signing of this Development Agreement. It is expressly contingent on the consent of DPR, which, as discussed at length above and in a separate letter submitted by this office and EDC regarding the proposed MOU amendment, is unlikely. Further, it is expressly contingent on the California Department of Fish and Game withdrawing the Notice of Violation they issued to DPR concerning Dos Pueblos Creek. Neither the County nor the Developer has any control over Fish and Game, a state agency. This provision further inappropriately presumes the invalidity of the Notice of Violation. These contingencies make this 'benefit' illusory.

§ 2.02 (b): Discussed above, the developer is already required by CEQA and by County policy to mitigate impacts to cultural resources to the maximum extent feasible. The extra provision that the developer mitigate all impacts regardless of cost or avoid the impact through other means, is important, alone is not sufficient consideration for the substantial benefit the Developer receives from the Development Agreement.

The legal, practical and environmental effect of entering into a development agreement for the Santa Barbara Ranch Project is to constrain the exercise of discretion by future Boards of Supervisors to address changed conditions. Before entering into such a long-term agreement, the County must undertake additional environmental review to predict future conditions and consider future environmental consequences – it cannot enter into this agreement blind. The past efforts at National Seashore designation, the August 18, 2008, meeting of the Board of Supervisors, and growing pressures for conversion of Gaviota Coast agricultural uses necessitate changed land use planning tools and strategies. The County's ability to implement and comply with the planning requirements of SB 375 could be impaired. The protracted term of the proposed development agreements could substantially impair the County's ability to adopt and implement additional land use controls. There will be a class of future Landowners that will be grandfathered many years hence and exempt from the rules that apply to other activities and development. This could impede enactment and implementation, and thereby further induce cumulative growth-inducing impacts. CEQA compliance is required.

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Santa Barbara County Board of Supervisors - Development Agreement Comments

October 10, 2008

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The Development Agreements tie the County's hands with respect to future efforts to protect Naples and the Gaviota Coast. The Agreements also hamper the already emasculated TDR program. To add insult to injury, the Agreements fail to include sufficient public benefits that would justify giving the Developer such extraordinary protections. Most of the purported benefits are illusory and are also described in the initial project benefits and Project Description. Unless the Board directs staff to thoroughly rethink and revise the Development Agreements with the above comments in mind, we strongly urge the Board to forego entering any development agreement for Naples.

Sincerely,

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Marc Chytilo  
For the Naples Coalition

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Nathan Alley  
For the Surfrider Foundation, Santa Barbara  
Chapter



LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

October 10, 2008

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

RE: October 13, 2008 Board of Supervisors Hearing on the Santa Barbara Ranch Project;  
Policy Consistency Analysis

*Dear Chair Carbajal and Members of the Board,*

This letter is submitted by the Law Office of Marc Chytilo on behalf of the Naples Coalition and by the Environmental Defense Center (EDC) on behalf of the Surfrider Foundation. Please note that our previous correspondence on this matter is incorporated herein by reference; we have attached a portion of EDC's letter on Policy Consistency to the Planning Commission (Exhibit 1).

The Policy Consistency Analysis for the proposed Naples Townsite (NTS) and for Alternative 1B is woefully inadequate. Major policy conflicts are identified, then summarily disregarded based on balancing and takings provisions, assumed approval of the Local Coastal Plan (LCP)<sup>1</sup> amendments, and Policy 2-13. The County has not sought to avoid or minimize policy conflicts associated with the NTS and Alt. 1B, and instead simply overridden these conflicts through an improper application of the California Coastal Act's balancing and harmonizing provisions. Conflicts with applicable policies designed at least in part to reduce environmental effects of a project are significant environmental impacts under CEQA that must be mitigated to the maximum extent feasible. (*See* CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936; CEQA Guidelines § 15126.4 (a)(1)). Before appealing to Policy 2-13 and prevention of the grid development scenario, methods for

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<sup>1</sup> "CLUP" (Coastal Land Use Plan) referred to in the Policy Consistency Analysis (PCA) and "LCP" (Local Coastal Plan) are one and the same.

achieving policy consistency must be therefore be evaluated and implemented to the maximum extent feasible. The following are policy-specific comments.

**LCP 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.

All parcels included in the rezone and Alt. 1B are currently designated for agricultural use, and are located in a rural area non-contiguous with the urban/rural boundary; residential use is not a priority use. The NTS and Alt. 1B therefore conflict with this policy. In attempting to justify consistency, the policy consistency analysis (PCA) states: "the project would implement Policy 2-13, which is more specific to Naples..." Immediate appeal to Policy 2-13 however is improper, because LCP Policy 8-2 trumps 2-13 because it is more protective of coastal resources (LCP 1-3; PRC § 30007.5.) The PCA states further "Alt. 1B is consistent with the intent of...Policy 8-2 because the project would both reduce the potential for agricultural land conversion, as compared to the potential build-out of the existing legal lots, and increase the amount of land that is to be kept in agricultural use in perpetuity...It would also introduce priority recreational and public access uses, and preserve environmentally sensitive habitats consistent with Policy 8-2." (p. 42) This logic is flawed in several respects - merely meeting staff's perceived intent of a LCP policy is insufficient when the interpretation is unreasonable in light of the clear policy directive. Sacrificing existing highly productive agricultural lands on Dos Pueblos Ranch is not required to prevent build out of Santa Barbara Ranch. Stated another way, resolving the Naples issues could be accomplished with lesser loss of agricultural lands, and with less loss of prime, productive agricultural lands.

The Policy interpretation ignores the fact that any development at Santa Barbara Ranch is subject to the same LCP policy, and so the "baseline" for comparison of policy inconsistencies must reflect the retention of some amount of agricultural land at Naples even with grid buildout. Further, grid buildout is likely to involve considerable clustering and/or lot consolidation, as reflected in the current proposals for sale. Exhibit XX. In this configuration, agricultural lands are specifically identified for preservation, without the loss of Dos Pueblos Ranch's prime orchards or the inland orchards.

Finally, the policy analysis must integrate the opportunity for clustering to reduce the impacts of the project. The analysis uses a lowest denominator approach, when in fact project alternatives may successfully protect more ag lands than either the proposed project or grid buildout. Staff has manipulated the PCA to justify their preferred outcome, but not on the basis of an objective comparison and selection of the best project configuration. This policy is intended to protect

coastal zone agricultural lands, and Alt. 1B does little to preserve agricultural land within the coastal zone, particularly when compared to other alternatives such as clustering.

**GP LU Development Policy 3:** No urban development shall be permitted beyond boundaries of land designated for urban uses except in neighborhoods in rural areas.

Alt. 1B violates this policy because it includes urban development (defined as any residential structure on a lot less than 5 acres in size<sup>2</sup>) and is beyond boundaries of land designated for urban use, and is not within a rural neighborhood. Specifically Alt. 1B includes residences on 14 lots of less than 5 acres: Lot 50: 3.8 acres; Lot 104: 3.8 acres; Lot 105: 3.8 acres; Lot 107 A: 3.8 acres; Lot 134: 3.8 acres; Lot 205: 3.18 acres; Lot 206: 3.11 acres; Lot 207: 3.29 acres; Lot 208: 4.71 acres; Lot 213: 4.02 acres; Lot 215: 4.12 acres; Lot 216: 4.67 acres; Lot DP-05C: 3.67 acres; Lot 43: 4.69 acres.

The PCA states that “Alternative 1B as proposed does not involve urban densities or uses...the average lot size for the new residences [excluding DP 11] would be over 13 acres.” P. 3 (emphasis added). The PCA must resort to use of average lot size when the language of the County’s Land Use and Development Code is clearly focused on individual lot sizes.

The PCA further states: “Given the unique circumstances of the project site, Alt. 1B, including creation of the NTS designation and other design features, legislative changes, and recommended mitigation measures would reduce the potential development that would be located beyond the urban boundary, compared to the potential grid build-out of the existing lots.” (p. 3) Urban density lots however are not necessary to avoid the grid build-out scenario—the County could extinguish lots that are less than five acres, or reconfigure lots such that each is greater than five acres in size. The applicant chose this configuration, knowing the terms of the applicable policy. His project violates the applicable policy and cannot be approved.

**CA § 30250:** (a) New residential...development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it...

Alt. 1B and the NTS is inconsistent with this policy because Naples is not within, contiguous with or in close proximity with existing developed areas, but proposes residential development. The PCA immediately appeals to 2-13. (See PCA, p. 16) The County must attempt to achieve compliance with this policy by clustering development, including looking to regionally clustered alternatives combining DPR, SBR, Makar and Las Varas development.

**GP LU Visual Resources Policy 2 LCP Policy 4-3 (Part III):** [Structures] shall be sited so as not to intrude into the skyline as seen from public viewing places.

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<sup>2</sup> LUDC § 35.110.020, def. ‘Urbanization’

Alt. 1B is inconsistent with at least five structures intrude into the skyline as seen from public viewing places: lots 51, 107A, 134, 135, and 215 (see PCA p. 8) (107A, 134 and 215 are also less than five acres in size, see above). The NTS is inconsistent insofar as it allows such skyline intrusion, despite the clear mandate in the policy that it be avoided. The PCA characterizes the skyline intrusion as 'potential' only. "In specific regard to [above lots], every reasonable measure shall be taken to avoid (if feasible) or minimize (if not feasible) the silhouetting of structures into the skyline." The Policy however requires avoidance. If infeasible, the lot(s) in question must be extinguished or relocated, which is clearly possible in light of the site size. Since the project does not achieve that, it conflicts with these policies and cannot be approved as proposed.

**GP LU Visual Resources Policy 2 and LCP Policy 4-3 (Parts I and II):** 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.

Alt. 1B and the NTS violate this policy in several respects. The height of the coastal structures (25 feet) is not compatible with the character of the surrounding natural environment. Further, the overall appearance of the development is out of character with the rural surroundings, a Class I impact identified in the EIR. The Project's proposed grading elevates each house pad onto an artificial knoll, with steep slopes below and above and a flat building pad. The project requires 295,000 cubic yards of cut and 175,000 cubic yards of fill, obliterating the natural contours and creating a series of unnatural tiers stepping uniformly up two opposing ridges. Steep cuts are required for roads, exposing cut slopes, potentially necessitating artificial-appearing retaining walls and interjecting linear features into the landscape. The proposed structures are not integrated into the landscape, rather, the landscape is manipulated to accommodate the houses, creating a distinctly Orange County feel to the Gaviota Coast. Far from being subordinate, the mass of large homes on adjacent lots is not compatible with the exceptional scenic qualities and natural character of the surrounding Gaviota Coast landscape.

The Project is obviously completely inconsistent with this policy, and will introduce an amount of structural development that will overwhelm the natural character. Options do exist to avoid these conflicts, such as clustering, smaller houses and more careful site planning, but in the absence of those alternatives and features, the proposed Project is patently inconsistent with the surrounding area. One way to test compatibility is to consider how the region would appear if the next landowner were to build at the same numbers and densities. It is clear that the development's impacts would be severe, and change the character of the area. In fact, this is what the applicant has proposed, with two adjacent ridges to be festooned with large houses, forever changing the character of eastern Gaviota Coast.

**CA § 30251:** The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Alt. 1B and the NTS are inconsistent with this policy due to visibility from El Capitan and other beaches and interruption of views to the ocean from proposed public trails. The increase to two-story structures on bluff exacerbates this conflict. Adding a second story to the blufftop homes, even at the prior height, represents a significant change adversely affecting visual and scenic features. With two stories allowed, these houses will each feature one or more elements that will seek to maximize views from a second story. This will be in the form of master bedrooms, balconies, widow's walks, or some similar feature. These features will add night lighting, which even if carefully designed to avoid exterior spillage, will still be illuminated and risible from long distances up and down coast. The PCA omits discussion of views along the ocean (e.g. from El Capitan or Ellwood Mesa) or from proposed public trails, stating that Alt. 1B is consistent because it eliminates visible coastal zone lots north of 101 and "views to the south are largely obscured by existing trees and topography." (PCA, p. 28) The PCA is inadequate, and the project is clearly not consistent with the California Coastal Act's central mandate to "protect" scenic and visual qualities as a public resource.

**CA § 30240:** (a) Environmentally sensitive habitat areas<sup>3</sup> shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which could significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The County has not properly qualified the biological resources of the site through an adequate series of surveys and creation of a reasonably comprehensive inventory to identify ESHAs. Omission of indicator native grasslands species has caused a severe underestimation of the area dominated by native grasses and therefore eligible as ESHA. Arguably much of the project site is ESHA and residential development is not an ESHA-dependent use, and thus is impermissible. Development activities on and adjacent to ESHA has not been designed to avoid significant disruption of habitat values or to prevent impacts. The proposed development will grade large portions of the site and the majority of all developed areas, causing untold adverse and complete destruction of the habitat values present in these areas that are reflected in ESHA designation. For these reasons, the project is not consistent with this policy.

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<sup>3</sup> **CA § 30107.5:** Environmentally sensitive habitat areas are defined as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Note: this definition is stated in the LCP in § 3.9.2.

**CA § 30230:** The biological productivity and the quality of coastal water, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habits, and minimizing alteration of natural streams.

DPR septic systems, waste water discharges from the STPs, runoff from landscape irrigation, non-point source pollution, erosion and sedimentation, agricultural all potentially affect ground and surface water quality, and marine, aquatic and terrestrial biological productivity. The EIR lacks adequate identification of hydrologic issues and does not adequately evaluate related biological impact issues. The Dos Pueblos Ranch has insisted on conditions that they will not accept an obligation to perform riparian habitat restoration on their 3.7 linear miles of Dos Pueblos Creek and all land owners adjacent to Dos Pueblos Creek have a pattern and practice of illegal and unpermitted development, water diversion, streambed modifications and similar activities that have incrementally, cumulatively and directly caused the deterioration of the quality and productivity of coastal streams, wetlands, estuaries and lakes. There has been no surveys of the status of marine organism populations, which include a rich and large (18 square mile) tidal marine wetland of global biological significance, and thus there is no evidence of optimal populations, whether they are properly managed or require restoration. The Naples reef is the site of extensive human water-contact recreational use (including surfing, diving, fishing) that have involved human health threats in some locations, but the record is devoid of any such study or evaluation, precluding the making of this finding. There is no substantial evidence in the record to support a finding of Project consistency with this policy. There is substantial evidence that the Project is not consistent with this finding.

**LCP Policy 2-13:** ...The County shall discourage residential development of existing lots. The County shall encourage and assist the property owner(s) in transferring development rights from the Naples townsite to an appropriate site within a designated urban area which is suitable for residential development. If the County determines that transferring development rights is not feasible, the land use designation of Ag-II-100 should be re-evaluated.

The County has not complied with this policy in the following regards:

- The weak and ineffectual TDR program adopted by the County at the insistence of the Applicant fails to fulfill the County's duty to discourage residential development of the existing lots. The County must craft a stronger program to comply with 2-13.
- TDR is partially feasible so the rezone should not be re-evaluated, and if it is, any rezoning considered should be the minimum necessary to address Landowners'

reasonable economic expectations in light of projected TDR revenues and proceeds from development that accords with overlying zoning designation and development intensity.

- The rezoning provision of Policy 2-13 only authorizes rezoning from AG-II-100. The Naples Townsite lots within the coastal zone are zoned AG-II-100, while the Townsite lots outside of the coastal zone are zoned U. Because Policy 2-13 only allows for rezoning within the coastal zone, it provides no basis or justification whatsoever for changing the zoning in the inland portion of the site. The subdivision of Dos Pueblos Ranch lands does not constitute compliance with Policy 2-13, as this policy directs transferred development into “designated urban areas.” Further, Policy 2-13 cannot be used to reconcile or balance away policy conflicts pertaining to the inland lots. For example, the proposed NTS violates General Plan (GP) Land Use (LU) Development Policy 2 which provides that the densities specified in the Land Use Plan are maximums (see below for further discussion of this policy). Policy 2-13 cannot justify increasing density in the inland lots.
- Alt. 1B violates Policy 2-13 because it transfers development to another rural area instead of a designated urban area suitable for residential development. Policy 2-13 is specific in terms of where the county shall encourage and assist the property owner in transferring development rights to. By essentially transferring development to other rural lands surrounding the townsite, the purpose and intent of Policy 2-13 is violated.
- The County has simply failed to implement Policy 2-13 in a timely or effective manner. Further, it has volitionally acted to breach the purposes and requirements of 2-13 in separating the project, compromising the potential efficacy of TDR.

**LCP 1-3:** where LCP policies overlap, the one that “is most protective of coastal resources shall take precedence”

In the PCA, it is asserted that Policy 2-13 takes precedence over other LCP policies that are more protective of coastal resources, i.e. LCP Policies 1-4, 8-2. This approach violates this LCP policy as it causes the loss of agricultural resources and impairment of remaining agricultural potential by the introduction of non-compatible uses; fails to accomplish coastal access requirements, fails to protect biological resources, violates visual and scenic resource policies, violates cultural resource policies, and provides extensions and expansions of urban utilities and services in a rural area. Policy 2-13 cannot be stretched to dominate all of these serial policy conflicts and as such, the Project is not consistent with LCP Policy 1-3.

**LCP Policy 1-4:** Prior to the issuance of a CDP, the County shall make the finding that the development reasonably meets the standards set forth in all applicable land use plans policies.

This finding cannot be made because of the numerous inconsistencies identified herein. Consistency cannot be achieved by an appeal to Policy 2-13 because the policies with which the project conflicts are more protective of coastal resources than policy 2-13 and therefore take precedence under LCP 1-3.

**GP LU Development Policy 2 and LCP Policy 2-12:** The densities specified in the land use plan are maximums and shall be reduced if it is determined that such reduction is warranted by conditions specifically applicable to a site, such as topography, geologic or flood hazards, habitat areas, or steep slopes.

The NTS conflicts with these policies because it increases the density from that specified in the land use plan, which are defined by the overlying zoning and are required to be reduced by implementation of Policy 2-13.

**CA § 30241:** “The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas’ agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following: a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban uses. b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development. d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands. e) By assuring that public service and facility expansions and non-agricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.”

The NTS and Alt. 1B conflict with this policy because prime agricultural land is converted to non-agricultural use, without implementing a, b and d above. The PCA immediately appeals to 2-13, however this is premature, and does not apply to Dos Pueblos Ranch’s non-Naples lots, whereon prime agricultural resources will be destroyed for large lot residential development. Introduction of residential activities and Landowner expectations, at both Dos Pueblos Ranch, Santa Barbara Ranch and in the subdivided area, substantially compromises agricultural protections, erodes the existing defined and stable boundaries between agricultural and urban uses and both implicitly extending the regional urban limit line as well as increasing substantially the level and changing the type of residential (urban) activities present adjacent to productive agricultural operations. The County could reconfigure the Project through alternatives and a hybrid utilizing TDR to avoid this conversion of and threats to prime agricultural land, but has not. The Project, as proposed for approval, is patently inconsistent with this policy and jeopardizes agricultural activities throughout the County’s coastal zone. .

**CA § 30242:** “All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.”

Alt. 1B and the NTS clearly conflict with this policy because continued agriculture feasible and the conversion in many instances *is* of prime agricultural land. Again, the PCA immediately appeals to 2-13, and to the fact that the ACE would preserve prime agricultural land. The ACEs under DPR’s control however may ultimately be removed from the project (see comment letter on the proposed MOU amendment, submitted by the Coalition and EDC, dated October 3, 2008). The County should explore clustered alternatives that avoid as much conversion of suitable agricultural lands as possible to achieve maximum consistency with this policy before appealing to 2-13 or to mitigation measures which do not avoid the inconsistency.

**GP Agriculture Element Goal II:** Agricultural lands shall be protected from adverse urban influence.

A finding of consistency with this policy cannot be made for Alt. 1B. The Policy Consistency Analysis lists the adverse urban influences that could affect future agricultural operations, including “Expansion of urban spheres of influence and encroachment of urban uses on adjacent agricultural land uses” and “conversion of highly productive agricultural lands to non-agricultural uses”. Alt. 1B will result in the encroachment of urban uses on adjacent agricultural land uses and will convert highly productive agricultural lands to non-agricultural use. Further, an additional adverse urban influence listed in the PCA includes “Pollution from siltation, flooding, urban stormwater and non-stormwater discharges.” Alt. 1B increases the amount of impermeable surfaces and landscape irrigation on ridgelines, increasing runoff and siltation.

The PCA maintains that mitigation is sufficient to render the proposed residential uses compatible with agricultural use on surrounding lands (p. 11). The mitigation measures proposed for Alt. 1B are insufficient to avoid this adverse influence, as discussed in separate letters submitted to the record.

**General Plan Agricultural Element Policy II D:** Conversion of highly productive agricultural lands...shall be discouraged.

The County has failed to discourage this conversion because the TDR program is so weak and ineffectual.

**General Plan Agricultural Element Goal III:** Where it is necessary for agricultural lands to be converted to other uses, this use shall not interfere with remaining agricultural operations.

Residential uses will interfere with agriculture; mitigation measures are insufficient (see discussion of GP Agriculture Element Goal II, above).

**General Plan Agricultural Element Policy III A:** Expansion of urban development into active agricultural areas outside of urban limits is to be discouraged, as long as infill development is available.

The PCA relies on TDR to achieve consistency with this policy (p. 12), however the County is not doing enough to discourage this conversion because the TDR program is so weak.

**LCP Policy 7-2:** For all development between the first public road and the ocean, granting of an easement to allow vertical access to the mean high tide line shall be mandatory unless: (a) another more suitable public access corridor is available or proposed by the land use plan within a reasonable distance of the site...or (b) access at the site would result in an unmitigable adverse impact on areas designated as "habitat areas" by the land use plan...

Alt. 1B is inconsistent with this policy because another more suitable corridor is identified on the land use plan, immediately adjacent to the site, namely DP Canyon. See LCP Policy 7-18, which requires the County acquire a vertical easement connecting the proposed bicycle trail to the beach at DP Canyon. This plainly constitutes "another more suitable public access corridor is available or proposed by the land use plan within a reasonable distance of the site." Dos Pueblos Ranch will enjoy substantial development on their lands, yet have pointedly manipulated the Project Description to exclude DP-19 for the exclusive purpose of defeating accomplishment of this policy. The Project fails to conform to this policy and findings that it does are not reasonable nor supported by substantial evidence.

Additionally, public access corridors at Las Varas Ranch and on the Makar property are not 'available', rather their dedication is contingent upon approval of residential development projects proposed for those properties. Makar has removed a portion of their coastal access facilities from their Project Description, reportedly in retribution for community concerns over their proposed development of more luxury housing on prime agricultural soils, and it is entirely speculative to rely on the good will of yet another Orange County developer intent on profiting from the development of the Gaviota Coast to provide beach access meeting Santa Barbara Ranch's obligations, were it even sufficient for that purpose.

The potential Makar and Las Varas access points are sufficiently distant from Naples so as to not constitute suitable alternatives. Further, the Makar access will cause beachgoers to traverse the seal-haul out area to access Naples Reef, exacerbating impacts to habitat and ecology.

**LCP Policy 7-3:** For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory. In coastal areas, where the bluffs exceed five feet in height, all beach seaward of the base of the bluff shall

be dedicated...At a minimum, the dedicated easement shall be adequate for lateral access during periods of high tide. In no case shall the dedicated easement be required to be closer than 10 feet to a residential structure...

This policy mandates the granting of a lateral easement at the top of the bluff, because at periods of high tide, the beach seaward of Santa Barbara Ranch is impassible. The current Project Description does not include a lateral easement along the bluff and therefore violates this policy.

**LCP Policy 7-18:** ...in order to maximize access to the beaches, vertical easements connecting the proposed bicycle trail (linking Santa Barbara and Gaviota) to the beach shall be acquired by a public agency at the following locations:...(2) Dos Pueblos Canyon.

The County has not acquired a vertical easement at Dos Pueblos Canyon as required by this policy. A segment of the bicycle trail proposed to link Santa Barbara and Gaviota is included within the Project, but the Project includes no access to the beach. This policy is directly applicable to the project at hand because Dos Pueblos Ranch in Dos Pueblos canyon is part of the project and the mouth of Dos Pueblos creek is adjacent to the project. The project otherwise includes no vertical access to the beach. Acquiring an easement at Dos Pueblos Canyon would remove the need to rely on other projects to provide vertical access, and in the event that those other projects do not provide vertical access, the easement would remove the need to build the stair structure that has significant visual and biological impacts.

**Coastal Act § 30212:** "(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection [of] fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected...(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Failure to provide access to the shoreline constitutes a violation of this policy because vertical access at Dos Pueblos Canyon is consistent with public safety and the protection of fragile coastal resources (e.g. seal haul out). Because adequate access does not yet 'exist' nearby (as admitted in the prior draft of the policy consistency analysis, which reads "vertical beach access on the SBR property in an area of the Gaviota Coast where beach access is highly desirable and no convenient access currently exists" [p. 54]), (2) cannot be used to justify lack of vertical access. Public pedestrian and bicycle beach access can be accommodated in the Dos Pueblos Creek corridor without adversely affecting agricultural resources. This corridor includes roads and trails, including private beach access facilities for the numerous residents of the Morehart residences. The corridor has sufficient width to create a beach access that avoids agricultural areas, and thus this finding that public beach access need not be provided on Dos Pueblos Ranch is not reasonable nor supported by substantial evidence.

**LCP Policy 10-1:** All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored to avoid development on significant historic, prehistoric, archaeological, and other classes of cultural sites.

All available measures have not been explored, and indeed additional mitigation measures and/or alternatives could avoid cultural resources and must be implemented to comply with CEQA. If these mitigation measures prove infeasible, the County must strengthen the TDR program, such that it can transfer development from culturally sensitive sites. If TDR is unsuccessful, the County must consider purchasing development rights from culturally sensitive areas to comply with this policy.

**GP LU Parks/Recreation Policy 4:** Opportunities for hiking and equestrian trails should be...expanded wherever compatible with surrounding uses.

Further expansion of hiking opportunities (e.g. along the bluff) is compatible with surrounding uses, and must be incorporated into the project to conform to this policy. Inland public hiking and equestrian trails are improperly omitted from the Project, and thus this policy has not considered

**LCP Policy 3-6:** Development and activity of any kind beyond the required blufftop setback shall be constructed to ensure that all surface and subsurface drainage shall not contribute to the erosion of the bluff face or the stability of the bluff itself.

There are currently no assurances that all surface and subsurface drainage will not contribute to the erosion or compromised stability of the bluff (*see* comment letter submitted by Barry Keller (7/9/08)). More study is required before any determination can be made regarding conformance with this policy.

**GP Visual Resources Policy 5 and LCP Policy 4-7:** utilities shall be placed underground unless "the cost of undergrounding would be so high as to deny service."

The PCA admits that one existing and four proposed water storage tanks, as well as the existing water treatment facility are located above ground. The PCA then states that mitigation measures would require these above-ground structures to use color treatments that blend with the surrounding environment. There is a patent conflict with this policy that is not resolved with the proposed mitigation measures. The Policy states that utilities *shall be placed underground*. These water system facilities may be placed underground, avoiding visual impacts and providing superior fire protection (due to the absence of exposed outlets). The only exception provided is where the cost would be so high as to deny service, and the PCA does not allege that this is the case, and we know of no evidence showing that undergrounding is cost-prohibitive. There is no substantial evidence that the project conforms to this policy and thus the finding cannot be made.

**LCP Policy 10-3:** When sufficient planning flexibility does not permit avoiding construction on archaeological or other types of cultural sites, adequate mitigation shall be required. Mitigation shall be designed in accord with the guidelines of the SOHP and CaNAHC.

PCA does not say the mitigation was designed “in accord with” the guidelines. Rather, that they would follow the NAHC guidelines regarding the management of unanticipated discovery of human remains, but as to the rest states “mitigation measures...would be consistent with and embody technical advice and guidance provided by OHP’s technical publications...” (p. 53)

The NAHC guidelines state that in most cases a field survey by a professional archaeologist will be required, to survey the entire property for cultural resources. *See Exhibit 23 to the Naples Coalition RDEIR Comments, January 23, 2008.* The guidelines go on to state “It cannot be stressed enough how important it is for the landowner or developer to complete the Phase I inventory stage as early as possible, and city and county planners are strongly urged to make this recommendation to their applicants.” Here, the entire site was not surveyed, instead outdated surveys of particular areas were relied upon. The supplemental surface inspection by URS archaeologists in April 2008 was not of the entire site. FEIR pp. 13-13 – 13-15.

Construction on lots DP-16 and DP-20 will directly impact *Mikiw* and may affect an unnamed habitation site north of *Mikiw*, and development outside of recorded site boundaries could result in unanticipated discoveries (MMRP p. 50). The MMRP proposes a Cultural Resource Program Plan (CRPP), to be submitted and approved prior to issuance of any permit or zoning clearance for any aspect of the project. The Project fails to conform to this policy and findings of consistency cannot be made. Last minute, minor relocations of Dos Pueblos Ranch development atop the village sites are patently inadequate and do not suffice as evidence to support a finding that feasible avoidance has been fully employed on these sites.

**LCP Policy 10-4:** “...activities other than development which could destroy or damage archaeological or historical sites shall be prohibited.”

Permitting new development on DPR south of Highway 101 to utilize septic systems could destroy or damage the significant archaeological sites present there, and discharge of water from the package treatment facility likewise could destroy or damage significant archaeological resources.

**LCP Policy 10-2:** When developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids impacts to such cultural sites if possible.

The Project is not designed to avoid cultural resources present on lots DP-15, DP-16 and DP-20. Lot 12 also contains cultural resources which must be avoided if possible. At least with regards

to the new development proposed for lots DP-15, DP-20 and Lot 12, if it cannot avoid cultural resources, these lots should be extinguished (note: DP-16 is the site of an existing residence; the new residence would be confined to its footprint, but this footprint is excessively large and includes features such as a leach field that is incompatible with the protection of archaeological resources.

**LCP 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.

The PCA states this policy is inapplicable and therefore does not address clustering. (see p. 31) Alt. 1B does not cluster structures to the maximum extent feasible, rather proposes a sprawling subdivision. Although this is a view corridor overlay policy, the LCP defines view corridors as "areas where there are views from a major coastal road to the ocean." This policy is therefore applicable because there are views from 101 across many parts of the Project as well as views from the public access roads south of the 101. Alt. 1B and the NTS fail to conform because the structures are not sited and designed to preserve unobstructed broad views of the Ocean.

The Project further violates LCP Policy 4-9 since clustering is not employed to the maximum extent feasible. The Project site layout and design is the opposite of clustering, with large lots and houses spaced out over hundreds of acres. The Project does not consider clustering of the Coastal residences, which would avoid visual and a myriad of other policy conflicts, and as such, patently violates this policy.

**LCP Policy 9-18:** Development shall be sited and designed to protect native grassland areas.

The PCA states that setbacks are sufficient (p. 47) however native grasslands were improperly mapped, as discussed at length in a separate letter submitted by EDC and the Coalition. Because of this, development and grading is proposed in areas that qualify for protection as native grasslands, and numerous setbacks may in fact be insufficient. The Project fails to conform to this policy.

**GP Hillside and Watershed Protection Policy 2;** "All development shall be designed to fit the site topography...and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms...shall be preserved to the maximum extent feasible..."

From the information in the FEIR and other project documents, it is evident that development is so oriented that grading and site preparation is not minimized, or that natural features and landforms will be preserved to the maximum extent feasible. The project considered in the EIR involved 116,400 CY of grading (62,800 CY cut, 53,600 CY fill) yet the Conditions authorize gross grading of 470,000 CY (295,000 CY cut, 175,000 CY fill). This represents a quadrupling of earthwork, with no apparent justification for the increase or evaluation of how these massive volumes of grading conform to this policy. As noted in prior comments, the Project involves

substantial landform alteration that has not been considered or disclosed except in cursory and summary fashion. There is no evidence that the Project conforms to this policy and indeed, substantial evidence that it does not, due to the unexplained substantial increase in volumes, the terracing of the site and manipulation of natural landforms.

**GP Hillside and Watershed Protection Policy 6 and LCP Policy 3-18:** “Provisions shall be made to conduct surface water to storm drains or suitable watercourses to prevent erosion.”

The PCA states that “Mitigation measures require BMPs to ensure that surface water is conducted to storm drains...”

While the MMRP contains various mitigation measures requiring BMPs to reduce surface water runoff, they do not require BMPs to conduct water to storm drains or suitable watercourses. Mitigation Measure WQ-1a includes BMPs to minimize soil movement however limits these BMPs to slopes greater than or equal to 5:1.

**LCP Policy 3-4:** bluff setback (p. 26) “The county shall determine the required setback. A geologic report shall be required by the County in order to make this determination.” The report “shall be prepared in conformance with the Coastal Commission’s adopted Statewide Interpretive Guidelines regarding “Geologic Stability of Blufftop Development.”

The County did not require a geologic report, rather relied on an outdated report (Hoover and Associates, 1986). A current report is required to determine whether climate change, sea level rise, Project seepage pit discharge, agricultural water practices, landscape watering, informal public and resident beach access on the bluff face and other factors have been adequately accounted for in establishing bluff retreat rates. There is ample evidence that changed conditions (global climate change and associated consequences) and Project activities will be radically different from what was contemplated and known in 1986.

**LCP Policy 2-2:** The long term integrity of groundwater basins or sub-basins located wholly within the coastal zone shall be protected. To this end, the safe yield as determined by competent hydrologic evidence of such a groundwater basin or sub-basin...shall not be exceeded...

The integrity of groundwater basins has not been determined by competent hydrologic evidence. The shale wells in the coastal zone intercept subsurface fresh water recharge that is integral to the ecological operation of the Naples Reef. This finding cannot be made.

**GP Conservation Element Policy 3.6:** The County shall not make land use decisions which would lead to the substantial over-commitment of any groundwater basin.

See LCP Policy 2-2, above. In the absence of safe yield information and preservation of native subsurface groundwater recharge to the marine wetlands, this finding cannot be made.

**GP Conservation Element Policy 3.7:** New urban development shall maximize the use of effective and appropriate natural and engineered recharge measures within project design....”

The PCA states this is inapplicable because the project does not represent an urban level of development (p. 14)—this is incorrect so this policy applies (see above). The Project’s recharge measures have not been maximized, and the impacts to geological stability, groundwater quality, and associated biological resources (terrestrial and marine) have been ignored. This finding cannot be made.

**LCP Policy 4-10:** ...landscaping when mature shall not impede public views.

Contrary to assertions in the PCA, this policy applies (see above discussion of LCP 4-9), and landscaping does purposefully impede public views so Alt. 1B is inconsistent with this policy.

**LCP Policy 7-4:** Requires the County to determine the environmental carrying capacity for “all existing and proposed recreational areas sited on or adjacent to dunes, wetlands...or any other areas designated as “Habitat Areas” by the land use plans. A management program to control the kinds, intensities, and locations of recreational activities so that habitat resources are preserved shall be developed, implemented, and enforced.”

The PCA claims this policy is inapplicable because the Project does not involve any “intensive recreational facilities.” (p. 38.) This policy applies however, and has not been complied with. *See* comment letter submitted by Elihu Gevirtz 10/9/08)

**LCP Policy 9-16A:** No grazing or other agricultural uses shall be permitted in coastal wetlands.

The PCA states that “grazing and other agricultural uses would be permitted only in the designated ACE areas.” (p. 47) However it is unclear whether grazing is allowed in the PACEs.

**LCP Policy 9-17:** Grazing shall be managed to protect native grassland habitat.

The PCA states that “grazing and other agricultural uses would be permitted only in the designated ACE areas.” (p. 47) However it is unclear whether grazing is allowed in the PACEs.

**LCP Policies 9-19 through 9-21** address vernal pools.

States that seasonal water bodies found on the site do not have vernal pool characteristics. (p. 47) However, vernal pools are known to occur near the site and the wetland delineation and other

biological surveys conducted for this project are woefully inadequate, as EDC has repeatedly argued and established with compelling evidence.

**LCP Policy 9-29** addresses foraging areas for kites, stating the “maximum feasible area shall be retained in grassland to provide feeding area for the kites.”

The PCA states that 570 acres of non-native grassland within the coastal zone will be within PACEs or protected open space areas. It further states that the Makar property provides 200 acres for the identified roosting pair to forage in “which is more than appropriate pursuant to the LCP standard of 30-125 acres per roosting pair.” (p. 48) The PCA gives no indication that 570 acres is the maximum feasible area, it may be that more can be feasibly protected. Further, the Makar property is slated for development and may not include adequate foraging area.

**LCP Policy 9-38:** No structures shall be located within the stream corridor...bridges (when support structures are located outside the critical habitat) may be permitted when no alternative route/location is feasible.

The PCA states that proposed bridge over Tomate Canada Creek would avoid direct impacts to the stream channel, and that utilizing the potentially feasible alternative access (Calle Real) may necessitate the construction of an additional roadway to provide emergency access. (p. 50) The PCA does not state whether the bridge includes support structures located inside the critical habitat. If it does, the bridge is prohibited by this policy, notwithstanding any absence of alternate routes. If it does not, the infeasibility of the alternative access must be determined before the bridge is considered. Additionally, the STP described below (LCP Policy 9-42) may also be prohibited by this policy if within the stream corridor.

**LCP Policy 9-42:** prohibits the installation of septic tanks within stream corridors.

The PCA states that one STP will be located within 100 feet of the Tomate Canada Creek stream channel, but that it would be subject to RWQCB waste discharge requirements. (p. 51) By locating this STP within the stream corridor, Alt. 1B violates this policy despite RWQCB requirements. Dos Pueblos Ranch has illegally installed and operated, and proposes additional new septic tanks in the Dos Pueblos Creek stream corridor. This policy is violated by Dos Pueblos Ranch and Santa Barbara Ranch’s development proposal.

**GP LU Development Policy 7** is not discussed in the PCA and may be applicable to the Project.

**Ridgeline and Hillside Development Guidelines (LUDC § 35.62.040)** are also not discussed in the PCA. These guidelines apply to structures proposed where there is a 16-foot drop in elevation within 100 feet in any direction from the proposed building footprint. PCA and FEIR do not include any reference to this policy or offer facts that would show that no project structure may be located within 100 feet from a 16 foot drop in elevation.

## **Conclusion**

In light of the foregoing, any finding that either Alt. 1B or the NTS are consistent with applicable policy is utterly unsupported by the evidence. We urge the Board to reevaluate policy consistency, and modify the project such that it conforms to applicable policy to the maximum extent feasible, prior to making any findings that the project conforms to applicable policy.

Respectfully submitted,

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Marc Chytilo  
For the Naples Coalition

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Nathan G. Alley  
For Santa Barbara Chapter of the Surfrider Foundation

Exhibit 1: Excerpt from EDC letter to Planning Commission (Jan. 23. 2008)



## LAW OFFICE OF MARC CHYTILO

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### ENVIRONMENTAL LAW

October 10, 2008

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

RE: October 13, 2008 Board of Supervisors Hearing on the Santa Barbara Ranch Project;  
Project Findings

*Dear Chair Carbajal and Honorable Members of the Board,*

This letter is submitted by the Environmental Defense Center on behalf of the Santa Barbara Chapter of the Surfrider Foundation and by the Law Office of Marc Chytilo on behalf of the Naples Coalition.

#### A. PROJECT FINDINGS

The draft Project Findings proposed for the Santa Barbara Ranch Project (the Project) contain a number of flaws and inaccuracies. We urge the Board to direct Staff to revise the Findings to correct these flaws and inaccuracies, described below. More importantly however, there are findings required for approval of various project components which simply cannot be made based on the record before the Board. For example, various applicable code sections require the Board to find that rezones, plan amendments, development plans and other project components are consistent with the Comprehensive Plan and/or other applicable policies. There is simply no evidence in the record to support findings of consistency.

§ I. B. 1, Project Applications, identifies Santa Barbara Ranch as the Applicant, but fails to identify Dos Pueblos Ranch, owner of a substantial portion of the Alt. 1B project site, as also a project applicant. SBR and DPR should be identified as co-applicants, and all requirements applicable to applicants applicable to DPR as well. To do otherwise results in a situation whereby DPR has an inordinate amount of control over the project, and ultimately could withhold critical benefits including perpetual conservation of agricultural lands under the ACE agreements and a trail segment that enables future connectivity to Las Varas and locations West

of the project site. The County's failure to secure an application from Dos Pueblos Ranch and process such an application has severely compromised the public's review and participation of Dos Pueblos Ranch development.

§ I. B. 7, Project Recommendation, states that the Applicant presented Alt. 1B "as a result of feedback received in connection with meetings of the Planning Commission, CBAR, AAC, and APAC." Characterizing Alt. 1B this way however, obscures the fact that the Applicant had an additional motivation in proposing the Alt. 1B project, namely the transfer of most development out of the coastal zone. This change, if the Board elects to separate the coastal and inland portions of the project<sup>1</sup>, will allow the Applicant to begin construction of inland lots immediately following Board approval.

Additionally, this section states that "As a result of these changes [introduced by Alt. 1B], coupled with the Final EIR's conclusion that Alternative 1B is the environmentally superior alternative, the Planning Commission has recommended approval of Alternative 1B in place of the MOU Project as originally proposed." This statement contains several inaccuracies. First, The FEIR concluded that Alternative 1A was the environmentally superior alternative; the Applicant proposed Alt. 1B after the FEIR was complete. The FEIR's conclusion that Alt. 1A is the environmentally superior alternative was not supported by substantial evidence, and other alternatives including Alternative 4 (reduced development) and Alternative 5 (clustered development) are both environmentally superior to both Alt. 1A and Alt. 1B. The last-minute introduction of Alt. 1B after the environmental review process was complete introduced evidence that alternatives and mitigation measures deemed infeasible in the environmental review documents due to non-cooperation of Dos Pueblos Ranch were no longer infeasible, yet the analysis made no attempt to define the environmentally preferred alternative using this additional information. Further, the Confirming Analysis performed for Alt. 1B was so cursory and insubstantial that it failed to discuss the environmental impacts of numerous changes the Alt. 1B project introduces. Any conclusion that Alt. 1B is environmentally superior therefore was not supported by complete or sound analysis of its impacts.

§ I.C.1, Draft Environmental Impact Report, states in part that the DEIR was recirculated to include "Reformatting to reinforce the MOU Project as the official project for which formal application has been made by dividing the document into distinct volumes that separately

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<sup>1</sup> The Naples Coalition and the Environmental Defense Center on behalf of the Surfrider Foundation have strongly urged the Board not to separate the inland and coastal projects for numerous reasons discussed in a separate letter to the Board. Briefly, postponing final approval of the inland entitlements pending approval of the LCP amendment and coastal entitlements by the Coastal Commission, is perfectly legal. It does not run afoul of *Sierra Club v. California Coastal Commission* (2005) 35 Cal. 4th 839, which held that the Coastal Commission could not deny a CDP based on impacts within the coastal zone of development outside the coastal zone. Awaiting Coastal Commission review to finalize inland approvals confers no jurisdiction on the Commission to consider project components outside the coastal zone. It merely ensures that the County will not issue final approval for the inland entitlements until its assured that coastal zone infrastructure necessary to serve the inland lots has been approved, and that DPR's coastal zone entitlements have been approved such that key benefits of the Project including the perpetual protection of agricultural lands in ACEs and a trail segment enabling future connectivity to the West, will be provided.

address the MOU Project and the Alternatives (including Alt. 1)." In fact, the reformatting obfuscated any notion that the MOU, and not Alt. 1, is the official project. This confusion as to what constitutes "the Project" has significantly hindered the environmental review process, particularly with regards to the identification and analysis of alternatives, and has significantly hindered the ability of the public and decisionmakers to understand what exactly is proposed and what the applicable legal requirements are. It is simply disingenuous to characterize Alt. 1A as an "alternative." The alternatives CEQA mandates be identified and discussed are alternatives which *reduce* the impacts of the project. Guidelines § 15126.6. Alt. 1 is not an alternative to the MOU project under CEQA because it does not, on balance, reduce the impacts of the MOU project. It significantly increases the level of development and geographic scope of the project, adding numerous additional significant impacts including impacts to cultural resources and impacts resulting from conflicts with applicable policy designed to protect the environment. Notably neither Alt. 1 or Alt. 1B remove or relocate development south of Highway 101 including the coastal bluffs.

§ III.A. General Plan Amendment, states correctly that Comprehensive Plan amendments must be in the public interest. The reasons stated in subpart 2 however do not establish that the amendment is in the public interest, and the record does not support this finding. The amendment will enable a 72 unit residential development which will irreparably damage the rural character of Naples.

The proposed Comprehensive Plan amendments are not in the public interest because: (1) they result in Class I significant adverse environmental impacts including substantially changing the overall visual character of the large, rural site, and cumulative loss of significant coastal and foothill habitats, and result in numerous other adverse impacts (Class II and III) identified in the EIR.

Finding III.A.2(i) notes that the policy amendments would comply with and further the objectives of Policy CLUP 2-13. However the objective of Policy 2-13 is clearly to avoid rezone and residential development of Naples to the extent possible through mechanisms including TDR, if feasible. The County's application of Policy 2-13 to the Comprehensive Plan amendments does not further the Policy's objective because it does not result in any TDR and allows full rezone of the project site. No evidence in the record demonstrates that partial TDR at \$73 million as identified by the County's TDR consultant plus build-out of SBR under existing zoning (up to 14 estate lots) is economically infeasible or otherwise not practical. Absent evidence demonstrating that partial TDR cannot help avoid a rezone of all or part of Naples, no evidenced supports a finding the Comprehensive Pan policies comply with Policy 2-13.

The County has not fulfilled its obligations under LCP Policy 2-13 to encourage and assist the transfer of development from Naples to appropriate urban locations, because the Board approved a TDR ordinance that virtually guarantees the failure of TDR. It is not in the public's interest to amend the Comprehensive Plan before the County has fulfilled its obligation under 2-13 to create a robust TDR program that will effectuate the goal of transferring development from Naples. It does not follow from the TDR study's finding that only partial TDR is feasible that a rezone is appropriate. Partial TDR plus build-out under existing zoning may be feasible but has not been

analyzed. Rather the Board should postpone any action on a rezone or Plan amendment until it creates a robust TDR program and that program has time to work.

Furthermore, it is unclear that preventing grid development is in the public interest because in reality, each grid lot will not in actuality be developed. Practical development considerations, site and policy constraints, noise profile, access, and site configuration all militate towards a combining of antiquated lots under any development scenario. The applicant's solicitations for the underlying lands disclose this clearly - Mr. Osgood has portions of the project site advertised for sale, but is not pursuing lot-by-lot sale, rather advertises 10-50 acre portions with equal or greater public amenities than the proposed project. Mormann, Exhibit 3

In addition, since the County relies on alleged consistency with Policy 2-13 to harmonize other policy conflicts, the Comprehensive Plan amendments are also inconsistent with other policies, including CLUP Policy 8-2 and CLUP Policy 4-3. For this reason, the Comprehensive Plan Amendments are counter to rather than in the public's interest.

Finding III.A.2(ii) claims that the Comprehensive Plan amendments provide a means for resolving an inherent conflict between legal residential lot densities and underlying land use designations at Naples. Notably, other alternatives analyzed in the EIR including Alternatives 4 and 5 are feasible, fulfill most objectives and provide means for resolving the inherent conflict between not densities and zoning while also minimizing impacts to the public's environmental. Finding III.A.2 ignores these other alternatives' ability to resolve the inherent conflict while better protecting the public's interests including views, open space, agriculture and habitats.

Finding III.A.2(v) notes the Comprehensive Plan amendments would "allow for continued agricultural operations, restoration of sensitive habitats, and improved recreational and coastal access opportunities" yet all of these uses are (a) already allowed, and/or (b) part of other feasible alternatives which impact less agricultural lands and habitats. Therefore Finding III.A.2.iii does not illustrate that Alt. 1B is in the public interest.

### III.B. Zoning Ordinance Amendment

1. Requirement (County LUDC § 35.104.060.A.1). The Board must find that the rezoning request is in the interests of the general community welfare. This finding is not supported by the substantial evidence in the record. See discussion of III.A. General Plan Amendment, *supra*.

Alt. 1B's rezone is not in the interests of the community's welfare. The rezone prioritizes limited water for future residents over agriculture. Agriculture is in the community's welfare, yet Alt. 1B converts 56.2 acres of prime farmland. Other feasible options including the applicant's MOU Project convert less than 1 acre of prime farmland.

Clean water is in the community's interest. The EIR notes the project will result in adverse impacts to water quality related to runoff from the oily streets, septic systems,

and fertilized landscapes. The Alt. 1B rezone would cause water pollution, and other alternatives would minimize the extent of the rezone and reduce pollution of the public's water. Alt. 1B is thus not in the interest community's welfare.

2. Requirement (County LUDC § 35.104.060.A.2). The Board must find that the rezoning request is consistent with the Comprehensive Plan, the requirements of State planning and zoning laws, and the LUDC. Such a finding is not supported by substantial evidence in the record, and cannot be made based on overt conflicts between the rezone and applicable policies and requirements, including Comprehensive Plan Land Use Development Policy 2 which provides that "The densities specified in the land use plan are maximums." The proposed rezone also violates Land Use Development Policy 3 which provides that "no urban development shall be permitted beyond boundaries of land designated for urban uses." The new NTS zone would permit urban development (defined as lots of less than 5 acres) beyond the boundaries of land designated for urban uses.
3. The rezone, zoning amendments and Development Agreement are not consistent with the Comprehensive Plan. First, many Comprehensive Plan policies were not considered in the County's analysis of this project. (See EDC RDEIR Comment letter)

Second the County used the wrong baseline to evaluate policy consistency, using a speculative future worst-case grid build-out scenario as the basis for project comparison instead of using existing conditions.

Third, the County illegally harmonized policy conflicts based on incorrect allegations of consistency with CLUP Policy 2-13.

Fourth, the County's policy consistency analysis improperly invoked the Coastal Act's "Balancing Provision" without evidence Coastal Act policies were in conflict.

Furthermore, the coastal zoning amendment and rezone amend the CLUP but this amendment has not been certified by the Coastal Commission. The County cannot make findings of consistency with the CLUP as amendment because the CLUP amendment is not Coastal Commission-certified. Therefore the County must await Coastal Commission certification of the CLUP amendment before making findings of consistency with the Comprehensive Plan / CLUP.

4. Requirement (County LUDC § 35.104.060.A.3). The request is consistent with good zoning and planning practices. This is evident from evaluation of the policies that apply to these lands and this project, both inside and outside the coastal zone. Staff and the so-called confirming analysis contend that the County is compelled to "balance" and "harmonize" purportedly conflicting policies that constitute, in ordinary circumstances, good planning. The County's analysis fails to examine

whether an acceptable and adequate project could be constructed on these lands. The EIR discloses that at least 3 of the studied alternatives will cause less adverse environmental impacts, and examination of the applicable land use policies discloses these alternatives avoid a number of the policy conflicts inherent in Alt. 1.

III.C. Development Agreement - Two development agreements were publicly released only shortly before the hearing. They are analyzed in other submittals.

#### III.D.1. Williamson Act Contract Modification

Findings cannot be made because the rezone is inconsistent with the Williamson Act. Findings cannot be made based on evidence in the record to support rescission of the Williamson Act agricultural preserve contract or to create an ACE in exchange for rescinding the contract.

- a. Requirement (Government Code § 51282(a)): The Board must find that 1) the cancellation is consistent with the purposes of this chapter [the Williamson Act]; or 2) the cancellation is in the public interest. The discussion which follows does not specify whether the cancellation is consistent with the purposes of the Williamson Act, and does not state that the WA-ACE exchange is in the public interest. Rather it states that the exchange “furthers agricultural preservation objectives by: (i) increasing the number of agricultural acres under protection; (ii) extending the duration of protection from 10 years to perpetuity; and (iii) providing a swath of protected agricultural land from the ocean to the mountains.” In fact, the exchange does not provide a swath of protected agricultural land from the ocean to the mountains, because the protections do not extend to the ocean. DPR excluded the lot known as DP-19 from ACE agreements and from the project. Without this lot, agricultural protections do not extend to the ocean.
- b. Requirement (Government Code § 51282(c)): The cancellation is only in the public interest if the Board finds: (i) that other public concerns substantially outweigh the objectives of this chapter [the Williamson Act]; and (ii) there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.

#### Finding III.D.1.b(1) Public Interest Consideration of Contract Rescission

The Williamson Act contract cancellation/rescission is not in the public interest because:

- (a) it converts 56 acres of prime farmland and does not physically replace them;
- (b) there is no evidence to support a finding TDR cannot feasibly avoid the need to cancel the contract, and evidence shows that partial TDR is feasible;
- (c) Alt. 1B converts more grassland habitat (229 acres) used by special-status species than any alternative considered in the EIR;

- (d) Alt. 1B results in greater impacts to public resources than any other alternative including water use, runoff, wastewater and sewage sludge generation and disposal, solid waste generation, traffic, air pollution and energy use.

Finding III.D.1.b(2) and Finding III.D.4.a(2) Alternative Lands

There are suitable, proximate, non-contracted lands available for the project which would avoid the need to cancel the Williamson Act contract, therefore Finding III.D.1.b(2) cannot be made. Specifically, as proposed by the applicant, the MOU Project i.e. SBR is a suitable, non-contracted land that can accommodate residential development sufficiently to avoid the cancellation of the Williamson Act contract. By virtue of the MOU Project being the applicant's original proposal, and the MOU Project's ability to avoid Williamson Act contract lands, the MOU Project site i.e. SBR which is owned by the applicant is a suitable non-contracted alternative site which renders it impossible to make Finding III.D.1.b(2).

This Finding claims that proximate land can only accommodate 15 units rather than the 40 planned on DP Ranch's Williamson Act agricultural preserve. However this overlooks two facts: (1) Alt. 1B can be scaled back while remaining economically viable, and (2) the applicant-proposed MOU Project is by definition feasible and does not require building 40 homes on DPR or rescinding the DPR Williamson Act contract.

Furthermore, evidence shows the County's new TDR Program further renders moot Alt. 1's Williamson Act contract rescission by providing alternative proximate locations to accommodate up to \$73 million worth of the development.

Finally, a 50 acre, non-Williamson Act contract parcel located proximately to the lands in question is now on the market. At the time of Agricultural Preserve Advisory Committee consideration, Commenters noted these lands had recently been conveyed and should be considered available. The Applicant stated they did not control these lands and they did not believe them to be available, however there is new evidence of their availability by their listing on the open market. See Exhibit 4. Unlike the adjoining Dos Pueblos Ranch lands, this land does not have active agricultural operations occurring and could not qualify for a Williamson Act contract.

Finding III.D.2.a and Finding III.D.2.a(1) cannot be made because evidence illustrates that the area proposed for agricultural conservation does not possess the necessary infrastructure to support long-term agriculture. The July 2008 letter from California DFG notes diversion of water from Dos Pueblos Creek must cease immediately. The County findings and Water Management Plan ignore this significant new information. DP Creek is the primary source of water for agriculture in the proposed ACE (Water Management Plan). Therefore Finding III.D.2.a(1) cannot be made.

Finding III.D.2.a(2) Long Term Commitment

The land proposed for the ACE is not threatened with conversion from agricultural in the near-term. The Findings claim that the land proposed for the ACE is threatened with inevitable conversion pressures arising from the potential to develop up to 274 legal lots. Notwithstanding

that the County EIR's analysis shows than only approximately half of SBR's 219 legal lots could be developed, the land proposed for the ACE is not within the Official Map, does not contain any of the 274 legal lots, and is therefore not threatened with conversion from agriculture due to these 274 legal lots.

This Finding compares the value of entitled Lot 132 (\$161,000 per acre) v. the land under agricultural preserve contract (\$926/acre) to suggest that the land under contract is threatened with conversion by economic pressures. However, the area of DPR planned for the ACE is zoned agriculture, is under Williamson Act contract not subject to cancellation, is outside the urban boundary, and is very steep and mountainous. County policies call for keeping this land zoned agriculture for the long-term. Therefore, the land proposed for the ACE is not threatened with conversion out of agriculture in the imminent or foreseeable future.

Moreover, even if indirect pressures mounted to develop DPR, development under existing agricultural zoning in the area of the ACE i.e. 100 acre minimum parcel size, such development would not convert DPR out of agriculture and would be consistent with ongoing agriculture. The DPR owner's claim to 27 legal lots is (1) not supported by any substantial evidence. Constraints including slopes limit the number of lots that are physically buildable. No analysis regarding adequacy of water supply or other constraints is included to suggest the development of 27 homes is a realistic threat. Even if the owner's unsupported assertions were true and there are 27 legal lots, development of 1 home per 100 acres is compatible with agriculture pursuant to County zoning, and therefore would not convert the area of DPR proposed for the ACE out of agriculture.

#### Finding III.D.2.b (Public Resources Code Section 10252 Conservation of Agriculture)

Pursuant to Public Resources Code Section 10252, an easement must make a beneficial contribution to the conservation of agriculture. However, the application of the agricultural contract exchange to this project converts 56 acres of prime farmland that can be avoided through feasible alternatives including the applicant's proposed MOU Project which impacts less than 1 acre. Alt. 1B also results in adverse and potentially significant agricultural land use conflicts identified in the EIR.

Moreover, the ACE would not meet the criteria for ACE designation. Specifically, the vast majority of the ACE is not within 2 miles of the exterior boundary of the sphere of influence of a city. Finding that only the "easterly property lines of SBR and DPR are located within two miles of the urban limit line" is not a finding – and must not be mistaken for a finding that the proposed ACE is within 2 miles.

Given the new DFG's restrictions on water supply, the quality of the land proposed for conservation in terms of its ability to support agriculture is now in question.

#### III.E.1: Subdivision Map Act

- b. Requirement (State Government Code § 66473.5): No local agency shall approve a tentative map...unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement is consistent with the general plan...The proposed finding admits that the density proposed is inconsistent with the general plan but that inconsistency will be remedied by the proposed amendments. The proposed Map however is inconsistent with other general plan policies contrary assertions in this proposed finding. As stated previously, the proposed project violates numerous county policies. These policy conflicts are discussed at length in a separate letter submitted by this office specific to the issue of policy consistency. Because of these inconsistencies, the subdivision is not consistent with the general plan, and this requirement of the Subdivision Map Act cannot be made.

Moreover, the County cannot find the subdivision consistent with the Comprehensive Plan / CLUP because the inland subdivision overtly relies on 'transferred' development potential from coastal lots, and because the Project requires a CLUP amendment but the CLUP amendment has not been approved by the Coastal Commission.

- c. Requirement (State Government Code § 66474): The following findings shall be cause[] for disapproval of a Vesting Tentative Tract Map (VTTM):
- i. The proposed map is not consistent with applicable general and specific plans. The proposed map for the SBR project is not consistent for reasons stated in response to III.E.1.b., above.
  - ii. The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans. The proposed design and improvement of the SBR project is not consistent for reasons stated in the response to III.E.1.b, above, and discussed at length in a separate letter submitted by this office on policy consistency.
  - iii. The site is not physically suitable for the type of development proposed. The inland area and the coastal area on Dos Pueblos Ranch is actively farmed and highly valued for its agricultural productivity, and its part in the rural agricultural landscape of the Gaviota Coast. Moreover, the inland area is *highly* constrained geologically. It has a Moderate-Severe rating on the Geologic Problems Index, as shown on the County Seismic Safety Element Map attached hereto as Exhibit 1, and the second highest Slope Stability and Landslides problem rating on the County Seismic Element Map attached hereto as Exhibit 2. The biological, visual, and cultural value of the project area also renders the site not physically suitable for estate residential development. For these and other reasons the site is not physically suitable for residential development.

- iv. The site is not physically suited for the proposed density of development.  
The subdivision should be disapproved unless substantial modifications are made to portions of the project site clearly unsuitable for the type of development involved. Indeed the Naples site is not physically suitable for 72 estate residences. This level and density of development far exceeds anything on the Gaviota Coast, and for reasons stated above, the site is not physically suitable to development at all, let alone 72 estate residences with associated guest houses, pools, garages, etc.
  - v. The design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The FEIR for the SBR project found that the project would have significant and unavoidable impacts on biological resources and visual resources. The project has significant unmitigated impacts that the FEIR failed to properly classify, including significant impacts to cultural and agriculture resources. Due to these significant environmental impacts, the project's design and improvements are indeed likely to cause substantial environmental damage. The proposed finding states erroneously that the project will avoid sensitive plant and animal species to the maximum extent feasible and will mitigate vegetative disturbances at a 3:1 ratio. Feasible project alternatives exist that would avoid sensitive plant and animal species to a much greater degree than Alt. 1B. Further, mitigation measures including revegetation at a 3:1 ratio, were not updated to account for the significant increase in vegetation removal required for Alt. 1B. *See e.g.* MMRP, pp. 21 and 22.  
  
Similarly, the project will substantially and avoidably injure fish and wildlife habitat. The project results in a Class I impact to habitat including 229 acres of grassland habitat (which supports dozens of special-status plant and animal species) identified in Confirming Analysis. The feasible Cluster Alternative (Alt. 5) avoids most of this injury to wildlife habitat. The applicant may not prefer Alt. 5 but there is no evidence it is infeasible or fails to fulfill most of the project objectives.
- d. Requirement (State Government Code § 66474.4):
- The County must deny the proposed subdivision, tentative map or parcel map because the resulting parcels will not be incidental to the commercial agricultural use of the land. The primary purpose of the project is not agriculture; it is to develop a residential development. The development is not incidental to the agricultural use. The primary economic value will be the development not the agriculture.

If water is scarce, the residential developments are prioritized over all agriculture according to the Water Management Plan, further demonstrating that the residential development is not incidental to the agricultural use of the land.

Furthermore, the resulting lots would be "too small to sustain their agricultural use" i.e. would not be agriculturally viable. (Project Findings page 17) Therefore Finding III.D.1.d cannot be made.

### III.E.2: County Subdivision Regulations

- a. Requirement (Lot Line Adjustment, County Code, Chapter 21, § 21-93 and LUDC § 35.30.110.B.): The Board must make six distinct findings, including that the LLA is in conformity with all applicable provisions of the Comprehensive Plan and this Development Code, and that all lots comply with the minimum lot size requirements for the applicable zone unless four or fewer existing lots are involved in the adjustment, the LLA will not result in increased subdivision potential for any affected lot, and the LLA will not result in a greater number of residential developable lots than existed prior to the adjustment.

The County must deny the proposed subdivision, tentative map or parcel map because the resulting parcels will not be incidental to the commercial agricultural use of the land. The primary purpose of the project is not agriculture; it is to develop a residential development. The development is not incidental to the agricultural use. The primary economic value will be the development not the agriculture.

If water is scarce, the residential developments are prioritized over all agriculture according to the Water Management Plan, further demonstrating that the residential development is not incidental to the agricultural use of the land.

Furthermore, the resulting lots would "too small to sustain their agricultural use" i.e. would not be agriculturally viable. (Project Findings page 17) Therefore Finding III.D.1.d cannot be made.

The lot line adjustments proposed on DPR south of Highway 101 result in 5 lots which are less than the 100-acre minimum parcel size for the zone district. The existing minimum parcel size in this area is 100 acres. However, the County proposes to reduce minimum parcel size in this area to 10 acres prior to the planned lot line adjustments. The County is jury-rigging the system to reduce the minimum parcel size in order to be able to make Finding III.E.2.b. However the lot line adjustments as planned will not result in lots which comply with the existing minimum parcel size and therefore the County cannot make Finding III.E.2.b.

### III.F: Final Development Plans

1. Requirement (County LUDC § 35.82.080.E.1.a): The Board must find that the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the density and intensity of development proposed. The Board cannot make this finding for reasons stated in response to State Government Code § 66474 iii and iv. The project site is not physically suited for the proposed development. Significant impacts to views and habitats are dictated by the project and the site. The site is not suited for the development because the development results in significant impacts to views and habitats. The site would be suitable for a smaller development that would avoid significant impacts to physical views and physical habitats.
2. Requirement (County LUDC § 35.82.080.E.1.b): The Board must find that adverse impacts are mitigated to the maximum extent feasible. The Board cannot make or sustain this finding because the record clearly demonstrates that adverse impacts are not mitigated to the maximum extent feasible. Contrary to the finding, substantial evidence demonstrates it is feasible to lessen impacts to sensitive species and habitats. (Ellis, 2008) The Findings inaccurately claim vegetative disturbances will be mitigated at 3:1; grasslands will not be replaced at all.
3. After circulation of the environmental impact report, Caltrans purportedly disclosed that they required reconfiguration of the highway on/off ramp, and a new Development Plan was added to the Project Description. There has been no environmental review conducted on this new component of the project, which involves potentially significant impacts to highway safety, visual characteristics, cultural resources and potentially other areas, and thus, the findings of adequate street and roads cannot be made due to the lack of CEQA compliance and thus the legal impossibility of construction of this facility.
4. Requirement (County LUDC § 35.82.080.E.1.d): The Board must find that there are adequate public services, including but not limited to, fire protection, water supply, sewage disposal, and police services to serve the project. The record reveals that there are inadequate fire protection services available to serve the project. While providing funding for a new fire station is required mitigation, there are no guarantees that the station will be built before the proposed project is built, if at all. Project construction activities will substantially increase risks of wildfire ignition, yet there will be inadequate Fire Department resources to respond to such fires, which increases the potential for larger conflagrations. The Gaviota Fire and the Gap Fire exemplify the need for prompt responses to prevent small fires from becoming large fires, as well as the explosive flammability of the Gaviota Coast. The proposed 'staging area' is woefully inadequate as it would not be equipped with firefighters and critical fire fighting equipment. As noted elsewhere, the Project lacks demonstrated access to infrastructure and utilities, in part from the bifurcation of the project. Other public services may be inadequate including trash, schools, and water supplies. The CDFG letter regarding Dos Pueblos Creek demonstrates a potential lack of public

services i.e. water. The EIR failed to use both relevant Solid Waste Impact Thresholds of Significance from the County's Thresholds and Guidelines Manual. Solid Waste service is not ensured as the County is rapidly approaching a full landfill. The above finding therefore cannot be sustained.

5. Requirement (County LUDC § 35.82.080.E.1.e): The Board must find that the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding areas. The project is incompatible with the surrounding rural agricultural and open space nature of the area. The project's visual incompatibility is acknowledged to be a significant and unmitigable (Class I) impact to visual resources, resulting from the change in visual character. The CEQA Findings state "the visual character of Alternative 1B would nonetheless be one of a rural ranchette development, as opposed to a more open and agricultural landscape, and, as a result, is considered to have a significant and unmitigable impact on the visual character of the landscape." (p. 10) Because of its visual incompatibility, and incompatibility with the agricultural and open space use of the surrounding area, the above finding cannot be sustained. Finding III.F.5 overlaps with Finding III.F.2 which requires that all *adverse* impacts be mitigated to the maximum extent feasible. The Project will be detrimental to the health, welfare, comfort and convenience of the neighborhood, and is incompatible with the surrounding area. The identification of adverse and significant adverse impacts to the area's environment illustrates the Project's detriment to the neighborhood. Finding II.F.5 notes all significant impacts are mitigated to the maximum extent feasible, however the less than significant adverse impacts are not mitigated to the maximum extent feasible pursuant to Finding III.F.2.
6. Requirement (County LUDC § 35.82.080.E.1.f): The Board must find that the project is in conformance with the applicable provisions of the Development Code and the Comprehensive Plan, including any applicable community or area plan. The project is not in conformance with numerous provisions of the Comprehensive Plan, and conflicts with numerous provisions of the Development Code as discussed repeatedly herein, in the response to the policy analysis, and as identified in the EDC RDEIR comment letter. Because of these conflicts, the above finding cannot be made. *See* Policy Consistency Analysis critique, submitted as a separate letter to this Board.

In addition, the findings of Local Coastal Plan policy consistency until the Local Coastal Plan revisions are accepted by the Coastal Commission into the LCP. CDP findings of conformity, even if offered conditionally, are unavailable to allow a CDP to be issued.

7. Requirement (County LUDC § 35.82.080.E.1.g): The Board must find, in designated rural areas that the use is compatible with and subordinate to the scenic and rural character of the area. The proposed use is neither compatible nor subordinate to the scenic and rural character of the area. The proposed 72 unit subdivision, and each of

the associated elements, including roads, 300,000 cubic yards of grading, structures and activities each change the visual character of the area, a Class I impact to visual resources and is not compatible nor subordinate to the scenic and rural character of the area.. See response to County LUDC § 35.82.080.E.1.e, above.

### III.G: Conditional Use Permits:

1. Requirement (County LUDC, § 35.82.060.E.1.a): The Board must find that the site for the proposed project is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed. The Board cannot make this finding for reasons stated in response to State Government Code § 66474 iii and iv, above. The Project Findings at page 20 acknowledge that “the overall change in visual character caused by the development of the Project would not be consistent with the existing rural agricultural land on and adjacent to the property.” Therefore Finding III.F.7 – that “In designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area” – cannot be made.
2. Requirement (County LUDC, § 35.82.060.E.1.b): The Board must find that within the Coastal Zone, adverse environmental impacts will be mitigated to the maximum extent feasible and within the Inland area significant environmental impacts will be mitigated to the maximum extent feasible. The Board cannot make this finding for reasons stated in response to County LUDC § 35.82.080.E.1.b, above. Statements that land use compatibility and visual impacts and conflicts have been minimized Project modifications have not substantially lessened the overall change in visual character. No evidence supports a finding that these land use and visual conflicts have been minimized to the maximum extent feasible. None of the approximately ten homes visible from Highway 101 – or the homes visible from the ocean and trails under Alt. 1B have been eliminated from the project, or even relocated out of view. Evidence prepared by appraiser John Ellis, MASI of Integra Realty demonstrates it is feasible to further lessen these conflicts by strategically deleting lots with the greatest visual and land use incompatibilities. Therefore it is improper for the County to find that the Project is compatible with and subordinate to the scenic and rural character of the area.
3. Requirement (County LUDC, § 35.82.060.E.1.c): The Board must find that there are adequate public services, including fire protection, police protection, sewage disposal, and water supply to serve the proposed project. The Board cannot make this finding for reasons stated in response to County LUDC § 35.82.080.E.1.d
4. Requirement (County LUDC, § 35.82.060.E.1.e): The Board must find that the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area. The Board cannot make this finding for reasons stated in response to County LUDC § 35.82.080.E.1.e.
5. Requirement (County LUDC, § 35.82.060.E.1.f): The Board must find that the project is in conformance with the applicable provisions of the Development Code and the

Comprehensive Plan, including any applicable community , Local Coastal or area plan. The Board cannot make this finding for reasons stated in response to County LUDC § 35.82.080.E.1.f

6. Requirement (County LUDC § 35.82.060.E.1.g): The Board must find, in designated rural areas that the use is compatible with and subordinate to the scenic and rural character of the area. The Board cannot make this finding for reasons stated in response to County LUDC § 35.82.080.E.1.g. The Project Findings discussion on page 21 indicates that the County uses an improper baseline to find the Project compatible with and subordinate to the scenic and rural character of the area. The discussion of Finding III.F.7 compares conditions with development of the Project to conditions with development under the speculative, worst case scenario grid build-out. Finding III.F.7 requires a determination that the Project is compatible with and subordinate to the *current* scenic and rural characteristics of the area - not some speculative future, worst-case scenario.

### III. H: Coastal Development Permits:

1. Requirement (County LUDC/Article II, § 35.83.050.E.1.a): The proposed development conforms to: (i) applicable provisions of the Comprehensive Plan, including the CLUP and any applicable community or area plan; and (ii) the applicable provisions of this Development Code (unless exempt under Chapter 35.101) The Board cannot make this finding for reasons stated in response to County LUDC § 35.82.080.E.1.f. The County cannot make findings of Project consistency with the CLUP to issue CDPs because the Project's CLUP amendments have not been certified by the Coastal Commission.
2. Requirement (County LUDC/Article II, § 35.83.050.E.1.c): The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks, and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement and processing fees have been paid. There are currently at least two zoning enforcement actions pending at the County for violations on both SBR and DPR. Prior to making the above finding, the Board must assure that all violations, including those subject to the current enforcement actions, are fully abated and all fees have been fully paid.
3. Requirement (County LUDC/Article II, § 35.83.050.E.1.d): The development complies with the standards of Section 35.30.100 (Infrastructure, Services, Utilities, and Related Facilities) The Board cannot make this finding because the development does not comply with the standards of Section 35.30.100 including that all utilities be placed underground unless it would be cost prohibitive to do so. The record demonstrates that some utilities including water tanks will be located above ground, but there is no evidence showing it would be cost prohibitive to locate those tanks underground.
4. The County must not find that the lots on which the Project is proposed were legally created. The Coastal Commission must first find the coastal zone lots legally created and accept the Official Map as a basis for the proposed CLUP amendment.

### III. I: Land Use Permits:

1. Requirement (County LUDC, § 35.82.110.E.1.a): The proposed development conforms to: (i) applicable provisions of the Comprehensive Plan, including the CLUP and any applicable community or area plan; and (ii) the applicable provisions of this Development Code (unless exempt under Chapter 35.101). The Board cannot make this finding for reasons stated in response to County LUDC § 35.82.080.E.1.f. No evidence supports a finding that the Project is consistent with the CLUP as amended and certified by the Coastal Commission. The amended CLUP must be certified by the Coastal Commission before this finding can be made. See Finding III.H.1 above.
2. Requirement (County LUDC/Article II, § 35.82.110.E.1.c): The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks, and any other applicable provisions of this Development Code, and any applicable zoning violation enforcement and processing fees have been paid. *See* response to County LUDC/Article II, § 35.83.050.E.1.c, above. Evidence in the record illustrates that there are numerous potential zoning violations and many non-conforming structures. The County claims that all such structures and uses shall be remedied prior to issuance of zoning clearance of final Approval of the Land Use Permit. However no accounting of the violations is provided to ensure such illegal and non-conforming uses are all remedied. Remedying all such uses and structures would be very costly. For instance, there is an estimated several dozen non-conforming septic systems based on the itemization of existing structures on DP Ranch contained in the record. To put families out of the farm worker housing to upgrade all the structures and septic systems to meet code is a monumental undertaking. No evidence in the record illustrates this can feasibly be done. Therefore the County must provide an assessment of whether it is feasible to remedy all zoning violations and non-conforming uses - prior to making the finding that such a remedy will occur.

### IV. Policy Consistency Analysis:

Policy Consistency is discussed in a separate County document, and comments on that analysis are contained in a separate letter submitted by this office. However, the brief paragraph on "Context" included in the Project Findings, demonstrates a key problem with the overall approach to policy consistency analysis. The Findings state:

The analysis takes into account existing baseline conditions; most notably, that the Project is more protective of coastal resources compared to lot-by-lot development following the grid pattern of the existing Naples Townsite. Further, the analysis takes into account: (i) the overarching provisions of the Coastal Act Section 30010 that prohibits the imposition of conditions or application of policies in ways that result in a "taking" of private property; and (ii) the California Coastal Act and County's CLUP allow for potential conflicts and inconsistencies to be "harmonized" through the application of CLUP Policy 2-13.

Not only does the analysis 'take account' for baseline provisions, takings and balancing provisions, it uses these as its principal guidance. Clear policy inconsistencies are balanced or harmonized away, without any effort to meaningfully identify the inconsistencies or attempt to reduce them. For example, General Plan Visual Resources Policy 2 and LCP Policy 4-3 prohibit the siting of structures such that they intrude into the skyline as seen from public viewing places. As proposed, at least five project residences intrude into the skyline as seen from public viewing places.

This approach is problematic because avoiding the policy inconsistencies expected with grid development is a key reason for pursuing planned development at Naples.

The County has set a very low standard for compliance with its own policies by balancing upfront before attempting to reduce inconsistencies to the maximum extent feasible.

## **B. CEQA Findings**

### III.B.1 Impact Bio-22

Finding III.B states that Alt. 1B's two Class I impacts (Bio-22 and Vis-0) cannot be mitigated any further. This assertion is not supported by substantial evidence in the record. No analysis shows that it is not practical to proceed with alternatives or mitigation measures which further lessen or avoid these impacts. As an example, the Finding that project's contribution to the cumulative impacts to grassland habitat (229 acres per Alt. 1B Confirming Analysis) is mitigated to the maximum extent feasible lists the mitigation measures designed to reduce impacts to wildlife movement, wetlands and grasslands. These measures do not result in avoidance or replacement of the 229 acres Alt 1B proposes to remove (Impact Bio-22). Areas of grassland to be avoided by design under Alt. 1B would be degraded by the project according to the EIR<sup>2</sup> and thus do not mitigate the project's direct loss of 229 acres contributing to Impact Bio-22. Therefore the mitigation measures cited in this finding do not reduce or compensate for the acreage of grassland eliminated.

Compared to Alt. 1B, the applicant's Alt. 1 feasibly avoids impacts to approximately 35 more acres of grassland habitat according to the EIR: 194 acres<sup>3</sup> would be removed for Alt. 1. The MOU Project proposed by the applicant is by definition feasible and removes less: 138 acres according to the EIR.

Alternative 5 reduces the loss of grassland habitat to less than 100 acres. Evidence may suggest Alternative 5 to be less profitable than the applicant's preferred project, but no evidence shows Alternative 5 to be infeasible. Since the MOU Project is a feasible way to further mitigate and almost halve Alternative 1B's contribution to cumulative Impact Bio-22, the County cannot find it is infeasible to further lessen Impact Bio-22. Finding III.B cannot be made.

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<sup>2</sup> FEIR at 9.4-70 and 9.4-71

<sup>3</sup> FEIR at 9.4-59

The Department of Fish and Game (DFG) identified feasible compensatory mitigation measures for the project's contribution to the large loss of sensitive grassland habitat (Impact Bio-22) but these measures – including offsite conservation easements - were rejected by the County without evidence of infeasibility and are not referenced in Finding III.B.1.

By stating that mitigation measures “cannot avoid this impact [Bio-22] entirely,” Finding III.B uses the wrong legal standard. Under CEQA, Class I impacts cannot be avoided but must still be mitigated to the maximum extent feasible. No evidence supports finding that Alt 1B's contribution to Impact Bio-22 is mitigated to the extent feasible. The conditions of approval fail to mitigate Alt 1B's contribution to Impact Bio-22 to the maximum extent feasible. The record includes evidence that other feasible project designs - e.g. the MOU Project - plus compensatory mitigation as suggested by DFG would further mitigate this Class I impact yet were rejected without cause.

#### III.B.2 Impact Vis-0

As with Finding III.B.1 above, Finding III.B.2 (Impact Vis-0) uses the incorrect standard. The Finding states, “... it is not possible to avoid a change in the visual character on the property.” Class I impacts are significant unavoidable impacts, yet must be still mitigated to the maximum extent feasible pursuant to CEQA. The finding claims “The project design minimizes the effect to the extent feasible by directing new development towards inland portions of the site, which are less visible from the highway.” Yet no evidence in the record exists showing it is infeasible to eliminate all or some of the visible lots north of Highway 101 to lessen the Class I Impact Vis-0. Eliminating all or some of the approximately 10 visible lots north of Highway 101 is a feasible mitigation which would [substantially] lessen Impact Vis-0. The conditions of approval do not require moving these visible homes below ridgelines or out of view from Highway 101 and no analysis shows it would be infeasible to do so. The only substantial evidence in the record regarding the feasibility of reduced alternatives supports a finding that a project which eliminates up to 12 of the most expensive homes is an economically, technically and legally feasible project alternative. (Ellis 2008). While the TDR Study (Solimar 2007) may indicate that revenues would be less from a reduced project, the study assesses only one side of the equation (revenues); no analysis shows that applicant's profits (revenues minus costs) would be less than the development industry standard or that a reduced project is otherwise economically infeasible. Reduced profits do not necessarily make alternatives infeasible; an alternative is only economically infeasible when substantial evidence shows it is financially impractical. (*Citizens of Goleta Valley v. County of Santa Barbara*) Absent evidence demonstrating a reduced project which eliminates some or all of the homes visible from Highway 101 is infeasible; the County cannot find that Impact Vis-0 is mitigated to the maximum extent feasible.

Impact Vis-0 is the overall change in visual character for the project site as a whole. Finding III.B.2 does not address visual change in character south of Highway 101. There are measures which could feasibly mitigate the overall change in visual character of the project site south of

Highway 101 e.g. eliminating lots, reducing home sizes, moving lots north from the coastal bluff to protect ocean views, and clustering, but the conditions of approval relating to re-siting of homes as well as Finding III.B.2 ignore the area south of Highway 101.

Condition D.1.d defers mitigation of significant Impact Vis-0 to BAR, but Condition D.1.a ties the BAR's hands by prohibiting it from substantially reducing the size or number of homes to the extent feasible to mitigate the significant impact.

#### III.C.1.b Mitigation Measure Geol-2

Finding III.C.1.b is that Impact Geol-2 is mitigated to below significance by Mitigation Geol-2. Mitigation Geol-2 allows grading to within 50 feet of major streams which violates LCP Policy 9-37. Policy 9-37 prohibits development, including grading, within 100 feet of major streams. Impact Geol-2 is not mitigated to below significance because Mitigation Measure Geol-2 is illegal. Finding III.C.1.b cannot be made because it relies on an illegal mitigation measure to lessen Impact Geol-2 to less than significant.

#### III.C.2.b Mitigation Measure WQ-1

Mitigation WQ-1 defers development of a SWPPP to after EIR certification and lacks performance standards to ensure water pollution from urban runoff will be less than significant. "The SWPP may contain all or some of the mitigation measures suggested in the EIR," according to the Finding. Of the 35 measures identified in Mitigation Measure WQ-1a, any two can be implemented to comply with this mitigation measure as written. The other 33 measures could be ignored. Absent performance standards to ensure that the SWPPP is meaningful and effective at reducing runoff, no finding can be made that Impact WQ-1 is mitigated to below significance.

#### III.C.3.b and d Mitigation Measures Bio-1b and 2b

Finding III.C.3.b and III.C.3.d rely on deferred, post-EIR certification special-status plant surveys. Without knowing the presence of special-status plants at the time of the EIR certification it is impossible to gauge whether impacts will be significant and unavoidable. Yet the EIR assumes it will be feasible to mitigate impacts to special-status plant species even without knowing the extent of their presence in development footprints. The Findings that Mitigation Measures Bio-1b and Bio-2b help mitigate Impacts Bio-1, Bio-7 and Bio-11 and Bio-2 and Bio-17 (respectively) to less than significant cannot be made; Mitigations Bio-1b and Bio-2b defer baseline surveys, impact analysis and mitigation with no performance standards and assurance it will be possible to mitigate impacts to less than significant.

#### III.C.3.g Mitigation Measure Bio-5

Wetland delineations done for portions of the Alt 1B project site were not done according to accepted scientific standards and are not reliable as baseline information. (Painter 2008; Magney 2008) Formal wetland delineations in other portions of the Alt. 1B site are deferred and it is therefore premature to conclude that impacts to wetlands can be mitigated to less than

significant. Mitigation Measure Bio-5 does not specify which areas will be delineated. It is an inadequate mitigation that does not ensure complete wetland identification, thorough impact analysis or mitigation to less than significant. Finding that wetland impacts can be mitigated to less than significant without first delineating the wetland baseline is impossible. The EIR failed to delineate all wetlands, determine if there are impacts, and identify areas for wetland mitigation and instead deferred this analysis of impacts to after EIR certification. The extent of the wetlands and impacts are unknown, therefore the County cannot find that this impact can be mitigated to less than significant.

#### III.C.4.b and d Mitigation Measures HM-2, HM-3 and HM-5

Mitigation Measures HM-2 and HM-3 improperly defer baseline surveys of the extent of hazardous contamination under the development envelopes. (Kram 2008) Without a baseline characterization, it is impossible to gauge the extent of contamination or the feasibility of mitigation. (Kram 2008) It may be infeasible to mitigate certain impacts. (Kram 2008) Until the impacts are identified it is impossible to find that impacts can feasibly be mitigated to less than significant so Findings III.C.4.b and d lacks supportive evidence and cannot be made.

#### III.C.5.a Mitigation Measure AG-1

Mitigation Measure AG-1 requires recordation of an easement on 2,684 acres but this land is not threatened with development. It is zoned agriculture, in the rural area, under agriculture preserve contract with no notice of cancellation, and it is largely steep and undevelopable. Even if it could be placed in an ACE it would not create any new prime agricultural soils and would thus not mitigate the loss of prime agricultural soils. However this land cannot be placed in an ACE under the proposed easement exchange because findings for the Williamson Act contract rescission and easement exchange cannot be made in part because the land proposed for the ACE is outside 2 miles from Goleta's sphere of influence/city boundary, and the land proposed for the ACE is not threatened with conversion out of agriculture in the foreseeable future. (See EDC and Naples Coalition comments on Williamson act findings.)

In addition, the finding claims that "the easement will provide for the continuation of expansion of agricultural uses." The continuation and expansion of agricultural uses is provided for on this land with or without the ACE by way of the agriculture zoning and largely undevelopable nature of the steep landscape. Moreover, Alt 1B's use of water supplies including SWP and shale wells takes back-up water supplies from agriculture. In the event of a shortage of water, Alt 1B takes precedence in water use over agriculture and agricultural water supplies are not guaranteed (Water Management Plan, 2008). Mitigation Measure AG-1 is not reliable or effective mitigation for the permanent loss of 56 acres of prime agriculture soils.

The record is clear that it is feasible to lessen the project's 56 acres of conversion of prime agricultural soils to less than one acre. The MOU Project proposed by the applicant would limit conversion of prime soils to < 1 acre according to the EIR and record documents.

### III.C.8a and b Mitigation Measures Cultural-1 and -2

The EIR defers baselines and fails to mitigate cultural impacts to less than significant. DP-15, -16 and -20 (homes and septic leach fields) are atop cultural sites. These homes could feasibly be eliminated to substantially lessen this impact. Since these impacts are significant, though purportedly mitigated, they must be avoided or mitigated to the maximum extent feasible. No evidence shows it is infeasible to eliminate these homes to lessen the cultural resource impacts to the extent possible.

### III.C.13 Global Climate Change

There is no evidence that meeting California Title 24 Energy Code standards and implementing energy conservation will lessen the project's impact on global warming. There are no thresholds, so there is no evidence the project reduces emissions of GHG to below significant.

Even in the absence of identified thresholds significant impacts can be made. Given AB 32's requirement to reduce GHG emissions in California, any increase is a significant project specific impact and contribution to a significant cumulative impact. These Class I impacts must be addressed in Findings section II and must be mitigated to the maximum extent feasible. There is no analysis showing that additional measures, including smaller homes, prohibitions on RSUs, fewer homes, and the applicants' formerly proposed DPR solar array are infeasible. Therefore findings cannot be made the global climate change effects are less than significant or mitigated to the maximum extent feasible.

### III.D.4 Hazards and Hazardous Materials

It is premature to find that offsite contaminated soil disposal is a less than significant (Class III) Impact because baseline surveys and site characterizations have been deferred. It may be that large volumes of soil must be moved around off the site, but this cannot be known until proper baseline surveys are undertaken. Hopeful thinking, not evidence supports this finding.

### III.D.5 Land Use

Alt. 1B is inconsistent with various policies including coastal policies so Impact Land-1 is not Class III. The EIR's policy consistency analysis is flawed. It uses an improper baseline. It excludes many relevant policies identified in EDC/Surfrider comments. Until a complete policy consistency analysis is undertaken it is premature to find the project complies with all policies and that Land-1 is Class III. Additionally, the CCC has final say over consistency with the Coastal Act and the County's application of coastal policies. Finding Land-1 less than significant is therefore premature and as noted above incorrect.

### III.D.6 Agricultural Resources

As noted above under 3.C.5.a, findings for the Williamson Act contract rescission and easement exchange cannot be made. Therefore Finding III.D.6 – that cancellation of a Williamson Act contract is less than significant - cannot be made.

### III.H – Findings regarding Alternatives

#### III.H.2 Findings that Certain Project Alternatives are not Feasible

##### Findings that Alternatives Fail to Achieve a Reduced Density that Landowners will Develop in Lieu of Grid Development

The Findings dismiss alternatives because landowners would allegedly elect to choose the purportedly more valuable grid development.

Findings that certain alternatives (e.g. Alternatives 2, 4, and 5) fail to achieve a reduced density that landowners will develop in lieu of the grid development note that the applicants would be precluded from realizing “nearly \$100 million in development right value associated with development of coastal terrace lots” under the MOU or Alternative 1 Projects. (See e.g. CEQA Findings page 41)

Because this finding hinges on whether the applicant would pursue the alternatives based on *economic considerations*, this finding embodies an argument that the alternatives are not economically feasible i.e. not practical to proceed.

Under CEQA, alternatives may cost more and may generate less revenue than an applicant’s preferred project while still being economically feasible. (*Citizens of Goleta Valley v. County of Santa Barbara*) Economic feasibility is not based on what applicants would like to make on their project; it is based on whether an alternative is practical. There is no evidence that foregoing all or some of the profits from the 9 coastal bluff lots renders an alternative impractical. While such alternatives may generate less revenue, they also cost less to build. Other than recent information submitted by EDC and Surfrider (Ellis 2008) no analysis of the applicant’s revenues and costs is included in the record. Ellis concluded that it is feasible to eliminate 12 of the largest homes on the bluff. Therefore there is no evidence showing that alternatives which protect the coastal bluff are economically or otherwise infeasible. While such alternatives may not be preferable to the applicant because they generate less profit, the County is required to mitigate significant impacts to the maximum extent feasible and to comply with policies if it means approving such a less-profitable alternative, as long as the alternative is feasible and fulfill most project objectives.

The findings do not consider costs or profit margins and only consider revenues. Just because an alternative generates less revenue does not mean it is infeasible. The findings consider only one side of the equation – revenues – and do not consider costs and profitability which are necessary to define alternatives’ economic feasibility.

Evidence in the record illustrates it is feasible to reduce the project to further mitigate significant impacts. (Ellis, 2008)

##### Findings of Legal Infeasibility

The findings claim all alternatives involving Dos Pueblos Ranch other than Alternative 1/1B are legally infeasible because the Dos Pueblos Ranch owner will not cooperate. The Dos Pueblos Ranch owner is a co-applicant for the Alternative 1 Project, and is seeking various permits for development on DP Ranch which renders the DP Ranch owners co-applicants for Alternative 1 – the preferred project analyzed at project level in the EIR. Evidence shows Alternative 1 has been the preferred applicant proposed project since before release of the RDEIR and DEIR, so these documents were flawed to refer to Alternative 1 as an alternative. The County cannot pretend the DP Ranch owners are not applicants merely because the original project was limited to Santa Barbara Ranch. To continue claiming Alternative 1/1B is an alternative and not the project is misleading and inaccurate. Doing so is a transparent attempt by the County to restrict the range of alternatives to only that supported by the applicant.

Alternatives using Dos Pueblos Ranch cannot be deemed legally infeasible merely because of applicants' preferences. Yet this is being done in the findings. As long as alternatives fulfill most objectives and are socially, technically, and economically feasible and are not illegal, they cannot be rejected by the County.

#### Grid Alternative (Alt. 3)

The Findings find that the Grid Alternative is “not supportive of any of the project objectives.” However, the findings also find that certain alternatives are not feasible because they would not generate enough revenue to convince the SB Ranch applicant not to pursue the Grid Alternative. The County cannot claim the Grid Alternative is infeasible and then use the threat of the Grid Alternative to find that other alternatives are infeasible.

The above paragraph illustrates that the County is trying to eliminate all alternatives except for that desired by the applicants because the County wants to make the SB Ranch applicant's lawsuit go away.

#### Reduced Development Alternative (Alt. 4)

(A) Alternative 4 substantially lessens significant impacts.

The Findings note that Alternative 4 does not reduce any of the significant and unavoidable impacts of the MOU Project. Evidence in the record demonstrates that Alternative 4 and other alternatives that reduce development substantially lessen the project's significant impacts including Impact Vis-0.

Regardless, EIRs are required to include a range of feasible alternatives which substantially lessen significant impacts and fulfill most objectives. By acknowledging Alternative 4 does not reduce any significant impacts, the Findings help illustrate the EIR's inadequate range of

alternatives. Findings that the County has considered an adequate range of alternatives which avoid or substantially lessen significant impacts cannot be made.

(B) Findings grossly mischaracterize Alternative 4 by claiming bluff lots deleted.

The Findings grossly mischaracterize Alternative 4. The Findings state on page 43 that Alternative 4 would forego \$100 million in additional development right value by excluding development of the nine coastal bluff lots. However, Alternative 4 includes the nine coastal bluff lots. (FEIR Fig. 11.5-1)

No evidence in the record shows that Alternative 4 – despite elimination of several low to medium-value inland lots - is not economically feasible i.e. that it is not practical. In fact evidence in the record supports a finding that Alternative 4 is feasible.

Evidence in the record illustrates without dispute that eliminating up to 12 expensive lots is economically feasible. (Ellis 2008)

#### Clustered Alternative (Alt. 5)

The Findings claim that Alternative 5 is inconsistent with the rural and agricultural nature of the Gaviota Coast. Yet this same criticism is true for Alternative 1/1B and the MOU Project. (See, e.g. page 4-37 of FEIR). While the EIR finds that changes to Alternative 1 could ensure consistency with the existing rural character, Alternative 1B still is not consistent with the rural character of the coast as evidenced by visual simulations, testimony and other evidence in the record. Moreover, just as the EIR can specify changes to Alternative 1 and the MOU Project to try to ensure compatibility with the rural character, similar changes can be made to the Cluster Development Alternative to ensure it is compatibility and consistent with the area's rural character. It is biased for the findings to selectively apply changes so that the applicant's preferred alternative (i.e. Alt. 1) but not others (e.g. Alt. 5) can be found compatible with the rural character of the Gaviota Coast.

#### III.H.2.d.i.c - Allegedly fails to achieve long-term solution

The findings' criticism of Alternative 5 – that it fails achieve a long term solution involving DPR (CEQA Findings page 45) – can also be levied against the applicant's proposed MOU Project, and is therefore not a valid criticism. The proposed MOU Project – like Alternative 5 - does not include DPR yet the MOU Project (the applicant-proposed project) is by definition feasible and in furtherance of the project objectives. The Findings cannot dismiss Alternative 5 for failing to fulfill an objective when the alternative is equal to the Project with respect to that objective. Alternatives (e.g. Alternatives 4 and 5) cannot be rejected for allegedly failing to fulfill an objective that the Project does not fulfill.

Furthermore, like Alternative 1 applies the MOU Project concept to both DPR and SBR, the Clustered Alternative concept can easily be applied to both ranches to address DPR's antiquated lots. The EIR's failure to include a Clustered Alternative for both ranches (like it applied the MOU concept to both ranches through Alt. 1) to fulfill this objective coupled with the finding that Alt. 5 must be rejected for not resolving DPR's antiquated lots is an indication that the County did not consider an adequate range of alternatives which it believes fulfill project objectives.

#### III.H.2.d.ii – Alleged Economic Infeasibility

See comments above regarding economic feasibility of alternatives.

#### III.H.2.d.iii Alleged Legal Infeasibility

The Findings are in serious error by claiming that "Alternative 5 would require cooperation from the Schulte family, who has confirmed that they will not allow development of the Dos Pueblos Ranch parcels under consideration in Alternative 5, rendering this Alternative legally infeasible." Alternative 5 does not entail any development on DPR and is therefore a legally feasible alternative.

#### Transfer of Development Rights (Alt. 6)

The CEQA Findings mischaracterize and misstate Solimar's findings regarding the economic feasibility of TDR. The Findings claim on page 46 "As valued in the TDR Report, Alternative 6 would likely result in a return of just \$20 million." This is not Solimar's Finding. Solimar found that \$20 million could be *initially* raised for TDR from donations and grants, but that a total \$73.2 million could feasibly be raised for Naples TDR. Specifically, after winnowing 80 receiver sites to 8 then applying a 61% reduction factor to account for "the current political debate" and "realities of land use on the south coast," Solimar found that TDR could generate \$73.2 million. (Santa Barbara Ranch Transferrable Development Rights (TDR) Feasibility Analysis, Solimar, March 8, 2006, page 79) The CEQA Findings' statement that only \$20 million could be raised for TDR is factually incorrect and not supported by evidence in the record. As a result, the Findings improperly dismiss TDR as economically infeasible. However, no evidence in the record looks at the other side of the economic feasibility equation - i.e. the applicant's costs – or at the profit margins of alternatives (i.e. revenues minus costs). Alternatives can cost more or result in less profit than an applicant's preferred project and still be economically feasible. Until an analysis of the applicant's costs and revenues is undertaken, there is no evidence in the record demonstrating that alternatives including TDR are economically infeasible.

Existing zoning on SBR allows build-out of up to 14 estate lots. No analysis shows that build-out under existing zoning is economically infeasible. Build-out of 14 estates at \$10 million each, for example, plus \$73 million from TDR may be economically feasible. In this instance TDR is a

feasible alternative, but the EIR failed to analyze the economic feasibility of TDR and of partial TDR. Findings that TDR is infeasible are therefore unsupported.

### Failure to Consider Adequate Range of Alternatives

The EIR does not contain an adequate range of feasible alternatives which substantially lessen the project's significant impacts while fulfilling most of the project objectives. The Findings note that all alternatives in the EIR except for one (Alt. 1) are infeasible. Analyzing one feasible alternative in an EIR is inadequate. Therefore the Findings that the project analyzed an adequate range of alternatives to comply with CEQA are in error.

### III.H.3 No Evidence Supporting Finding Alternative 1B is Environmentally Superior Alternative

Alternative 1B substantially increases the project's contribution to significant cumulative impact Bio-22, the loss of coastal and foothill habitats. Specifically, Alternative 1B increases the MOU Project's conversion of grassland habitats (138 acres) to 229 acres according to the Confirming Analysis. This is a substantial increase in a significant impact identified in the EIR, and illustrates that Alt. 1B is not the Environmentally Superior Alternative.

Alternative 1B increases conversion of prime soils from 56 acres to less than 1 acre.

Alternative 1B adds DP Lots 15, 16 and 20 atop the ancient Chumash village sites.

By including more units over a larger area, Alt. 1B increases the MOU Project's storm water runoff.

By virtue of having 71 units and an employee duplex as opposed to 54 units, Alt. 1B increases per capita-based environmental impacts (e.g. traffic, air pollution, water demand, energy demand, wastewater and sludge generation, and solid waste production, etc.) proportionately.

Without analysis, Alternative 1B presumes the development potential of DPR's antiquated lots creating more development potential than exists, further increasing the environmental impacts of development over the MOU Project's impacts.

The Finding claims Alternative 1B is superior because of the Agricultural Conservation Easement Exchange. However, Alternative 1B cancels a Williamson Act agricultural preserve contract to convert hundreds of acres of farmland (56 acres of prime farmland) to urban development. Much of this conversion can feasibly be avoided, including by SBR-based alternatives some of which impact less than 1 acre of prime farmland.

The area proposed for the agriculture conservation easement (ACE) created to offset the loss of farmland is already protected and not threatened by development. It is zoned agriculture, it is

outside the urban boundary, it is by and large not part of the Naples town site, and it is part of a Williamson Act preserve contract which is not subject to non-renewal. If Alternative 1B were not approved, there is no evidence in the record that development of Dos Pueblos ranch is more likely. Therefore since neither Alternative 1B nor SBR-based alternatives would result in development of the large ACE, Alternative 1B is not superior to other alternatives for this reason as the Finding claims.

The Finding notes that Alt. 1B has design guidelines “to reflect more rural-sensitive architecture.” However such design guidelines would be imposed on any alternative so the Findings cannot single out Alternative 1B as superior based on this feature common to all alternatives.

The finding that is supported by substantial evidence is the finding that Alt. 1B “reduces the potential for view impacts” from Highway 101 northward. (CEQA Findings page 46)

However, as noted above and demonstrated in the Confirming Analysis and FEIR, Alt. 1B significantly increases the project’s contribution to Class I Impact Bio-22 from 138 to 219 acres.

Due to its larger size, scale and scope, Alt. 1B also increases virtually every other environmental impact. The evidence in the record clearly shows that Alt. 1B is not environmentally superior to the MOU Project

#### III.H.3.a Best Meets Project Objectives

Alt. 1B does not resolve policy and environmental issues that “are otherwise anticipated if the owners of Dos Pueblos Ranch independently pursue development”<sup>4</sup> because Alt. 1B is hogtied by DPR’s conditions for participation. If development of DPR were pursued independently DPR would be the “applicant” and could not – as it is doing with Alt. 1B – restrict alternatives and mitigation measures that feasibly mitigate the project’s impacts. Contrary to the finding, the environmental and policy issues are not resolved by the County submitting to DPR’s conditions. Through a subsequent CEQA review process for a DPR project, however, the County could resolve policy and environmental issues because the County could impose feasible conditions and mitigation measures to resolve such issues. Under Alt. 1B the County is allowing DPR - as a voluntary owner of an offsite alternative – to dictate the conditions of Alt. 1. This does not *resolve* the environmental and policy issues.

#### III.H.3.b Results in More Beneficial Impacts

As noted above, because neither Alt. 1/1B nor the SBR-based Alternatives 4 and 5 and MOU Project would result in conversion of agricultural lands within the large portion of the ACE proposed outside the town site, neither creates nor avoids a significant impact in this area.

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<sup>4</sup> CEQA Findings page 47.

Therefore Alt. 1B does not avoid significant agricultural impacts of the MOU Project – it rather increases them – and Alt. 1B is not environmentally superior for lessening agricultural impacts.

#### IV Statement of Overriding Considerations

##### *Issue Resolution*

Alternative 1B would not implement Policy 2-13 because it does not include TDR. TDR was determined to be partially feasible by the Board, yet no requirements have been imposed to transfer development into the urban area. Such transfer, even at \$73 million, plus build-out of up to 14 SBR lots under existing zoning, may feasibly avoid the proposed rezone as intended by Policy 2-13 but the County has not analyzed whether partial TDR plus build out under existing zoning is economically feasible. Therefore Alt. 1B does not comply with Policy 2-13 or resolve the inherent land use conflicts at Naples, and does not override significant impacts.

##### *Agricultural Preservation*

Alternative 1B would preserve agricultural land but this land is not threatened with development or conversion from agriculture. The land proposed for the ACE is already in Williamson Act contract with no notice of non-renewal, is zoned agriculture with 100-acre minimum parcel size and is outside the urban boundary. There has never been a proposal to develop the large majority of the ACE. It is largely too steep and constrained to develop. Given the current protection of this area, Alt. 1B offers marginal if any agricultural preservation benefit. Instead, Alt. 1B removes over 56 acres of existing prime farmland and over 220 acres of agricultural land. Alt. 1B adversely affects agricultural resource preservation by resulting in less on-the-ground farmland than currently exists, and by creating land use conflicts with new residences next to farmland.

##### *Resource Protection*

The County uses the wrong baseline to argue that Alternative 1B benefits natural resources. In fact Alt. 1B contributes to a Class I significant and unavoidable cumulative loss of habitats identified in the FEIR as Impact Bio-22. The Findings claim that Alt. 1B is less harmful to natural resources than the Grid Alternative considered in the EIR. However, this is an irrelevant comparison because Alt. 1B would significantly degrade natural resources using the existing conditions as a baseline. Alt. 1B damages and does not provide benefits for natural resource protections which can be used to override Alt. 1B's significant impacts.

Thank you for your time and attention. Please contact us with any questions.

Sincerely,

Brian Trautwein  
Environmental Analyst  
Environmental Defense Center

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Marc Chytilo

Law Office of Marc Chytilo

Cc: California Coastal Commission  
Naples Coalition  
Surfrider Foundation

Exhibit 1: County Seismic Safety Element Map, Geologic Problems Index

Exhibit 2: County Seismic Safety Element Map, Slope Stability and Landslides

Exhibit 3: Kerry Mormann & Associates, The Santa Barbara Ranch, 10/5/08

Exhibit 4: Kerry Mormann & Associates, The Dos Pueblos Orchid Ranch, 10/5/08



## LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

October 10, 2008

Chairman Salud Carbajal  
Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, CA 93101

**Re: Santa Barbara Ranch Project & Visual Resources**

Dear Chairman Carbajal & Honorable Supervisors,

This letter is submitted by the Environmental Defense Center on behalf of the Santa Barbara Chapter of the Surfrider Foundation and by the Law Office of Marc Chytilo on behalf of the Naples Coalition.

The County Planning Commission has recommended that your Board certify the Santa Barbara Ranch Project (Project) Environmental Impact Report (EIR). We object to that recommendation for a number of reasons, and we believe that the EIR should be revised and recirculated as required by the California Environmental Quality Act (CEQA).<sup>1</sup> This letter will address issues related to the EIR Visual Resources analysis and why that analysis is deficient under the law. Further discussion of the EIR and Visual Resources can be found in our separate letter regarding CEQA and dated October 10, 2008.

The Gaviota Coast is recognized as a scenic area of international significance. See Exhibit 2, Gaviota Coast Draft Feasibility Study and Environmental Assessment, 4/2003, p. 36-37. Measured by the sheer number of people who will be affected by the proposed Project, visual impacts may be its most lasting and widely felt consequence. The EIR understates the scenic value of Naples, but the public surely does not.

### **The Project Violates Visual Resource Policies**

Visual resource policies of the existing Coastal Land Use Plan (CLUP) and Comprehensive Plan state: "Structures ... *shall* be sited so as not to intrude into the skyline as seen from public viewing places." (Emphasis added.) This is plain language

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<sup>1</sup> CEQA Statutes § 21092.1; CEQA Guidelines § 15088.5(a)(3).

and gives clear direction to the County; it is not subject to interpretation. The policy is mirrored in Local Coastal Plan (LCP) Policy 4-3.

The proposed Project would violate these policies – at least five homes will have contours that break the skyline, as seen from public viewing places. This must be acknowledged in the EIR as a significant Project impact.<sup>2</sup>

The issue of skyline intrusion is indicative of the EIR's overall failure to properly follow the County Thresholds and Guidelines Manual.<sup>3</sup> That document sets forth specific impact assessment methodology which are not apparent in the EIR. Case in point, the EIR analysis continually finds that none of the Key Observation Points (KOPs) depict conditions that violate local coastal policies. Yet evidence in the record shows that the Project will violate polices that prohibit skyline intrusions, as discussed above.

### **EIR Visual Resources Analysis Is Inadequate**

The EIR fails to analyze the significant changes to the visual profile of the bluff-top lots introduced by Alt. 1B. The Confirming Analysis disregards the visual impacts of the significant design changes incorporated into Alt. 1B, and understates the visual impact of allowing two-storied structures on the coastal bluff. Design of the bluff residences is expected to take advantage of the significant view opportunities, including balconies, additional lighting, and general increase in the bulk of the coastal bluff structures, which will significantly increase the visual profile of the homes, and substantially increase the Project's visual impacts.<sup>4</sup>

The FEIR included a significant change in the Project Description from a visual perspective – quadrupling grading volumes from 116,400 cubic yards to 480,000 cubic yards, but ignored the visual impact significance. Landform alteration impacts are presumably increased to a commensurate degree, but there is no mention of the visual significance of substantial topographical alterations associated with this magnitude of grading whatsoever in the FEIR. Further, the tightening of structure density in the Alt. 1B design necessarily involves steeper and more highly altered slopes between each house to create level building pads in the sloping inland terrain of Santa Barbara and Dos Pueblos Ranches. These cut and filled slopes will appear as a series of terraces or stairsteps from the south, including the coastal viewpoint trail and its blufftop viewpoint terminus, where viewers will have no choice but to turn and look to the mountains after reaching the dead-end trail, as prescribed by the Planning Commission. The enormity of the Project's topographical alteration will likely be evident from that vantage.

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<sup>2</sup> See CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936.

<sup>3</sup> The skyline intrusion issue further demonstrates the County's willingness to 'flexibly' interpret policies where no flexibility is permitted by the policy language.

<sup>4</sup> These changes constitute significant new information added to the EIR after the close of public comment but before certification, for which recirculation of the EIR is required pursuant to CEQA. See Guidelines § 15088.5 (a); *Laurel Heights* 6 Cal. 4th at 1120;; also see our letter on CEQA submitted 10/10/08.

Concomitantly with the topographical modifications, the Project relocates development and structures along two prominent ridges that are visible from viewpoints other than the Highway 101 corridor and nearby surface roads. In particular, the eastern ridge is prominent when viewed from the various public viewing places on Farren Road to the north east of the Project. As noted in the EIR and in the attached Exhibits, Farren Road is heavily used as a recreational corridor for bicyclists, hikers, birdwatchers, and for viewing sunsets over the Gaviota Coast. The FEIR notes only that intervening topography blocks views of the site from Farren Road "from many locations", but clearly not all. Farren Road is a trail corridor and includes many popular pullouts, and the EIR and confirming analysis fail utterly to evaluate the Project's visibility, in particular Alt. 1 B's topographical alterations and structures, from each point along Farren Road.

Visual impacts will be increased from KOP 4, Farren Road, since Alt. 1 B's relocating homes further north and higher in elevation moves them closer to Farren Road and important public views. This change results in substantial increases to the Project's prominence and visibility, and Impact Vis-4 no longer accurately characterizes this impact.

Additionally, the FEIR's analysis of views from private homes is nonsensical, stating that "Although approximately 2,000 residence in approximately 500 residences (Census 1999) live within the census block boundary, few have unobstructed views." FEIR 9.9-4. Views from private residences existing and proposed for Farren Road and in the foothills must be identified, not discounted through linguistic gobbledygook. There is no attempt at full disclosure of this impact.

Impacts of the Project to views of the Project's landscape from the ocean are significant, but these views were not simulated or adequately addressed in the EIR and the County's conclusion to the contrary is without credible evidence. View impacts will be felt by many recreational users of the Naples Reef area and areas nearby, including recreationalists using public trails at El Capitan, surfers and those boating, fishing, diving, paddling or observing wildlife at sea. Significantly, views of the Project site are currently of open space, visually stunning in its openness and overall scenic quality. The Project would destroy the visual quality of the site as seen from the open ocean, near-shore areas and nearby beaches including El Capitan, as well as from public trails proposed as part of the project, by altering landforms and adding 700,000 square feet of structures, plus roads and other improvements. By the County's own criteria, the project has significant visual impacts. See County Environmental Thresholds and Guidelines Manual, p. 180; also see our letters on the RDEIR and our 10-10-08 letter on CEQA for further discussion.

The EIR improperly relies upon vegetative screening to mitigate Project impacts. Santa Barbara Ranch sits in a region prone to wildfire, and vegetation is ephemeral.<sup>5</sup>

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<sup>5</sup> The majority of the vegetative screening for the Project is provided by eucalyptus, a particularly flammable tree type that increases the fire risk associated with the project, discussed in our comments on CEQA.

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Chairman Salud Carbajal, Santa Barbara County Board of Supervisors re: Visual Resources

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Mitigation is therefore not certain and should be further strengthened. The EIR also fails to adequately address impacts from landscape screening and other visual resource mitigation measures.

In addition, the visual simulations prepared by the Applicant for Alt. 1B are not representative of the view of the project as experienced by travelers on Highway 101. *See* Reeve Woolpert Letter (October 9, 2008), attached hereto as Exhibit 1. Significant visual impacts remain despite the Applicant's shifting of some lots further north. Further, Alt. 1B does nothing to reduce visual impacts associated with the coastal portion of the Project.

## **Conclusion**

The County's assessment of visual impacts of the Project is fatally flawed. Properly conducted, a complete and competent visual impact analysis would disclose that the Alt. 1 B Project will cause significant adverse effects to visual resources in the area. We urge the County to consider a Project alternative that reduces (Alternative 4), clusters (Alternative 5) and transfers development (Alternative 6), and which includes less visible development onsite. That Project alternative would be properly deemed "environmentally superior" and most capable of protecting coastal resources, including views.

Thank you for your time and attention. Please contact us with any questions.

Sincerely,

Nathan G. Alley  
Staff Attorney  
Environmental Defense Center

Marc Chytilo  
Law Office of Marc Chytilo

cc: California Coastal Commission  
Naples Coalition  
Surfrider Foundation

Exhibit 1: Letter submitted by visual expert Reeve Woolpert (10/9/08)

Exhibit 2: U.S. National Park Service, Gaviota Coast Draft Feasibility Study and Environmental Assessment, 4/2003, p. 36-37.

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Exhibit 3: Comprehensive Plan Parks Recreation and Trails Map for the Santa Barbara – Goleta Area (PRT-3)

Exhibit 4: Santa Barbara Audubon Society Field Trips Webpage (printed May 28, 2008)

Exhibit 5: Santa Barbara County Birding's website, search for 'Farren' (printed May 28, 2008)

Exhibit 6: SBslopers Webpage (printed May 28, 2008)

*MARK KRAM, Ph.D.*  
*Hydrogeologist/Environmental Geochemist, CGWP #471*  
*Santa Barbara, CA 93101*  
*Phone (805) 844-6854*

10/08/08

Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, California 93101

RE: Santa Barbara Ranch (Naples) Project Approval Issues

Chairman Carbajal and Members of the Board of Supervisors,

I am a Hydrogeologist and Certified Ground Water Professional specializing in hazardous waste assessment, remediation, and water supply issues. I have over 20 years of experience and have written national guidance through EPA, ASTM and ITRC on these topics. I recently had an opportunity to review the proposed Santa Barbara Ranch FEIR submitted by the applicant. On July 18 of 2008 I submitted a detailed letter to the Planning Commission to express my concerns about the responses to my RDEIR comments. During the public hearing, the majority of my concerns were deemed insufficient to warrant a more complete characterization of known hazardous materials on the Santa Barbara Ranch to protect future inhabitants from potential toxic exposure. Furthermore, it is my belief that our community, in particular the County, could experience significant legal exposure if the project proceeds as currently planned, as the conclusions presented in the FEIR regarding mitigation of impacts due to hazardous waste releases on the property are based on a non-intrusive (e.g., no sample collection or analysis) "Phase I Environmental Site Assessment" prepared before new scientific information about potential risks became available. The purpose of this letter is to reiterate my concerns, to encourage you to review my letter to the Planning Commission, and most importantly, to encourage you to require a Phase II hazardous waste investigation prior to approval of this project.

I was just informed that once approved, the applicant will be required to locate each of the former oil extraction wells, and that no structures shall be within 10 feet of these locations. I'm not sure how this safe distance criteria was derived, but believe very strongly that a comprehensive investigation should be performed before project approval to determine the site-specific potential migration pathways associated with any contaminant sources. Only through this type of assessment can an adequate safe distance be derived. In addition, drilling muds and other types of potentially hazardous materials were likely disposed of during well installations and operations. It is critical that all disposal locations be identified, that the extent of contamination be determined, and that an exposure pathway be conducted for each of these categories of toxic releases. Furthermore, once hazardous materials are identified, all impacts due to implementation of selected remediation approaches should be carefully evaluated and mitigated.

Remediation of hazardous materials can involve extensive grading and excavation of large volumes of soil, venting of contaminants, treatment in place, and other strategies that could have substantial additional environmental impacts on Santa Barbara Ranch.

One particular exposure pathway that was given very little attention by the Planning Commission, but is currently gaining significant attention from the regulatory community, is referred to as "vapor intrusion". As you might expect, this refers to the situation whereby volatile contaminants in the subsurface migrate into the air in living spaces, exposing residents to potentially considerable concentrations of hazardous chemical contaminants and causing health impacts and economic injury. Since the wells may not have been adequately sealed (i.e., the FEIR did not even include a map of their presumed locations relative to the development footprint), and waste pits were most likely unlined and thus potentially contaminated a considerable amount of soil, vapor intrusion is indeed a very real possibility at Santa Barbara Ranch. If contaminated soils are not detected, these soils may be used as fill under houses. Even if contaminated soils are not disturbed, a ten foot separation between the wellhead could place structures over the "mud pit" that accompanies each exploratory well.

As stated above, once a potential source is identified (e.g., well, waste pit, etc.), assessment of vapor intrusion potential should commence prior to approval and initiation of any grading. Please note that the potential for vapor intrusion was not considered in the Phase I Environmental Site Assessment performed by Russell Consultants in 2002. In fact, the American Society for Testing and Materials (ASTM) released their guideline (ASTM E2600) for including vapor intrusion assessments as a corollary to their Phase I assessment guidance (ASTM E1527) just this past March (<http://www.mondaq.com/article.asp?articleid=62850>). EPA and ITRC guides are in development, as this concept and migration pathway is proving to be a significant risk factor. As such, I believe it would be irresponsible to ignore this issue given what is known about the history of this site and the current plans to inhabit areas of potential risk.

Regarding financial exposure, if it is discovered that a large contaminant plume exists, that groundwater has been impaired, or that a migration pathway for hazardous contaminants into a sensitive habitat or dwelling can be articulated, costs for restoration could be significant ([http://www.foley.com/publications/pub\\_detail.aspx?pubid=4152](http://www.foley.com/publications/pub_detail.aspx?pubid=4152)). This could have direct impact on the plan, as it could render the development unprofitable or allow for the facilitation of the TDR process. Furthermore, since the County has elected to not study these concerns through a comprehensive hazardous assessment, if contamination is then later discovered by a future homeowner, the County's legal exposure could be significant.

In summary, the FEIR does not adequately address critical impacts associated with hazardous waste releases, and subsequent costs and health risks to the community, as additional environmental assessments will be required to evaluate current and future conditions as they relate to the proposed development alternatives for the Santa Barbara Ranch property. I strongly suggest that the County gain this essential information before

Click on "Bookmarks" for a Table of Contents of all Documents included.

deciding on a development plan for this site. The future consequences of ignoring this critical element could be considerable.

Thank you for your time. Your efforts are greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Kram". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dr. Mark Kram, CGWP #471  
Hydrogeologist/Environmental Geochemist  
Santa Barbara, CA 93101  
805-844-6854



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003

IN REPLY REFER TO:  
2008-FA-0073

October 10, 2008

Santa Barbara Clerk of the Board  
Board of Supervisors  
County of Santa Barbara  
105 East Anapamu Street, Room 407  
Santa Barbara, California 93101

**Subject:** Comments on the Proposed Final Environmental Impact Report for the Santa Barbara Ranch Project, Santa Barbara County, California (Case No. 04EIR-00000-00014)

Dear Supervisors:

We are writing in response to the County of Santa Barbara (County) Board of Supervisors' notice of public hearing for the proposed Santa Barbara Ranch Project, which was received in our office on October 3, 2008. The notice indicated that the County Planning Commission has made the following recommendations to the Board of Supervisors: (i) adopt findings in support of project approval; (ii) certify the final environmental impact report (FEIR); (iii) adopt implementing resolutions and ordinances; and (iv) approve Alternative 1B subject to specified conditions. We are providing comments on the FEIR, in order to address the adequacy of the County's responses (as described in the section 15.0 of the FEIR) to the comments contained in our January 23, 2008, letter regarding the draft environmental impact statement for the subject project.

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the taking of any federally listed endangered or threatened species. Section 3(18) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways. If a project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7(a)(2) of the Act. If a proposed project does not involve a Federal agency

but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act.

### **General Comment**

While we remain concerned with a number of the County's responses to issues raised in our January 23, 2008, comment letter, our primary concern is that the FEIR proposes to defer issues regarding the presence of federally-listed species and the proposed project's potential for take of these species, if present, to a time when opportunities for effectively incorporating avoidance and minimization measures into the project description would be lost. Deferring the identification of impacts to listed species may preclude our ability to meet permit issuance criteria and authorize take of federally listed species. A number of the County's responses in the FEIR do not address our request for the County's coordination with the Service on endangered species avoidance and protection issues. As stated during our site visit to the project area with County planning staff on December 13, 2006, and in our January 23, 2008, comment letter, we request that the County and the project proponent coordinate with us to ensure compliance with the Act. Deferring compliance with the Act to future parcel owners could preclude the development of an effective conservation strategy for listed species that may be adversely affected by the proposed project. As noted in our January 23, 2008, comment letter, despite the incorporation of any mitigation measures developed pursuant to the California Environmental Quality Act (CEQA), any take of listed species that would result from implementation of the proposed project would require exemption pursuant to section 7 or authorization pursuant to section 10(a)(1)(B) of the Act.

### **Specific Comments**

Responses F-2-3, -4, and -5: It is our determination that water diversion from Dos Pueblos Creek could result in take of the federally threatened California red-legged frog (*Rana aurora draytonii*). Section 13.4 of the FEIR, which addresses water diversions from Dos Pueblos Creek, states that the subject project would use State Water for all new domestic purposes, and concludes that the project will not have any effect on surface flows in Dos Pueblos Creek. The FEIR further asserts that agency comments regarding the dewatering of Dos Pueblos Creek and the resulting impacts on riparian habitat are unfounded. We believe these previously-stated concerns are legitimate due to the decreasing reliability of State Water. As the FEIR states, an updated Draft Reliability Report has been published by the State Water Project (SWP) and indicates that instead of being able to deliver 80 percent of SWP's commitments 80 percent of the time, they will only be able to deliver 80 percent of their commitments 40 percent of the time. These projections do not appear to have been represented in the summary of water sources and uses presented in Table 13-3. Table 13-3 provides a water balance for Dos Pueblos Creek based on 100 percent, 80 percent, and 30 percent availability of State Water in wet, normal-dry, and very dry years respectively. These percentages appear high given the new estimated reliability of State Water. The deficit would need to be compensated by other sources, likely including diversion from Dos Pueblos Creek and pumping from wells that are hydrologically connected with Dos Pueblos Creek via subsurface flow.

Statements in the FEIR's responses to comments indicate that the proposed project will not have a significant effect on the California red-legged frog and that the most recent analysis conducted for the diversion permit was in 1991, prior to the Federal listing of the subspecies. Despite this discrepancy, the FEIR does not propose any revisions to the terms of this permit to address adverse effects of the diversion activities on this subspecies. The potential for take of listed and/or otherwise sensitive species (in this case, the California red-legged frog and potentially the federally endangered tidewater goby (*Eucyclogobius newberryi*) is typically analyzed and determined by a biologist or other qualified individual familiar with the species; however, the FEIR indicates that the landowner is the entity making the determination in this case (specifically, Response F-2-5).

Response F-2-5: Please note that a review of the species documented in the relevant USGS quadrangles in the 2005 California Natural Diversity Data Base (CNDDDB) is not sufficient to determine which species are not present, or have a low probability of occurrence, within the project area. The information within the CNDDDB is contributed voluntarily and many biologists do not participate in the development of this database. In addition, many areas of California, including substantial portions of Santa Barbara County, remain unsurveyed for the presence of sensitive plant and wildlife species.

The use of pre-construction surveys will not allow for impacts to be avoided or likely minimized and appears to presume that translocation would be acceptable as a mitigation measure (Mitigation Bio-1b). The Service does not typically concur with this approach, as most plant translocation efforts are not successful in re-establishing functional populations. Mitigation Bio-2b states that "in the event that any plant species designated as endangered, threatened, or rare under the Endangered Species Act or California Endangered Species Act are detected, construction on the subject lot shall not proceed until the USFWS and/or CDFG have been notified and any required authorizations are obtained." As noted in our General Comment above, this proposal defers mitigation or authorization to a time when many opportunities to avoid or minimize impacts may no longer be feasible or effective.

Response F-2-10: This response states that various species have the potential to occur in the project area but provides no data upon which to conduct an impact analysis. It is unclear why surveys for State- and federally-listed species were not conducted during the CEQA process, as this would have ensured that if impacts would occur during project implementation, the necessary species-specific mitigation measures could have been included for public and agency review.

Response F-2-12: In addition to typical pond or vernal pool habitats, those listed vernal pool branchiopod species with potential to occur onsite can be found in very small depressions and/or swales that exhibit a hydroperiod sufficient for them to complete a life cycle. It is unclear how the project will identify those seasonal water bodies that may contain State- or federally-listed vernal pool species such that they can be avoided and adequately buffered. While Mitigation Bio-5 states that these areas would be buffered by a distance of 100 feet, this alone may not be sufficient to avoid take of listed vernal pool branchiopod species.

Response F-2-14: As noted in our discussion regarding Response F-2-5 above, the CNDDDB should not be considered a substitute for habitat assessments and/or field surveys. In this case, the tidewater goby is known to recolonize historic locations such as Dos Pueblos Creek, and the absence of a CNDDDB record in 2005 cannot be considered conclusive evidence that the species is not present. The FEIR states that a recovery plan has not been prepared for the tidewater goby; however, a final recovery plan for the species was issued by the Service on December 7, 2005. The recovery plan and the tidewater goby survey guidelines contained within it were discussed in our January 23, 2008, comment letter on the project. In addition, although Response F-2-14 of the FEIR states otherwise, critical habitat for the tidewater goby was proposed on November 28, 2006, and was designated on January 31, 2008 (73 Federal Register 5920).

Response F-2-15: California red-legged frogs are known to move overland for distances well in excess of 100 feet from breeding habitat. Researchers in Santa Cruz County documented marked California red-legged frogs making overland movements of up to 2 miles over the course of a wet season. These individual frogs were observed to make long-distance movements that are straight-line, point to point migrations over variable upland terrain rather than using riparian corridors for movement between habitats. As such, a 100-foot buffer between development and habitat for these frogs is not sufficient to ensure that take would not occur during project implementation.

Response F-2-16: Public education and Covenants, Codes, and Restrictions are not measures that can be relied upon to ensure that take of California red-legged frogs (or other listed species) would not result from the increase in human presence and activity proximal to breeding and upland dispersal habitat. Covenants, Codes, and Restrictions can also be modified by a homeowner's association without input from the Service. Speed limits are difficult to enforce and, similarly, should not be relied upon as an avoidance measure to preclude take of dispersing California red-legged frogs.

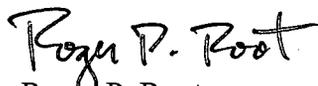
Response F-2-17: While we recognize that the County would not have a direct role in any consultation between the U.S. Army Corps of Engineers and the Service pursuant to section 7 of the Act, the County does have a direct role in the approval of the project design that will be the subject of that consultation or a possible application for an incidental take permit submitted by the current or a future landowner(s). Survey information relative to the presence of such species within the project area is a necessary component of any consultation or incidental take permit application and should be gathered as early as possible in the project design/approval process. In order to be considered in the project design, these data should be collected and analyzed as part of the CEQA process. In this way, the opportunity for project modifications that could avoid adverse impacts to federally-listed species, and thereby avoid the need for future consultation or permit authorization, would be available for incorporation into the final design to minimize the need for future land owners to navigate endangered species issues. Based on our review of the FEIR, the trigger is unclear for future landowners to engage with the Service to ensure that take of federally listed species would not occur or is adequately authorized.

Santa Barbara Clerk of the Board

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We appreciate the opportunity to provide these comments on the FEIR for the Santa Barbara Ranch project. We hope that you will consider and address the issues we have presented. We are available to work with you and County planning staff on this project and any others where endangered species issues are involved. If you have any questions regarding the content of this letter, please contact Julie M. Vanderwier or Jenny Phillips of my staff at (805) 644-1766, extension 222 or 325 respectively.

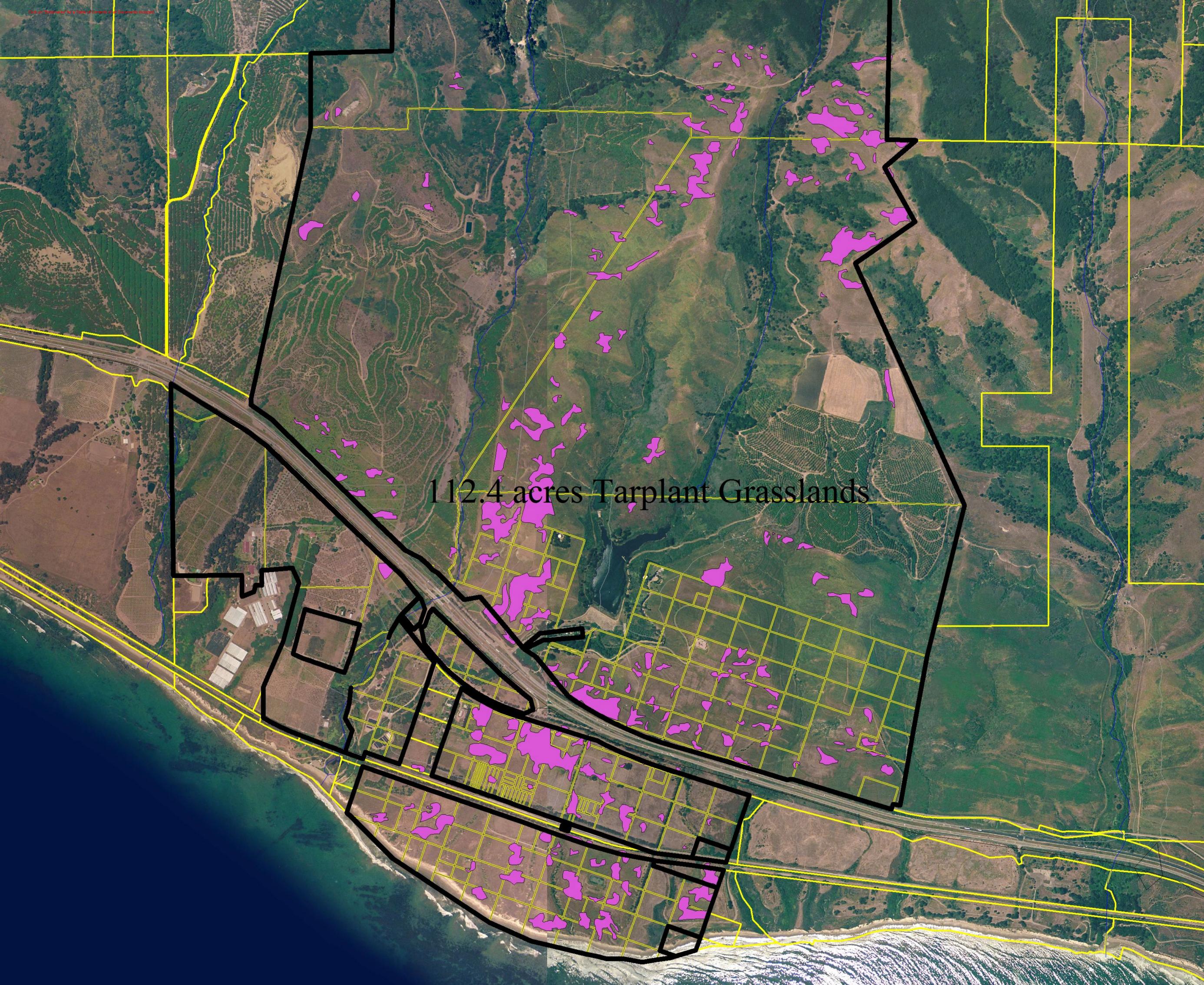
Sincerely,



Roger P. Root  
Assistant Field Supervisor

cc:

Rodney McInnis, National Marine Fisheries Service  
Betty Courtney, California Department of Fish and Game  
Steve Herrera, California State Water Resources Control Board  
David Lacaro, Regional Water Quality Control Board



112.4 acres Tarplant Grasslands

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Elizabeth L. Painter, Ph.D.  
Botanist and Plant Ecologist  
2627 State Street #2  
Santa Barbara, CA 93105  
805-687-6187  
paintere@west.net

17 July 2008

**Subject: Santa Barbara Ranch FEIR**

Dear Planning Commissioners:

I would like to submit the following comments and information on those parts of the Santa Barbara Ranch Final Environmental Impact Report (URS Corporation 2008) related specifically to biological resources, in particular, plants and vegetation. I believe that I am very qualified to address these issues. I hold graduate degrees in both botany and ecology, and have 34 years professional experience in these fields, and 18 years experience working with the California flora. I have authored in The Jepson Manual, the Jepson Desert Manual, and the forthcoming revision of The Jepson Manual. My curriculum vitae is on file with Santa Barbara County Planning & Development.

I found a number of serious flaws in how the 2008 URS Corporation Final Environmental Impact Report (FEIR 2008) addressed plants and vegetation, which I will discuss in detail below. I have reviewed not only the FEIR (2008), but also Holland's (2003) Botanical survey of Santa Barbara Ranch and SAIC's (2005) Final 2004–2005 Biological Survey Report. Although the FEIR (2008) states that it had adequate baseline information, this does not appear to be an accurate characterization of the plant and vegetation information provided.

Based on the lack of a complete list of plant taxa<sup>1</sup> occurring in the project area in Holland (2003), SAIC (2005), or the FEIR (2008), it is evident that no comprehensive floristic survey was conducted, despite this being prerequisite to conducting an adequate botanical survey. Holland (2003) stated that his was a preliminary survey. SAIC (2005) and the FEIR (2008) are both 'final'. Without a comprehensive floristic survey, the information cannot be considered adequate for the purposes of impact assessment in the FEIR (2008). Without a comprehensive floristic survey, there is no satisfactory way to determine all the rare plant taxa occur in the project area, all the plant taxa associated with any of the habitat (plant community or vegetation) types occurring in the project site, nor to determine if an adequate number of taxa were used to identify these habitat types. Without a comprehensive floristic survey and a complete list of plant taxa occurring at the project site, the baseline information cannot be considered adequate for adequate for the purposes of identifying and mitigating impacts to rare taxa or for identifying habitat types and mitigating impacts to rare habitats.

Failure to conduct a comprehensive floristic survey and a complete list of plant taxa occurring at the project site is a failure to meet Fish and Wildlife Service, California Department of Fish and Game (CDFG), California Native Plant Society (CNPS), and Santa Barbara County protocols and guidelines for botanical field surveys and documentation habitats of a project site. These guidelines, developed by federal and state biological resource agencies and professional botanists, provide minimum standards by which botanical and floristic inventories should be conducted. These are the minimum standards expected of professional botanical consultants.

USFWS Guidelines (2000): "List every species observed and compile a comprehensive list of vascular plants for the entire project site. Vascular plants need to be identified to a taxonomic level

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<sup>1</sup> (taxon, singular) a group of organisms of any taxonomic rank, e.g., family, genus, species — used in my comments as the general term for the lowest rank identified in the project documents because there are mixed levels of taxa reported for the project site (e.g., genera, species, infraspecific taxa)

which allows rarity to be determined” and “a comprehensive list of all vascular plants occurring on the project site for each habitat type”.

CDFG Guidelines (2000): “A floristic survey requires that every plant observed be identified to the extent necessary to determine its rarity and listing status. In addition, a sufficient number of visits spaced throughout the growing season are necessary to accurately determine what plants exist on the site. In order to properly characterize the site and document the completeness of the survey, a complete list of plants observed on the site should be included in every botanical survey report”.

CNPS Guidelines (2001): “A floristic survey requires that every plant observed be identified to species, subspecies, or variety as applicable. In order to characterize the site properly, a complete list of plants observed on the site shall be included in every botanical survey report. In addition, a sufficient number of visits spaced throughout the growing season is necessary to prepare an accurate inventory of all plants that exist on the site. The number of visits and the timing between visits must be determined by geographic location, the plant communities present, and the weather patterns of the year(s) in which the surveys are conducted.”

Santa Barbara County biological survey guidelines (2002): “Investigations should be conducted at the proper season and time of day when special status species are both evident and identifiable. Field surveys should be scheduled to coincide with known flowering periods, and/or during periods of phenological development that are necessary to identify plants of concern....”

Under CDFG and CNPS guidelines, there need to have been multiple visits to all parts of the project site throughout the growing seasons of plant taxa that could occur to be considered adequate in conducting a floristic survey and be able to detect special-status species. Holland (2003) stated that the site was surveyed in March through mid-July, but does not clearly say that the entire project site was surveyed multiple times during that period. Based on the SAIC (2005) report, it appears that SAIC botanists spent nearly all of their time surveying and sampling grassland vegetation (14 April 2004, 23 April 2004, 28 April 2004, 25 May 2004) or wetlands (14 April 2004, 19 April 2004, 23 April 2004, 28 April 2004, 3 May 2004, 25 May 2004, 14 June 2004, 15 June 2004, 13 July 2004), and did not visit any of the Dos Pueblos Ranch. The FEIR states that a biologist visited the entire project site at least once. However, data supporting this is not clearly provided in any of the documents. Holland’s survey dates would have missed early spring-, late summer-, autumn-, and winter-flowering plant taxa. The SAIC survey dates would have missed early spring-, late summer-, autumn-, and winter-flowering plant taxa. Neither Holland (2003) nor SAIC (2005) included any of the chaparral information provided in the FEIR (2008). Based on information available in Holland (2003), SAIC (2005), and the FEIR (2008), it appears that surveys failed to follow the USFWS, CDFG, CNPS, or County survey guidelines. Failure to follow the USFWS, CDFG, CNPS, or County guidelines means that the baseline information cannot be considered adequate.

It appears from Holland (2003), SAIC (2005), and the FEIR (2008) that no herbarium voucher specimens were collected for any of these. Correspondence with V.L. Holland and David J. Keil confirmed that no voucher specimens were made for the Holland (2003) survey. A search of the Consortium of California Herbaria yielded 34 specimen records from the project area<sup>2</sup>, several of which were not mentioned in Holland (2003), SAIC (2005), or the FEIR (2008).

Santa Barbara County biological survey guidelines (2002) recommend that “[c]ollections of voucher specimens or rare (or suspected rare) plants or animals should be made only when such actions do not jeopardize the continued existence of the population and in accordance with applicable state and federal regulations” and that “[a]ll voucher specimens should be deposited at local public herbaria or recognized museums of natural history for proper storage and future reference.” The guidelines also require that reports of biological field surveys and reports must contain a list of “herbaria and museums visited, and the location of voucher specimens”.

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<sup>2</sup> see ‘herbarium’ sheet on attached Excel file

Click on "Bookmarks" for a Table of Contents of all Documents included.

California Native Plant Society (CNPS) recommends that "voucher specimens be collected and stored appropriately to document floristic data included in environmental review projects and scientific studies". CNPS's recommendations concerning voucher specimens include the following:

"Environmental review projects (e.g., environmental impact reports [EIRs] and statements [EISs], environmental assessments [EAs], initial studies and negative declarations, natural environmental studies) that are conducted in the State of California and that include botanical field observations should also include voucher specimens, and/or photographic documentation consistent with existing standards, deposited in one or more herbaria listed in *Index Herbariorum*, Ed. 8 (Holmgren et al. 1990) or subsequent editions."<sup>3</sup>

"The thoroughness of documentation for a particular project should be commensurate to the importance of the study, but in any case should include collection of voucher specimens for target species studies and noteworthy botanical observations (e.g., range extensions; state and county records; rediscoveries)."

"Clients (e.g., private or public permit applicants) for whom environmental studies are conducted should be held financially responsible for the collection, identification, and curation of botanical vouchers; otherwise, there is little chance that documentation will improve."

"Collection of botanical vouchers and the deposition of them in formal herbaria should be a requirement of the CEQA and NEPA processes. CNPS recommends that the responsible agencies and legislative bodies undertake a review of state and federal legislation and make appropriate amendments that will result in the collection and preparation of botanical vouchers becoming a formal part of the environmental review process."

"One category of hierarchical data associated with herbarium specimens should be that which (1) identifies the project for which the specimen serves as a voucher, (2) lists the client, agency, and/or institution associated with the project, and (3) names the report in which the specimen is cited."

In failing to collect herbarium voucher specimens, it appears that the surveys failed to follow CNPS and County guidelines. Without herbarium vouchers, there is no permanent record of plant taxa (rare and common) that occur at the project site. Without herbarium vouchers, there is no satisfactory way to determine if the names applied in Holland (2003), SAIC (2005), and the FEIR (2008) reflect the taxa actually occurring at the project site (i.e., that the taxa were correctly identified). Without herbarium vouchers, there is no way for anyone to attempt to complete the partial identifications found in the reports. Without herbarium vouchers, the baseline information cannot be considered adequate.

I found 215 plant taxa in Holland (2003), SAIC (2005), the FEIR (2008), and herbarium records<sup>4</sup>:

- 34 plant taxa were found as herbarium specimens found in Consortium of California Herbaria
- 151 plant taxa were listed by Holland.
- 171 plant taxa were listed by SAIC.
- 56 plant taxa were listed by the FEIR.

USFWS Guidelines (2000) state that "[v]ascular plants need to be identified to a taxonomic level which allows rarity to be determined". Of the 215 plant taxa, 14 taxa were identified only to genus

- Acacia sp.
- Amaranthus sp.
- Citrus sp.
- Clarkia sp. [15 native taxa documented in SB Co.]
- Clematis sp. [3 native taxa documented in SB Co.]
- Eucalyptus sp.
- Filago sp. [3 taxa documented in SB Co., including 2 native taxa]

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<sup>3</sup> The indexed herbaria in Santa Barbara County are the herbaria at the Santa Barbara Botanic Garden and the University of California at Santa Barbara.

<sup>4</sup> see 'taxa' sheet on attached Excel file

Click on "Bookmarks" for a Table of Contents of all Documents included.

Hemizonia sp. [10 native taxa documented in SB Co.]  
Lomatium sp. [8 taxa documented in SB Co.]  
Microseris sp. [5 taxa documented in SB Co.]  
Pinus sp. [9 taxa documented in SB Co.]  
Populus sp. [2 taxa documented in SB Co.]  
Salix sp. [7 taxa documented in SB Co.]  
Vulpia sp. [6 taxa documented in SB Co.]

30 taxa with infraspecific taxa (vars. or subspp.) were identified only to species:

Amsinckia menziesii [2 vars. documented in SB Co.]  
Atriplex lentiformis [1 subsp. documented in SB Co.]  
Bloomeria crocea [3 vars. documented in SB Co.]  
Brodiaea terrestris [1 subsp. documented in SB Co.]  
Calystegia macrostegia [3 subspp. documented in SB Co.]  
Castilleja exserta [2 subspp. documented in SB Co.]  
Ceanothus megacarpus [2 vars. documented in SB Co.]  
Claytonia perfoliata [2 subspp. documented in SB Co.]  
Dichelostemma capitatum [1 subsp. documented in SB Co.]  
Epilobium ciliatum [1 subsp. documented in SB Co.]  
Hazardia squarrosa [3 vars. documented in SB Co.]  
Hordeum brachyantherum [2 subspp. documented in SB Co.]  
Hordeum murinum [2 subspp. documented in SB Co.]  
Isocoma menziesii [4 vars. documented in SB Co.]  
Juncus bufonius [3 vars. documented in SB Co.]  
Juncus effusus [2 vars. documented in SB Co.]  
Juncus phaeocephalus [1 var. documented in SB Co.]  
Lepidium nitidum [1 var. documented in SB Co.]  
Lomatium caruifolium [2 vars. documented in SB Co.]  
Lotus scoparius [1 var. documented in SB Co.]  
Malacothrix saxatilis [5 subspp. documented in SB Co.]  
Pholistoma auritum [1 var. documented in SB Co.]  
Quercus agrifolia [1 var. documented in SB Co.]  
Rhamnus californica [1 subsp. documented in SB Co.]  
Scrophularia californica [2 subspp. documented in SB Co.]  
Sidalcea malviflora [4 subspp. documented in SB Co.]  
Trifolium albopurpureum [2 var. documented in SB Co.]  
Urtica dioica [1 subsp. documented in SB Co.]  
Verbena lasiostachys [2 vars. documented in SB Co.]  
Vulpia microstachys [4 vars. documented in SB Co.]

Without complete identifications of reported plant taxa, the baseline information cannot be considered adequate.

Over the past several years, I have begun to assemble lists of habitats for native plant taxa documented in Santa Barbara County. Not all sources have been surveyed for all taxa. To date, I have surveyed 4 to 30 sources for over 1600 native plant taxa found in Santa Barbara County. I have surveyed<sup>5</sup> The Jepson Manual (Hickman 1003), online treatments for revision of The Jepson Manual (Jepson Flora Project 2008), A California Flora (Munz 1959) and Supplement (Munz 1968), Flora of North America (Flora of North America Editorial Committee 1993+), A Flora of the Santa Barbara Region (Smith 1998), and the Calflora database for all taxa reviewed to date. Other sources reviewed include A Flora of Santa Cruz Island (Junak et al. 1995), Flowering Plants of Monterey County (Matthews 1997), and A Flora of Kern County (Twisselmann 1967). I have found that over 600 native plant taxa are listed by at least one source as occurring in grasslands, over 60 native plant taxa are listed by at least one source as occurring

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<sup>5</sup> not all sources included all taxa on my list and were not included in 'number of sources' on attached the Excel file

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in 'potreros', over 160 native plant taxa are listed by at least one source as occurring in 'fields', over 200 native plant taxa are listed by at least one source as occurring in meadows, over 300 native plant taxa are listed by at least one source as occurring in moist habitats, over 500 native plant taxa are listed by at least one source as occurring in wetlands, over 400 native plant taxa are listed by at least one source as occurring in riparian, stream habits, over 900 native plant taxa are listed by at least one source as occurring in shrublands, over 700 native plant taxa are listed by at least one source as occurring in woodlands, over 30 native plant taxa are listed by at least one source as occurring in savannas, and over 500 native plant taxa are listed by at least one source as occurring in forests.

I checked the 215 plant taxa recorded in Holland (2003), SAIC (2005), the FEIR (2008), and herbarium records against my habitat records and found that, 111 are considered by most or all sources to be native taxa<sup>6</sup>.

68 are listed by at least one source as occurring in grasslands (including coastal prairie, herbland).

24 are most commonly listed as occurring in grasslands (including coastal prairie, herbland).

13 are listed by at least one source as occurring in potreros<sup>7</sup>.

0 taxa are most commonly listed source as occurring in potreros.

22 are listed by at least one source as occurring in fields<sup>8</sup>.

0 taxa are most commonly listed as occurring in fields.

20 are listed by at least one source as occurring in meadows (including cienegas<sup>9</sup>).

0 taxa are most commonly listed as occurring in meadows (including cienegas).

42 are listed by at least one source as occurring in moist habitats.

1 taxon is most commonly listed as occurring in moist habitats.

55 are listed by at least one source as occurring in wetlands (at least FAC).

26 taxa are most commonly listed as occurring in wetlands (at least FAC).

61 are listed by at least one source as occurring in riparian, stream habitats.

11 taxa are most commonly listed as occurring in riparian, stream habitats.

99 are listed by at least one source as occurring in shrublands.

44 taxa are most commonly listed as occurring in shrublands.

81 are listed by at least one source as occurring in woodlands.

10 taxa are most commonly listed as occurring in woodlands.

11 are listed by at least one source as occurring in savannas.

0 taxa are most commonly listed as occurring in savannas.

55 are listed by at least one source as occurring in forests.

1 taxon is most commonly listed as occurring in forests.

6 rare plant taxa that occur on the project site (or very near) were identified in Holland (2003), SAIC (2005), the FEIR (2008), and herbarium records:

*Baccharis plummerae* subsp. *plummerae*

CNPS 4.3

Herbarium specimen

FEIR (high potential for occurrence in project area)

*Brodiaea terrestris* subsp. *terrestris*

Rare Plants of Santa Barbara County

Holland; SAIC; FEIR

*Horkelia cuneata* subsp. *puberula*

CNPS 1B.1

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<sup>6</sup> see attached Excel file (all pages)

<sup>7</sup> Potreros are most frequently defined as dry montane grasslands, but the term is sometimes used for moist grasslands and meadow.

<sup>8</sup> The term 'fields' appears to be used for cultivated areas in some cases and noncultivated areas in others (often akin 'herbland' or 'wildflower' fields).

<sup>9</sup> Cienagas are wet meadows or marshes.

Click on "Bookmarks" for a Table of Contents of all Documents included.

FEIR (regions 4, 5)  
Lonicera subspicata var. subspicata  
CNPS 1B.2, Rare Plants of Santa Barbara County  
SAIC; FEIR (regions 1, 4)  
Malacothrix saxatilis var. saxatilis  
CNPS 4.2  
FEIR [regions 2, 3]  
Parnassia palustris  
Rare Plants of Santa Barbara County  
Herbarium specimen, FEIR (region 5)

Although Santa Barbara County biological survey guidelines (2002) require that “[I]nvestigations should be well-documented. When rare or endangered plants or animals or unusual plant communities are located, a California Native Plant Field Survey Form or its equivalent must be completed and sent to the Natural Diversity Data Base and a copy attached to the report sent to RMD”, there were no California Native Plant [NDDB] Field Survey Forms included with the FEIR.

However, this may not be all of the rare plant taxa at the project site. Without a comprehensive floristic survey pursuant to the USFWS, CDFG, CNPS, and County guidelines, it is not possible to determine how many rare plant taxa were missed.

There were 3 genera not identified to species which contain rare taxa:

Clematis sp.  
1 sensitive taxon in SB Co.  
SAIC  
Filago sp.  
1 sensitive taxon in SB Co.  
SAIC  
Hemizonia sp.  
6 sensitive taxa in SB Co.  
SAIC

The FEIR (2008) states (p. 9.4-87) states that “Rare plant surveys shall be conducted within one year of the proposed commencement of construction activities”. However, without a complete list of rare plants, planning decisions that need to be made before approval of construction activities cannot be made. Without a complete survey for and identifications of rare plant taxa, the rare plant baseline information cannot be considered adequate.

On p. 9.4-88 of the FEIR (2008), it says that “In the event any sensitive plant species are found in these areas to be disturbed, a qualified biologist shall collect seeds, bulbs, or cuttings of these species for transplantation to suitable areas within the OSCE [Open Space Conservation Easement].” The FEIR (2008) provides no evidence that this would be a successful strategy. Studies have found that transplantation is rarely successful (Allen 1994, CNPS 1998, Fahselt 1988, Fiedler 1991, Hall 1987, Howald 1996). And ‘successes’ often required continued intensive management. CNPS (1998) reported that “reliance on transplantation of state-listed species is not only unlikely to succeed, but is likely to contribute to further declines of these taxa, possibly to widespread extinctions. In an example that could illustrate the potential results for the proposal in the FEIR, Havlik (1987) reported on a case where (as is suggested in the FEIR) on an attempt to transplant to ‘suitable’ habitat of rare plants that were discovered shortly before building began on an approved development project. The effort was “essentially a failure”. It is inappropriate to propose as a primary strategy for protecting ‘sensitive plant species’ methodology that has a very high potential for failure. It would be more appropriate (and probably more successful) if a comprehensive rare plant survey were conducted early in the process and avoidance strategies were developed prior to project approval.

There appear to be conflicts between current literature and Holland (2003), SAIC (2005), and the FEIR (2008) as to which taxa are native or alien.

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Xanthium strumarium is listed as alien by Holland, SAIC, and the FEIR. However, it is unclear what their source was for this decision.

Xanthium strumarium is treated as a native species in The Jepson Manual (Hickman 1993), as well as Flora of North America, the USDA PLANTS database, Jepson Online Interchange (Jepson Herbarium information for the revision of The Jepson Manual).

Some taxa identified as alien are now considered native and vice versa.

Matricaria discoidea [Chamomilla suaveolens] is considered native by Flora of North America and Jepson Online Interchange (Jepson Herbarium information for the revision of The Jepson Manual).

Lepidium strictum is now considered alien by the Jepson Online Interchange.

As a former English teacher, I strongly believe that the use by Santa Barbara County<sup>10</sup> of the term 'native grassland species' must be literal, i.e., that all **native species** that have been identified as most commonly or frequently growing in **grasslands**<sup>11</sup> should be included in measurements of 10% or more relative cover.

Based on the plant taxa most commonly listed as occurring in grasslands, choices of plant taxa that Holland (2003), SAIC (2005), and the FEIR (2008) included as 'native grassland species' appear to be at least somewhat arbitrary and incomplete.

Of the 111 native plant taxa mentioned by Holland (2003), SAIC (2005), and the FEIR (2008), the sources I have surveyed identified 'grasslands' (including coastal prairie, herblands) as the most frequently identified 'grassland' habitat (including coastal prairie, herblands) of at least 24 taxa<sup>12</sup>.

SAIC and the FEIR identified 10 taxa as 'native grassland species':

- Bloomeria crocea
- Brodiaea terrestris
- Castilleja exserta
- Hordeum brachyantherum
- Dichelostemma pulchella
- Juncus occidentalis
- Leymus triticoides
- Nassella pulchra
- Plantago erecta
- Sisyrinchium bellum

Holland identified 17 native plant taxa as occurring in 'grassland and mixed ruderal communities', but did not separate out 'native grassland species':

- Bloomeria crocea
- Brodiaea terrestris
- Calystegia macrostegia
- Castilleja densiflora subsp. densiflora
- Eschscholzia californica
- Dichelostemma capitatum
- Eremocarpus setigerus
- Hemizonia fasciculata

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<sup>10</sup> Santa Barbara County Environmental Thresholds of Significance Report (1993)

<sup>11</sup> Most plant taxa are listed in multiple habitats, e.g., Nassella pulchra occurs not only in grasslands (27 of 31 sources) but also shrublands (16 of 31), woodlands (12 of 31), and forests (1 of 31). The high frequency of listed occurrences in woodlands and forests might indicate that it should also be included in measurements for those habitat types.

<sup>12</sup> see 'grasslands' sheet on attached Excel file

Click on "Bookmarks" for a Table of Contents of all Documents included.

Lotus humistratus  
Lupinus succulentus  
Nassella pulchra  
Plantago erecta  
Sanicula arguta  
Sidalcea malviflora  
Sisyrinchium bellum  
Trifolium albopurpureum var. albopurpureum  
Verbena lasiostachys  
Vulpia microstachys

Since these apparently arbitrary choices were then used to decide a priori in which areas to run transects to see if cover was sufficient to constitute a 'native grassland', the placements of transects was also arbitrary.

Thus, both because of the failure to include all 'native grassland species' and the placement of transects, 'native grasslands' could have been significantly underestimated.

Without complete a complete survey for and measurement of cover by all 'grassland' plant taxa, the baseline information cannot be considered adequate.

Holland (2003) did not explain why he considered *Hemizonia fasciculata* [*Deinandra fasciculata*] to be 'ruderal'<sup>13</sup>. Neither SAIC (2005) nor the FEIR (2008) explain why they did not include this taxon in 'native grassland species'.

In 10 of 13 sources I surveyed, 'grassland' (including coastal prairie, herblands) is most commonly the listed habitat for *Hemizonia fasciculata* [*Deinandra fasciculata*]. Relatively few sources included 'disturbed' among the habitats (e.g., Flora of North America gave 'burns' as its example of disturbed).

The Jepson Manual lists coastal grassland, woodland.

Flora of North America lists grasslands, openings in chaparral, coastal scrub, and woodlands, vernal pool beds, disturbed sites (e.g., burns).

Munz's California Flora lists valley grassland, coastal sage scrub, southern oak woodland.

Munz's Southern California Flora lists valley grasslands, coastal sage scrub, southern oak woodland.

Smith's A Flora of the Santa Barbara Region lists fields, open woodlands.

Calflora lists valley grassland, coastal sage scrub, southern oak woodland.

In his draft Jepson Manual revision treatment, Baldwin (personal communication) lists grasslands, scrub, woodlands, vernal pools, open or disturbed sites.

Junak et al.'s Flora of Santa Cruz Island lists valley and foothill grassland, grassy slopes, coastal flats, pastures, coastal scrub.

Hoover's San Luis Obispo Co. book interior herbaceous habitats, clay soils.

Since not all native grassland species were included, then those areas with 'native grassland species' not identified by SAIC (2005) or the FEIR (2008) need to (re)surveyed. This would include all those areas with *Hemizonia fasciculata* [*Deinandra fasciculata*], including those previously identified as 'non-native grassland' or 'weedy' and the areas photographed by in June of this year by Magney (2008).

Holland (2003), SAIC (2005), and the FEIR (2008) did not include any discussion of measurements of biological (cryptobiotic, cryptogamic) soil crusts as constituents of 'native grassland' (or other native plant habitat types), although they can be important in what is often called 'bare ground'. Biological soil crusts an association of lichens, mosses, microfungi, green algae, cyanobacteria, and other bacteria (Belnap et

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<sup>13</sup> a plant that grows on poor land or disturbed sites, including natural disturbances (e.g., burns, landslides, gopher and ground squirrel soil excavations)

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al. 2001, Rosentreter et al. 2007). Biological soil crusts stabilize soils and reduce wind and water erosion, aid in water infiltration, improve seedling establishment, increase soil organic matter and nutrients, and increase survival of some higher plant taxa (Belnap 1994, Belnap & Gardner 1993, Belnap et al. 1994, Belnap et al. 2001, Beymer & Klopatek 1992, Brotherson et al. 1983, Harper & Marble 1988, Harper & Pendleton 1993, St. Clair & Johansen 1993). Without inclusion of biological soil crusts, the baseline information provided cannot be considered adequate.

Holland (2003), SAIC (2005), and the FEIR (2008) do not define 'weed'. The term 'weed' is often casually used; however, to weed scientists and most other biologists, 'weeds' are not simply 'any plants growing where they are not wanted', which requires a value judgment by the observer (Holland and Keil 1995, Stuckey and Barkley 1993). An explanation of the differences between definitions of *weed* based on value judgments and definitions based on biological attributes can be found in Stuckey and Barkley (1993) and Holland and Keil (1995).

Based on biological attributes, Holland and Keil (1995) describe 'weeds' as species introduced by human activities to areas outside their natural range that aggressively invade stands of undisturbed native vegetation as well as areas that have been subjected to disturbance (particularly human-induced disturbance). This description does not place a value judgment on a species' economic impact or aesthetic qualities. It also excludes native species within their native range and habitat, even if the latter is 'disturbed'.

Holland (2003) did not explain why he considered *Eremocarpus setigerus* [*Croton setigerus*] or *Heliotropium curassavicum* to be 'invasive weeds'. Both *Eremocarpus setigerus* and *Heliotropium curassavicum* are native species, thus by definition not invasive. By Holland and Keil's definition neither are weeds (although *Eremocarpus setigerus* is sometimes described as growing in disturbed sites).

In 12 of 16 sources I surveyed, 'grassland' (including coastal prairie, herblands) is most commonly the listed habitat for *Eremocarpus setigerus* [*Croton setigerus*]. A few sources included 'disturbed'<sup>14</sup> among the habitats.

The Jepson Manual lists dry, open, often disturbed areas.

Munz's California Flora lists valley grassland, coastal sage scrub, foothill woodland, oak woodland.

Munz's Southern California Flora lists valley grassland, coastal sage scrub, oak woodland.

Smith's A Flora of the Santa Barbara Region lists roadsides, fallow ground, pastures, fields.

Calflora lists valley grassland, coastal sage scrub, foothill woodland, northern oak woodland, southern oak woodland.

Junak et al.'s Flora of Santa Cruz Island lists grasslands, grassy hillsides, open ridgetops and slopes, coastal scrub, near vernal ponds.

Matthews's Monterey Co. book lists valley grassland, oak woodland, coastal sage scrub.

Twisselmann's Kern Co. book lists upper Sonoran grassland, summer fallowed fields, sandy plains, roadsides.

In 7 of 13 sources I surveyed, 'wetland' is most commonly the listed habitat for *Heliotropium curassavicum*, while 4 listed 'moist' and 4 listed 'grassland'. None included 'disturbed' among the habitats. *Heliotropium curassavicum* is not included on the Corps of Engineers 'wetland species' lists. However, this should not preclude its being considered as a 'wetland' component, especially since many taxa frequently found in 'moist' habitats are considered to be at least FAC.

The Jepson Manual lists moist to dry, saline soils.

Munz's California Flora lists saline or alkaline soils.

Munz's Southern California Flora lists saline or alkaline soils.

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<sup>14</sup> including natural disturbances (e.g., burns, landslides, gopher and ground squirrel soil excavations)

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Smith's A Flora of the Santa Barbara Region lists ocean bluffs, coastal marshes, waste places, roadsides, sandy fields.

Calflora says that it grows "occurs almost always under natural conditions in wetlands" and lists yellow pine forest, red fir forest, lodgepole forest, foothill woodland, chaparral, valley grassland, riparian-wetlands.

Junak et al.'s Flora of Santa Cruz Island lists brackish estuary, sandy beaches, floodplains, moist grassy flats, coastal strand, grasslands.

Hoover's San Luis Obispo Co. book lists saline, alkaline, or moist ground

Matthews's Monterey Co. book lists saline or alkaline soils.

Twisselmann's Kern Co. book lists alkali sink (seasonally wet), winter-wet often subalkaline low places, sandy washes, canal banks, moist soil.

Neither SAIC (2005) nor the FEIR (2008) provide a clear definition of 'relative cover', nor do they make clear whether aerial or basal cover was used. I reviewed a plant ecological methods book on my shelves, checked several webpages, and contacted plant ecologists. The general consensus was that 'relative cover' means the cover of a particular taxon or group of taxa divided by the sum of the covers of all species. It generally does not include non-living plant material (e.g., litter or mulch), biological soil crust, or bare ground. If aerial cover is used, total plant cover can be greater than or less than 100%, depending on whether cover by taxa overlaps. If basal cover is used, total plant cover usually is less than 100%.

Holland (2003), SAIC (2005), and the FEIR (2008) indicated that plant habitats at the project site included grasslands, chaparral, coastal scrub, coastal bluff scrub, marine terrace, riparian woodlands, and wetlands.<sup>15</sup> Relevés were the primary method by which habitats at the project site were characterized. Coast live oak riparian woodland, coast live oak woodland, coast live oak-sycamore woodland, southern willow scrub, coastal bluff scrub, wetlands, and native grasslands are considered sensitive types by federal, state, and local resource agencies.

Only 5 relevés were included in SAIC's (2005) report, which by most standards is not adequate to characterize all the plant habitat types identified in the project area.

There are no chaparral, coast live oak woodlands, sycamore woodland, willow scrub, or coastal bluff relevés.

There is only one coastal scrub relevé, R3.

There is only one 'ruderal' area relevé, relevé R4.

There are only 3 'grassland' relevés, R1, R2, and R5.

It would appear that most of the habitats at the project site, particularly the sensitive habitat types, were inadequately surveyed or not surveyed at all. Without more complete habitat surveys, the baseline information provided cannot be considered adequate. Santa Barbara County biological survey guidelines (1992) require that "[I]nvestigations should be conducted using systematic field techniques in all habitats of the site to ensure a reasonably thorough coverage of potential impact areas."

None of the grassland relevés included cover by *Hemizonia fasciculata* [*Deinandra fasciculata*], which appears from photos to be an important native 'grassland' species. Nor do they include *Eremocarpus setigerus* [*Croton setigerus*]. Because not all 'native grassland taxa' were considered, it is quite possible that more 'grassland' relevés would have been appropriate to adequately characterize 'native grasslands'.

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<sup>15</sup> see 'reports' sheet on attached Excel file

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SAIC relevé R2 is labeled 'non-native grassland'. Only 1 native taxon was identified, *Hemizonia* sp. (<1%). Since this transect was read in early April, it may have been too early to adequately sample the *Hemizonia*. Finding this at the site should have triggered a resurvey of the relevé later in the season, when *Hemizonia* was more abundant, so it could be accurately determined if in fact *Hemizonia* was only a minor constituent at the site.

SAIC relevé R2 is labeled 'grassland', but does not specify 'native'. The plants includes 12% cover by *Lomatium* (species not given). Since all *Lomatium*s in Santa Barbara County are native, this is sufficient cover to define this as a 'native grassland'. In addition to the *Lomatium*, other native plant taxa at the site include *Plantago erecta* (1%), *Sisyrinchium bellum* (1%), *Hordeum brachyantherum* (2%), *Microseris* (species not given) (<1%), *Castilleja exserta* (<1%). If a complete accounting of plant taxa were provided, there may have been more native taxa. However, with what is given, native plant taxa compose at least 16% of the cover. If this is absolute cover (which adds up to 37% total), then native plant taxa constitute 43% of the relative cover.

SAIC (2005) relevé R5 is labeled 'non-grassland'. Most of the listed dominants are alien taxa. However, 5% of the cover is *Vulpia* sp. There are 6 native *Vulpia* taxa in Santa Barbara County. 5% absolute cover is 6% relative cover, so it would not take many hits on unreported native plant taxa to open this site up to consideration as a 'native grassland'.

There are 6 'native grassland' transect forms included in SAIC's (2005) report. Because not all 'native grassland taxa' were considered, it is quite possible that more 'native grassland' transects would have been appropriate to adequately characterize 'native grasslands'.

'Native grassland' transect T1 appears to discount this site as a 'native grassland', because the absolute cover by *Hordeum brachyantherum* (the only 'native grassland species' recorded) was 8%, and the relative cover was less than 10%. However, this was established using cover values with a precision level of whole numbers while the relative cover value was taken to 1 decimal place (which is inappropriately adding a significant digit to the level of precision). Results cannot be more precise than the data were. When the 9.5% cover is rounded to the appropriate precision level, 'native grassland' relative cover is 10%<sup>16</sup>, even without measuring any other 'native grassland species' that were not reported. Without a comprehensive survey of all wetland sites at the appropriate times of year, the baseline information cannot be considered adequate.

On Santa Barbara Ranch, wetlands were more adequately surveyed than any other habitat. There are 24 'wetland plot' forms included in SAIC's (2005) report. However, not all wetlands on Santa Barbara Ranch were formally delineated. However, not all Corps of Engineers 'wetland species' recorded in Holland (2003), SAIC (2005), the FEIR (2008), and herbarium records were identified on these forms, indicating that not all wetlands were surveyed.

I found 58 Corps of Engineers 'wetland species'<sup>17</sup> among the taxa recorded in Holland (2003), SAIC (2005), the FEIR (2008), and herbarium records. No wetlands on Dos Pueblos Ranch were delineated. Neither Holland (2003) nor SAIC (2005) were tasked with covering Dos Pueblos Ranch. Moreover, for wetlands that were delineated, the FEIR listed only 17 of these. Again, this failure to include all Engineers 'wetland species' indicates that not all wetlands were surveyed. Without a complete list of 'wetland' plant taxa occurring at the project site, the baseline information cannot be considered adequate.

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<sup>16</sup> I set my calculator for the appropriate number of significant digits (whole number as percent, 2 decimal places as fraction), and got 10% (.10) as the answer to 8% divided by 84%.

<sup>17</sup> see 'C of E wetland' sheet on attached Excel file

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Thank you for your considerations of my comments and information.

Sincerely,

Elizabeth L. Painter, Ph.D.

cc: Brian Trautwein, Environmental Defense Center  
Nathan G. Alley, Environmental Defense Center

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Dear Supervisors,

Why was it necessary to vote in a secret on this issue when a hearing is due 10/13/08? Dividing the development into two is a major change to the plan and should not be voted on without the public's knowledge or input!

These actions are a disgrace to democracy and it is obvious that some of you are very biased and are in a rush to vote before public opinion has been heard.

I oppose the closed session and secret vote that took place, and had I been able to vote, I cast my vote NO, on this revised plan. I also vote NO on the old plan. Any development should be grouped together so as to preserve the surrounding bluff habitat for animals, and for people to enjoy as well. We need to know that we have wild spaces preserved on our coast. We cannot destroy the very thing that our county is known for- our beautiful coastal scenery and wildlife. The Naples reef and Gaviota Coast are extremely sensitive areas that should not be disturbed. Once the tractors arrive en mass, especially in such a spread out plan such as Mr. Osgood's, that's it, the ecosystem is disrupted. If we do allow development at the scale proposed, everything becomes devalued as the reasons why people want to move here and enjoy the land are destroyed.

I urge those of you who are voting "Yes" to take a long, close look at the public's opinion as well as all environmental reports on these issues and to realize that your job should be to look at the overall issues and environmental regulations in place and that your job is not to rush plans through, especially without public hearing!

Why are you in such a hurry to approve Mr. Osgood's plans, anyway? Is there something in it for you? I don't think that California's elite are in dire straights to find housing so much that we need to develop the coast immediately. I understand you support a land owner's right to build a home on their property. Mr. Osgood is clearly going beyond building a home or two for his own use. Just because developers have been allowed to destroy sensitive coastal areas in the past with massive developments doesn't make it right, legal, or mean that it should continue to be approved. A stand must be taken somewhere, and I urge you to take a strong look at these plans and realize they go far, far beyond what a private owner needs for his own personal use. There is only one reason Mr. Osgood is developing these lands: GREED

Please ask yourselves again why you are voting YES so quickly, and on a new plan.

Sincerely,

Mariah Moon

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CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.  
916 Anacapa Street, Santa Barbara, CA 93101  
phone (805) 966-3979 • toll free (877) 966-3979 • fax (805) 966-3970  
www.citizensplanning.org • info@citizensplanning.org

#- 1

October 9, 2008

Honorable Board of Supervisors  
County Administration  
105 E. Anapamu St.  
Santa Barbara, CA 93101

RECEIVED

OCT 09 2008

S.B. COUNTY  
PLANNING & DEVELOPMENT

Re: Santa Barbara Ranch development at Naples

Dear Supervisors:

Citizens Planning Association has provided extensive comments on the EIR for this project. The inadequacies of that document should not be news to any of you. Rather than revisit those inadequacies, we choose here to take a more macro view of the project.



If we step back and look at the history of the project, after the adverse Court ruling the County adopted a MOU. After several years the project grew to include some additional property from the Dos Pueblos Ranch (Alt 1), and then fairly recently grew again to include still more Dos Pueblos property and development (Alt 1B). While the developer was busy expanding his project, he has refused to entertain any abridgements. For example, Supervisor Firestone stated rather early the principle that development should not be visible from public viewpoints, and that principle has been ignored by the developer. Another example would be the approach to TDR as required by LCP 2-13. That policy could have been satisfied by a viable program that had real consequences both in terms of raising funds/identifying receiver sites, and entailments on the developer to participate. Instead a completely ineffectual program has been adopted, not to accomplish anything meaningful at Naples but to provide cover for the non-compliance with LCP 2-13. And a third example would be the requirement for a coastal trail and beach access. As everyone knows, the time to do this is when a development plan is proposed within the coastal zone, and initially the County did this, at least in part. But the developer objected and so the proposal for a trail and beach access has morphed into a freeway trail without beach access.

For those of us who have lived with this project almost since its inception, the outline of a negotiated resolution between the County and the developer has always been pretty clear. Provide a project that has some development at the site (mainly at locations outside view corridors) along with a robust TDR program (partly a programmatic approach but also funded in part with receiver sites on properties owned by the County and/or South Coast municipalities, and in part by external funds). But there has been no movement toward this resolution, and why should there have been when the County has been willing to give the developer whatever he has asked for? The abdication of responsibility for this project will become a terrible legacy for your board.

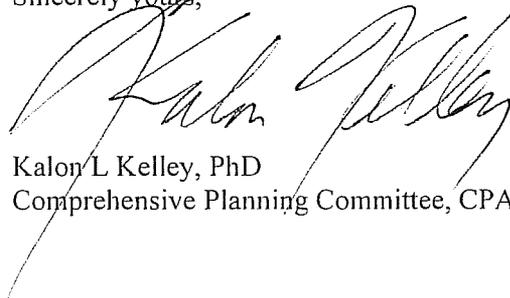
The developer has been very skillful in using the threat to develop the lots that currently exist unless his project is approved as he wishes. Unfortunately this threat was taken too seriously by County Counsel when the MOU was first drafted, and it continues to be the completely dominant theme in this project. What is unrecognized is that were the grid development so easy to accomplish and economically advantageous to the developer (in comparison to the current project) this would have been pursued long ago. That it has not been reflects his business judgment. But it should also signal to the County that they need not merely acquiesce in whatever plan the developer proposes, but that there is room for negotiation and that they can make wise planning decisions without being held hostage by a threatened development.

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Now it's the eleventh hour, but still not too late to redeem the situation. The one step you could make that would jumpstart any negotiated workout on this property would be to rescind your approval of the changes to the MOU made this week. Requiring that the coastal commission weigh in on this project before any development can proceed is both the right (and legal) thing to do as well as incentivizing this developer to work with the community toward a project that protects both his investment and the community interests in preserving the Gaviota Coast.

Be brave!

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kalon L. Kelley". The signature is fluid and cursive, with a long, sweeping underline that extends to the left and then curves back under the name.

Kalon L. Kelley, PhD

Comprehensive Planning Committee, CPA

J. Nick Todd  
Field Biologist  
U.C. Santa Cruz  
Predatory Bird Research Group  
Local Address: 244 Calle Serrento  
Goleta, CA. 93117  
jnicktodd@gmail.com

Mr. Tom Figg, Planner  
Santa Barbara County  
Planning and Development department  
123 E. Anapamu Street  
Santa Barbara, CA 93101

**Subject:** Comments regarding the Santa Barbara Ranch Revised Draft EIR- Assessment of Biological Impacts

Dear Mr. Figg:

I appreciate the opportunity to state my concerns regarding the Santa Barbara Ranch Revised Draft EIR (RDEIR). With a B.S. in Ecology and Systematic Biology from Cal Poly San Luis Obispo and ten years professional raptor experience in Santa Barbara County, including the Northern Channel Islands, I feel I can provide some meaningful comments with regards to the RDEIR. A significant portion of my work has been with raptor species in the coastal environment. My resume is attached.

### **RDEIR Raptor Surveys are Inadequate**

Raptor surveys for the RDEIR were inconsistent with outlined protocols as dictated by the Coastal Commission. The Coastal Commission outlines that both the winter and breeding raptor surveys require a minimum of five survey days each, separated by a week minimum. The RDEIR 9.4.2.1.2 states, however, that only one site visit where "all parts of the project area were visited at least once" occurred. In addition to not meeting the minimum requirements, it would be impossible to adequately survey the entire 485- acre MOU Project area or the 3,237 acre Alternative 1 Project area with one person in one day, especially when considering nocturnal birds of prey.

With the current level of survey work it is likely that a mischaracterization of raptor presence and habitat use has occurred. For instance during my several years of golden eagle capture work on the Northern Channel Islands it would often take over 120 man hours per week to detect the presence of a golden eagle and determine its pattern of behavior.

In addition to the minimum of five site visits per survey it is recommended that two persons with radios conduct the surveys on the project site. On at least two of the survey days there should be one person on each side of the freeway.

In the case of the burrowing owl it is recommended to follow the survey protocols outlined here: <http://www2.ucsc.edu/scpbrg/survey.htm>. Burrowing owl surveys were inadequate or nonexistent for the RDEIR.

### **Impacts to Raptors from the MOU Project and the Alternative 1 Project are Significant and not Mitigable**

The RDEIR characterization of the impacts to raptors within the project area as it is stated in Impact Bio-11 (page 9.4-67) is contrary to parts a, d and e of the Class One Impacts as outlined in the County of Santa Barbara's Thresholds for Biological Resources. The County Thresholds and Guidelines support finding impacts to raptors Class I: significant and unavoidable.

Though the project area contains areas of non-native grassland, non-native trees, fragmented habitat with the presence of ruderal species, it still supports sensitive species and constitutes significant habitat for raptor species of special concern listed in table 9.4-4. Sensitive species such as the white-tailed kite and numerous special-status raptors use these habitats. Personal observations from outside the project area into the project area have indicated use by at least one pair of white-tailed kites; in 2008, raptors were viewed undertaking foraging activities and pairing up for apparent nesting.

RDEIR Section 9.4.4.5, Residual Impacts, states that "impact Bio-22, the cumulative loss of coastal terrace grasslands along the Gaviota Coast, is considered significant and unmitigable". In a similar fashion raptor species that depend on these grasslands for foraging will be negatively affected. Successful mitigation will largely depend on whether or not key prey species can be maintained in remaining grasslands. Small mammal surveys with habitat analysis should be performed. These surveys should occur both in the native and non-native grasslands in the project area.

The RDEIR analysis fails to correctly apply the impact assessment criteria in the County's Thresholds and Guidelines Manual. For instance, large areas of non-native grassland will be removed and this area supports rare raptors which perch, nest and/or roost in non-native trees. This loss is significant based on the County's Thresholds and Guidelines. Specifically, the projects will substantially reduce raptor abundance and reproduction by eliminating significant foraging habitats, and will substantially fragment raptor foraging habitat and reduce raptor access to such habitat. Therefore the project impacts are significant.

These impacts are not mitigated in any meaningful way. The loss of between 138 acres (MOU Project) and 194 acres (Alternative 1) of quality grassland foraging habitat is not minimized, replaced, avoided or compensated for in any way. There is no attempt to cluster units to reduce the development footprint and preserve foraging habitat, no attempt at offsite purchase and preservation of threatened raptor foraging and no attempt to replace or restore the lost habitat. Therefore impacts are Class I pursuant to the County's Thresholds and Guidelines Manual and pursuant to this assessment of project impacts.

Click on "Bookmarks" for a Table of Contents of all Documents included.

## **Annual and Native Grasslands that Support Special-status Raptor Foraging are ESHA**

In the RDEIR on page 9.4-19 Section 9.4.2.3.2 it is stated that Annual and native grasslands in the project area provide important foraging habitat for a number of raptor species, particularly where associated with roosting/nesting sites in close proximity to grasslands, as is the case with eucalyptus windrows scattered throughout this area. This supports a finding classifying the above habitats as Environmentally Sensitive Habitat Areas (ESHA). These grasslands fit the Coastal Act's ESHA definition in their own right due to their unique and rare nature as part of the Gaviota Coast. Sensitive species such as the white-tailed kite and burrowing owl largely depend on these remaining grasslands for foraging. Development of these habitats, or of adjacent land, could compromise the ability for these species to persist there.

Thank you for the opportunity to review and then comment on this document. I may be reached at the above e-mail address if you have any questions regarding my comments.

Respectfully,

(signed)

J. Nick Todd

cc: Brian Trautwein, Environmental Analyst, Environmental Defense Center



**Legend**

- 12 to 216 MOU Project Lots
- California Coastal Commission Certified Coastal Zone
- MOU Project Area
- MOU Project Proposed Lot Lines
- Existing Parcels

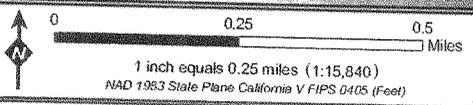
Source: Courtesy of Santa Barbara Planning Development Mapping, and L&P.

**Alternative 1 Alternative Coastal Trail and Access Plan**

- V = Vertical Access
- Coastal Trail - Pedestrian
- Coastal Trail - Multi-Use
- Spur Trail to Lookout Point
- Future Coastal Trail connection
- P = Parking Lot with Restroom



Image Source:  
 AirPhotoUSA, flown October 2004  
 (1 foot resolution).



Santa Barbara Ranch EIR  
 County of Santa Barbara

Figure 2.2-1 Existing Plus Proposed Lot Lines - MOU Project

April 2006

T:\Santa Barbara Ranch\Drawings\Figures 2.2-1 Existing Plus Proposed Lot Lines - MOU Project.mxd

Click on "Bookmarks" for a Table of Contents of all Documents included.



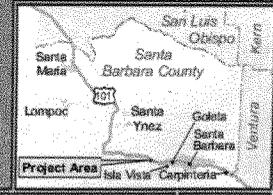
**Legend**

- 12 to 216 MOU Project Lots
- \*\*\*\*\* California Coastal Commission Certified Coastal Zone
- MOU Project Area
- MOU Project Proposed Lot Lines
- Existing Parcels

Source: County of Santa Barbara Planning Development Mapping and L&P

**MOU Project Alternative Coastal Trail and Access Plan**

- Coastal Trail – Pedestrian
- Coastal Trail – Multi-Use
- Spur Trail to Lookout Point
- Future Coastal Trail connection
- P = Parking Lot with Restroom



7: Santa Barbara Ranch EIR - Attachment Figure 2.2-1 Existing Plus Proposed Lot Lines - MOU Project.mxd

# New Weeds Added to Cal-IPC Inventory

The California Invasive Plant Inventory will be updated annually to reflect new information submitted to Cal-IPC. In February 2007, the Inventory Review Committee met to review submissions received between February 2006 and January 2007. Seven species were added to the Inventory and two were evaluated but not listed. Minor revisions were made to four listed species. Ratings were not changed for any species listed in the 2006 Inventory. The Inventory may be downloaded as a free pdf file from our website (choose Invasive Plant Inventory from the Quicklinks box at [www.cal-ipc.org](http://www.cal-ipc.org)). Complete Plant Assessment Forms with detailed information and literature citations may be viewed in the online Inventory database.

## New Species Reviewed

<i>Acacia dealbata</i>	silver wattle	Moderate
<i>Brachypodium distachyon</i>	annual false-brome	Moderate
<i>Bromus japonicus</i>	Japanese brome	Limited
<i>Fraxinus uhdei</i>	evergreen ash	Evaluated But Not Listed
<i>Linaria vulgaris</i>	yellow toadflax	Moderate
<i>Pennisetum villosum</i>	feathertop	Evaluated But Not Listed
<i>Phytolacca americana</i>	common pokeweed	Limited
<i>Salsola soda</i>	oppositeleaf Russian thistle	Moderate
<i>Saccharum ravennae</i>	ravennagrass	Moderate - Alert

## Revisions to Listed Species

<i>Cupressus macrocarpa</i>	Monterey cypress	Remove Sonoran shrub as ecotype invaded and change distribution in coastal scrub from C to D.
<i>Sesbania punicea</i>	scarlet wisteria	Add Central West as invaded Jepson region
<i>Taeniatherum caput-medusae</i>	medusahead	Add Central West as invaded Jepson region
<i>Vinca major</i>	periwinkle	Add Central West as invaded Jepson region

## Species Nominated But Not Reviewed

If you have information on these species, please submit it to Elizabeth Brusati, [edbrusati@cal-ipc.org](mailto:edbrusati@cal-ipc.org).

<i>Acacia baileyana</i> , <i>A. cyclops</i> , <i>A. longifolia</i>	cootamundra wattle, cyclops acacia, Sydney golden wattle	Not widespread in wildlands, no information on impacts
<i>Agrostis capillaris</i>	colonial bentgrass	Impacts not known
<i>Alopecurus pratensis</i>	meadow foxtail	Too limited in wildlands to review
<i>Casuarina equisetifolia</i>	beach sheoak	Impacts not known
<i>Descurainia pinnata</i>	western tansymustard	Native to California according to the Jepson Manual
<i>Festuca pratensis</i>	meadow fescue	Impacts not known
<i>Gypsophila paniculata</i>	baby's breath	Too limited in wildlands to review
<i>Hedera hibernica</i>	Atlantic ivy	Not confirmed present in California
<i>Lapsana communis</i>	common nipplewort	Impacts not known
<i>Melilotus alba</i>	yellow sweetclover	Impacts not known
<i>Nassella tenuissima</i>	finestem needlegrass	On Symposium weed alerts, but too limited to review
<i>Phleum pratense</i>	timothy	Impacts not known
<i>Poa annua</i>	annual bluegrass	Not a wildland weed
<i>Polypogon interruptus</i>	ditch rabbitsfoot grass	Too limited in wildlands to review
<i>Populus alba</i>	white poplar	Impacts not known
<i>Salsola kali</i>	Russian thistle	Synonym of <i>Salsola tragus</i> (Limited)
<i>Schinus polygamous</i>	Hardee peppertree	No information
<i>Sisymbrium altissimum</i>	tall tumbled mustard	Impacts not known

From: Carl Wishner  
To: David Magney

RE: Potential Occurrence of Special Bryophytes and Lichens in Santa Barbara

The California Department of Fish and Game's Natural Diversity Database lists 29 bryophytes, and nine lichens on their current Special Vascular Plants, Bryophytes and Lichens List (CDFG: CNDDDB April 2008<sup>1</sup>). The potential for occurrence of Special Status species within each of these groups, and a conclusion regarding the necessity of further studies is given below:

### Bryophytes

Among those 29 bryophytes, five (5) [mosses] are reported by Norris and Shevock (2004<sup>2</sup>), and two liverworts are reported by Doyle and Stottler (2006<sup>3</sup>) for the Southwest Geographic Province of California, namely, three-ranked hump moss (*Meesia triquetra*), broad-nerved hump moss (*M. uliginosa*), Shevock's copper moss (*Schizmenium shevockii*), California screw moss (*Tortula californica*), coastal triquetrella (*Triquetrella californica*), bottle liverwort (*Sphaerocarpos drewei*), and Campbell's liverwort (*Geothallus tuberosus*). The California Native Plant Society has assigned rankings for all of these bryophytes, and four of these *probably* meet the criteria for listing under CESA as Threatened or Endangered species, and therefore, also the CEQA Section 15380 criterion for EIR consideration, being ranked on CNPS List 1B. Two others ranked CNPS List 2 *may* meet the previous criteria. However, CESA has no precedent or provision for the listing of bryophytes, therefore, CEQA criteria are ambiguous or unknown. One species on CNPS List 4 probably does not meet the criteria.

On the basis of habitat considerations, two of the latter seven have some possibility of occurring at Naples project site. These are restricted to the mosses California screw moss (*Tortula californica*) and coastal triquetrella (*Triquetrella californica*). Another 1B.2 moss species is Shevock's copper moss (*Schizymenium shevockii*), reported at (Santa Margarita Ecological Reserve, Riverside Co.), from [cismontane woodland at mesic sites, on metamorphic rocks (in same habitat as *Meilichoferia elongata*)] is not anticipated. The two other hump moss species, *Meesia triquetra* and *M. uliginosa* are plants of bogs and fens, ranked by CNPS as 4.2 and 2.2, respectively, and possibly not meeting the CESA criteria for listing. Moreover, this habitat and these species are *decidedly absent* from this project site. Two special-status liverwort species are found only in vernal pools, namely, Campbell's liverwort (*Geothallus tuberosus*), or in openings on soil bottle liverwort (*Sphaerocarpos drewei*) of Riverside and San Diego counties, and have not been reported northward from these locations. Thus, two moss species are potentially occurring at Naples project site:

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<sup>1</sup> California Natural Diversity Database (CNDDDB). 2008. Special Vascular Plants, Bryophytes, and Lichens List. January. [April.] California Department of Fish and Game, Biogeographic Data Branch, Sacramento, California. <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/SPPlants.pdf>

<sup>2</sup> Norris, D.H., and J.R. & Shevock. 2004. Contributions Toward a Byoflora of California. I. A Specimen-based Catalogue of Mosses. *Madroño* 51(1):1-131.

<sup>3</sup> Doyle, W.T., and R.E. Stottler. 2006. Contributions Toward a Byoflora of California. I. A Specimen-based Catalogue of Mosses. *Madroño* 53(2):89-197.

Coastal triquetrella (*Triquetrella californica*) is reported from seven (7) widespread North Coastal to South Coastal locations from Del Norte, Mendocino, Marin, San Francisco, and Contra Costa (at Mount Diablo) Counties, and one located very disjunct southward to San Diego County, at San Vicente Dam. Habitat is reported as “coastal bluff scrub and coastal scrub, on soil from 10-100 m.”

California screw moss (*Tortula californica*) is reported from five (5) widely separated locations between Oil Center east of Bakersfield in the foothills of the southern Sierra Nevada in Kern County, and from the Central Coast Ranges from Monterey County, disjunct to Santa Barbara from Cherry Canyon on Santa Rosa Id, to the inner South Coastal Mountains in the vicinity of Elsinore and Temecula in Riverside County. Its habitat is described as “coastal scrub, valley and foothill grassland, on sandy soil, 10-1460 m.” Sagar (personal communication January 15, 2007) reports that this species occurs in the Santa Monica Mountains at Circle X Ranch, and in Newton Canyon, on moist soil over rocks, citing a recent collection by Wilson.

A number of bryophytes not included on CDFG’s Special Vascular Plants, Bryophytes and Lichens List (cited above) may nonetheless be considered rare, especially from a local perspective. Recently, the County of Ventura has implemented a program of recognition of “Locally Important Species” that includes vascular plants for which there are five or fewer documented records of collections within their county. Although no bryophytes are presently included, one (*Bryolawtonia vancouveriensis*) has been recently nominated, and several others can be cited as eligible for such consideration. As an example of objective assessment of locally important species, we cite below some results from a study of a small parcel of land in the Hidden Valley area of the Santa Monica Mountains. Here, five species of mosses were found that were “either previously unknown, or very rarely reported from the Southwestern Floristic Province of California, and from Ventura County” (Wishner 2008<sup>4</sup>). Furthermore, “some of these might be considered for inclusion on Ventura County’s list of Locally Important Plants, on the basis of meeting the criterion of 5 or fewer known occurrences or collections.” Some of the details of the findings are given below:

*Ephemerum serratum*. The current specimens are the first for the Southwestern Floristic Province of California, and the only known record for Ventura County. The UC herbarium reports only fifteen records of this species in California. This species has wide distribution in eastern North America, from Texas, Louisiana, Missouri and Wisconsin eastward, and some Canadian Provinces, but limited to California and Oregon in the west. Also, it occurs in South America, Europe, Asia, Africa, and New Zealand (Bryan *in* FNA 2007<sup>5</sup>). Estimated State Rank S2.1 (6-20 Element Occurrences, very threatened).

*Phascum cuspidatum*. This species has a wide distribution throughout North America, and two varieties are also reported outside North America, in Europe, Turkey, Asia, Caucasus, Iran,

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<sup>4</sup> Wishner, C. 2008. Bryophyte Inventory, Ash Hidden Valley. 11 pp. Prepared for David Magney Environmental Consultants, Ojai, California. Chicago Park, California.

<sup>5</sup> Bryan, V.S. 2007. Ephemeraceae, pp. 646-653 *in* Flora of North America Editorial Committee, eds. 2007. *Flora of North America North of Mexico*. Volume 27. New York and Oxford.

Madiera, Canary Islands, Algeria, Morocco, and Ecuador. The UC herbarium reports sixty (60) records of this species in California. However, it is poorly represented in the Southwestern Floristic Province of California, with the southernmost records being in San Luis Obispo Co. (Santa Margarita Lake County Park [Norris 103611<sup>6</sup>]; American Canyon Campground, Los Padres NF [Norris and Borchert 80721]), Santa Barbara Co. (Miranda Canyon Road [Norris 80692]; Sedgewick Preserve [Shevock 27897]), Kern Co. (Granite Gorge [Norris 80806]), San Bernardino Co. (Mid-Hills Campground, Providence Mountains [Norris 81412]; Cottonwood Springs, Granite Mountains [Norris87757]), Orange Co. (O'Neal Regional Park [Norris 82168]), and San Diego Co. (O'Neal Regional Park [Norris 82175]). The present Hidden Valley location is perhaps the third record for Ventura County, the others being Arroyo Conejo Canyon, Simi Hills (Laeger 01884a), and vicinity of Sandstone Peak (Sagar 176). Estimated State Rank S3.2 (21-80 Element Occurrences, threatened).

*Hennediella stanfordensis*. The UC herbarium reports only 49 records of this species in California, including only two records in Santa Barbara County. Sagar (personal communication 2008) reports its occurrence in the Santa Monica Mountains. These are the first records in the Southwest Floristic Province, the only two records in the Santa Monica Mountains, and the Hidden Valley location *may* be the only known location in Ventura Co. There is one location in Mexico (Guerrero). It is reported from France, Greece, and Australia (Smith 2004). Estimated State Rank S3.2 (21-80 Element Occurrences, threatened).

*Bryum subapiculatum*. Norris and Shevock (2004) report this species only in the central western region, but not in the southwestern region of California. The present investigator has also collected, and had verified specimens of this species from Camp Pendleton in San Diego Co. (Wishner 2007). Records of *Bryum subapiculatum* in California are limited to one in Inyo Co. (Death Valley NP, Last Chance Mountains, Cucomonga Canyon [Laeger 1130]). There is one record for *B. microerythrocarpum*, presumably synonymous, in Trinity Co. (Swede Rock, Del Rio [Norris 68459]). The present record, and the one at Camp Pendleton are the first anywhere in Southern California. It is reported from British Columbia and Washington to California (Spence 1988<sup>7</sup>), Europe, Faroes, Iceland, Israel, and New Zealand (Smith 2004<sup>8</sup>). Estimated State Rank S1.1 (Less than 6 Element Occurrences, very threatened).

*Bryum torquescens*. The UC herbarium reports only ten (10) records of this species in California. There are no California records of this species south of Monterey, San Benito, and Contra Costa counties. The Hidden Valley location is the first in the Southwestern Floristic Province, and the only known location in the Santa Monica Mountains or Ventura County. It is reported from British Columbia and Washington to California, east to New Mexico, Colorado (Spence 1988), Europe, Turkey, Cyprus, western Asia, Pakistan, Nepal, China, Azores, Canary Islands, southern Africa, Kenya, Mexico, Chile, Australia, and New Zealand (Smith 2004). Estimated State Rank S2.1 (6-20 Element Occurrences, very threatened).

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<sup>6</sup> Represents specimen collector and collection number. All specimens cited are housed at the University of California Herbarium (UC).

<sup>7</sup> Spence, J.R. 1988. *Bryum* Hedw. (Bryaceae) in Western North America. *The Bryologist* 91(2):73-85.

<sup>8</sup> Smith, A.J.E. 2004. *The Moss Flora of Britain*. 2nd Ed. Cambridge University Press. Xii + 1012 pp.

*Bryum violaceum*. There are only five (5) records in California from Contra Costa Co. (Mt Diablo SP [Norris 100525]), Monterey Co (Hunter Liggett Military Reservation [Norris 87220, 87221]), Fresno Co. (Kings Canyon NP, LeConte Canyon [Shevock 18628]), and San Bernardino Co. (Mojave National Preserve, Pachalcka Spring [Laeger 1800]). However, Wishner (2007)<sup>9</sup> collected specimens in the Peninsular Range of San Diego Co. at Camp Pendleton, confirmed by Spence. It is reported from British Columbia and Washington to California, Idaho (Spence 1988), Europe, Azerbaijan, Macaronesia, Egypt, South Africa, and New Zealand (Smith 2004). Estimated State Rank S1.1 (Less than 6 Element Occurrences, very threatened).

*Bestia longipes*. This is a monotypic genus (only one species), rather common in San Francisco Bay region, and diminishing in all directions from there (Norris and Shevock 2004). The UC herbarium reports 36 records of this species in California. The distribution of *Bestia* is limited to very shaded riparian sites. Its occurrence is not common, and abundance is low in the Santa Monica Mountains, mainly found in the western portion. Other, southernmost records are from Santa Barbara Co. (Stagecoach Road, Santa Ynez Mountains [Laeger 526]; Cold Springs, Santa Ynez Mountains [Shevock 27875]; Santa Rosa Island [Shevock 20817, 20911]). Estimated State Rank S3.2 (21-80 Element Occurrences, threatened).

In summary, these serve only as an example of our incomplete state of knowledge about non-vascular plants. Until recently, they have mostly been ignored in CEQA documentation. Moreover, no objective findings can be made for any project's impacts on bryophytes (or lichens), short of actual field investigation and inventory by an experienced investigator.

### Lichens

Among nine lichens included on the CDFG Special Lichens, CNPS gives no status ranking for these, as they do for bryophytes. Information about distribution in California of these and other lichens is even more limited than it is for bryophytes. According to CDFG, "there are few lichens in California for which we have adequate information to place them on the list of Special taxa." "We [do not include] lichens for which little is known, even if they are only known from a few sites in California, because the level of information is not developed enough. Lichen statuses are developed in coordination with the California Lichen Society (CALs) and relevant experts."

Among those nine lichen species on CDFG's list, the following three have potential to occur on the Naples project site:

Woven-spored lichen (*Texosporium sancti-jacobi*) is reported from 20 locations by in California, of which 18 reports are from the Southwestern Geographic Province, mainly in San Diego, Riverside and Los Angeles [San Clemente Id] Counties, with one in Ventura, and one in Santa Barbara [Aliso Canyon Campground]. Two other occurrences are rather disjunct in San Benito County in the Central Coast Province. Based upon this, the species possibly occurs throughout

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<sup>9</sup> Wishner, C. 2007. Bryophyte Flora and Field Guide, Roblar Post-Fire Recovery Monitoring Sites, Camp Pendleton, California. Prepared for Jones & Stokes Associates, Irvine, California. 54 pp. + macrophotographs and photomicrographs on 2 CDs and DVD. Chicago Park, California.

the southern and central coastal region of California, being largely undetected. The Global Rank is G2, and State Rank S1.1. Habitat “Chaparral, open sites in California, with *Adenostoma fasciculatum*, *Eriogonum* [spp.], *Selaginella* [spp.], at Pinnacles, on small mammal pellets, 290-660m.” This published description is geographically outdated, however. In the Santa Monica Mountains of Ventura County near Conejo Mountain, Reifner (2004<sup>10</sup>) describes its occurrence as “rare, on [volcanic] soil with cryptogammic crust, on rabbit dung and old twigs [in coastal sage scrub].” In the Gavilan Hills of Riverside County, Reifner noted the species “rare, on old twigs and rabbit dung [on decomposed granitic soils in chamise chaparral].” Thus, this species with wide distribution from coastal southern and central California has potential to occur at the Naples project site, on specialized substrates, especially on mammal dung and twigs.

Firm cup lichen (*Cladonia firma*) is reported from maritime habitats in Europe and North America, on stabilized sand dunes near the coast, on soil and detritus on stabilized sand dunes, in pure stands or intermixed with other lichens and mosses forming biotic crusts. There are no CNDDDB records of this species in Rarefind (CNDDDB August 2008).

Splitting yarn lichen (*Sulcaria isidiifera*) is reported from “Chaparral, cismontane woodland, on branches of oaks and shrubs, 20-30m” [of course, this elevation reflects only known occurrences]. Near Morro Bay in San Luis Obispo County, Bratt (2002<sup>11</sup>) reports occurrence at Los Osos State Oaks Reserve “on branches of *Quercus agrifolia* [coast live oak], *Adenostoma fasciculatum* [chamise], and *Ceanothus ramulosus* [], in sandy areas [this is also type locality for *Hypogymnia mollis*].”

The remaining five of the seven lichen species on CDFG’s list are probably absent on the Naples project site:

Solorina spongiosa (*Solorina spongiosa*) is reported from “Alpine areas and subalpine coniferous forest, on moss mats in areas with calcareous seepage, generally in high altitude sites with north or east exposure.” One reported occurrence in Inyo Co., near South Lake at ca. 9,500 ft. (Mt Thompson quadrangle).

Light-gray lichen (*Mobergia californica*), an endemic genus for North America (Mayerhoffer) is reported by CNDDDB from one location, in “coastal scrub, abundant on cobbles in right habitat, only known from on site in Baja and one in San Diego area.”

Long-beard lichen (*Usnea longissima*) is reported from “North Coast coniferous forest, broadleaf upland forest, grow[ing] in the redwood zone on a variety of trees including big-leaf maple, oaks, ash, Douglas-fir, and [California] bay, 0-2,000 ft.” No records in Rarefind (CNDDDB August 2008).

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<sup>10</sup> Reifner, R.E. Jr. 2004. The Distribution and Ecology of *Texasporium sancti-jacobi* in Southern California. *Madroño* 51(3):326-330.

<sup>11</sup> Bratt, C. 2002. Email dated May 24, 2002 to R. Bittman on *Sulcaria isidiifera* [cited in CDFG Rarefind report for EO 1]. Santa Barbara, California.

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Memo Regarding Nonvascular Plants in Santa Barbara County to David Magney

7 October 2008

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Baja rock lichen (*Graphis saxorum*) is reported “only from Santa Catalina Id on rocky substrates, volcanic rocks, moderately shaded, usually n-facing, [near] vertical, and on underhangs, recesses, etc., 20-100m.”

Thamniola lichen (*Thamniola vermicularis*) is reported from “chaparral, valley and foothill grassland, on rocks derived from Wilson Ranch Sandstone formation” in Marin County.

Aquatic felt lichen (*Peltigera hydrothyria*) is found in cold unpolluted streams in mixed conifer forest along the western slope of the Sierra Nevada. No records in Rarefind (CNDDDB August 2008).

#### Conclusion:

Two species of mosses, and three species of lichen included on the California Department of Fish and Game’s List of Special Vascular Plants, Bryophytes and Lichens (CDFG April 2008) are considered to have some possibility of occurrence at Naples project site, which cannot be discounted short of surveys performed by qualified observers. Site-specific field surveys by qualified observers to detect their presence or absence within the impact areas have not been performed. Objective assessment of project impacts on non-vascular plants is thereby precluded.

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October 9, 2008

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

RE: Santa Barbara Ranch Visual Studies

Dear Board Members:

The following analysis comes from observations and research as a photographer, teacher, computer animator and community activist. I have sought to better understand why certain scenes and photographs are more appealing than others, and improve my ability to create uniquely satisfying images, particularly of photographed landscapes and computer generated renderings. As a computer animator, I have been looking for ways to make my 3D work photorealistic. As an animation teacher, I have tried to convey to students my appreciation for nature and belief that in naturalness, one may find and study the key elements of artistic composition, and learn important secrets to our perceptions of beauty and the way we see.

A lifelong resident of the coast, I have lived in Summerland for over 35 years and have been a member of the former Summerland Water Board and the Summerland Citizen's Association board of directors (in the past and presently). As an SCA board member, I helped write our 1992 Summerland Community Plan and am currently a member of SunPac, updating the plan. I have also served on Summerland's Board of Architectural Review and helped evaluate more than 200 new architectural projects when Summerland was nearly doubling in size two decades ago. I still regularly attend our BAR meetings.

I've studied the modeling of many proposed architectural projects over the years during seemingly countless board hearings and, when in the classroom, teaching computer animation and architectural visualization. These have included beautiful pastel, acrylic and oil paintings; pen and pencil drawings; elaborate foam core and balsa wood scale models; and cutting edge computer graphics such as Interacta's. No visualization attempt, though, ever impresses like a built project in situ in sunlight. All visualization forms have inadequacies and biases. With regards to Interacta's Naples presentation, some significant ones stand out.

First though, we probably all agree, Interacta's show was compelling. The use of a hi-definition camera, careful attention to camera settings and position, and their animation and compositing techniques were skillful and designed to impress. The editing of their simulations and expert use of organizational and informational graphics was tight.

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A sophisticated, informative, professional (and entertaining) effort such as Interacta's inherently suggests that it is accurate. At the May 29<sup>th</sup> Planning Committee workshop, Naples Coalition attorney, Marc Chytilo, asked for story poles as a way to help measure that accuracy to further understand project impacts. Good story poles can certainly verify location, height, scale, etc., but when using cameras and computers to photographically represent visual qualities we need to keep in mind some significant differences between digitized photographic renderings and real life human visual perception.

Our eyes and mind process light enabling vision unlike how cameras, computer software, and display devices manipulate and present it. Interacta would have us believe their visualizations were practically real because they used an expensive video system with carefully controlled settings; a virtual, in-computer camera on a GPS plotted motion path; skilled technicians; and complex software with thousands of buttons and sliders. But cameras, computers and digital algorithms innately distort and limit the rendition of reality and our visual experience because that reality and experience is far too complex and vibrant to recreate; and not easily nor fully understood.

Interacta's engineered analysis fails to accurately present how we will ultimately see the Naples completed project. They overlook, misrepresent and/or marginalize important qualities and capacities of human perception.

An example would be the use of a 45° FOV (field of view) or angle of coverage. Take a 45° angle and bring it up to your eyes while driving and sight along its sides to see what you don't see. Be careful! In my car, a 45° FOV limits my sight forward to from one edge of the windshield to roughly where the rear view mirror hangs in the windshield's center and is unnaturally narrow and very dangerous.

A standard or normal camera lens is considered to be one that produces a perspective similar to the human eye. Indeed a lens with a 45° FOV would qualify as a non perspective-distorting, standard lens for 35mm photography or videography. Standard lenses are typically chosen when a photographer wants an image to look normal. Although the linearity of the view may appear correct, broad areas of the human field of vision are clipped when limited to 45°.

The FOV of a single human eye is 150°. Our combined horizontal FOV is 180° to 200°. The horizontal fields of our eyes overlap in the center creating a binocular central field of view. The area of overlap is 120° with 30° to 35° monocular vision on each side. We have a vertical FOV of 120° to 135°. A 45° FOV certainly does not begin to faithfully reproduce a traveler's true Cinerama experience of the scenic Gaviota Coast.

Interacta's robotic simulation also fails to reflect the dynamic, whole brain nature of how we acquire information from our 200° or so of panoramic vision. Basic to this very complex process is visual acuity, eye scanning and focusing. Acuity refers to the ability to discern detail and is affected by a number of factors lacking in the simulations, particularly decent contrast (discussed later). The foveal system of the eye is the part of the retina providing 100% visual acuity. Distinct, clear and focused vision exists only

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along a line of sight, an imaginary line running between the fovea and a fixation point in the view. We have central or foveal vision (primarily conscious seeing) that is substantially different from our peripheral vision (primarily a subconscious process) and experience a limited area near our fixation point within that expansive field of view in sharp focus.

Key to taking advantage of a rather inclusive and usually cluttered FOV, and the excellent acuity of central vision, is our relentless scanning of the physical world as our brain tries to assemble sharp, meaningful images of our surroundings. We constantly examine (consciously and unconsciously) overlapping areas of our FOV (our eyes are always moving) while selectively focusing on individual things applying maximum acuity there and, as in film making, can even punch or zoom in on distant objects and detail something like a camera's zoom lens to look at them more thoroughly.

Additionally, when focusing we can concentrate our seeing excluding all but an individual element of our view, whether close or distant (e.g. a squished bug on the windshield, a pronghorn sprinting across the road up ahead to disappear over a far hill, or a house built there), letting that thing dominate our awareness. We scan, explore, shift focus, include and exclude all the time and it is a natural, necessary part of seeing, analyzing and understanding our surroundings. A speeding, mindless video camera recording a preset 45° slice of Gaviota "sees" little.

Another key part of the visual realm lacking in the simulation is realistic movement. The primary function of eyes as they evolved was as motion detectors. Our moving and/or our eyes moving and/or object movement must happen for vision. Seeing only occurs with movement. The visual processing of movement is our primary distance receptor and spatial monitor allowing discovery near and far, and is the basis for the human navigation system. Motion enhances awareness. For example, it is most pleasing to drive the winding roads of irregular deserts and prairies or meander through a flowing crowd in a city of tall buildings and be engrossed in the plastic dimensions of space and reality.

To facilitate our mobility, and our tracking and looking closely at active or passing things that get our attention, motion at our eyes' fixation point appears dampened. This dampening is generated in the visual cortex, suppresses blur, and helps us sort out spatial qualities such as position, depth and dimension. A spooked coyote or even a band of wild horses high-tailing it in the hills of Interacta's two-dimensional, monotonous footage would have been utterly overlooked.

Homes perched on a Gaviota Coast hillside when spotted from a moving vehicle, even though they may be seen only through "rare pockets of open space in the windrows" as Interacta contends, will stand out more than simulated because of the object tracking/organizing tendencies of our motion based vision. My wife and I experienced this phenomenon all across the spectacular West this summer as we came upon the sprawling edges of towns. Mile after mile absorbed in the innate fluid design of passing, beautiful, wild places our unfettered, exploring, relaxed vision was suddenly arrested by the aberrant pattern and placement of new homes. We were compelled to scrutinize these interruptions, temporarily transfixed by their incongruent look, morphing alignment and

form, and their tendency to fix our attention on a specific layer of streaming visual planes such that the entire scene seemed to be anchored to them. It became clear that a house or structure in an otherwise natural setting is a very attractive search icon within the peripheral field of vision.

Interacta's presentation did not simulate the all important dimensionality, flowing spatial relationships and weighting of landscape elements that would be experienced by a passerby who would be consciously and subconsciously visually investigating the changing scene zooming in, focusing, tracking, excluding, concentrating, observing the juxtaposition of objects etc. In fact in demonstrating visual impacts, Interacta froze their tedious drive-by footage and cut to still scenes with pasted-in, digital veneers of homes. The result was hard to read, unrealistic, two dimensional and prevented us from applying our highly evolved, full brain, motion based perceptual capabilities in evaluating the proposals.

In documentary filmmaking (e.g. PBS's Nature), note the use and mixing of panning, dolly and especially crane shots that slowly reposition the camera and vantage point. Note the contribution of these effective perspective defining techniques to our grasping the dimensionality of the space and things we are seeing as well as their relative positions and sizes. They are an essential part of the language of film and increasingly popular cinematic tools for documentary work. On the other hand, if the director wants to flatten a scene, camera controls are locked.

Movement, by the way, is most noticeable in the peripheral zone at the extremities of the FOV, an area highly sensitive to it. When an object moves on the far edge of our vision an immediate reflex swings the eyes to align with it. Movement takes a back seat to visual acuity near and along our line of sight though. Humans evolved this beneficial combination in the day when we both had to keep a keen analytical eye out ahead and react to an ambush from the side.

We employ sophisticated, extremely difficult to mimic methods to evaluate our surroundings and construct detailed, meaningful impressions of it in our brains. Our seeing is incredibly better, more lively and vigorous than that of a video camera mounted on a car fixed to stare forward with the focus locked on infinity wearing, in effect, blinders. Things don't "come and go so quickly" as Interacta suggests. Interruptions of the natural patterns of a scenic landscape will not be "fleeting at best," but rather will unfortunately tend to engage and distract us.

Mr. Chytilo commented on the difficulty of seeing the buildings in the presentation from his seat in the audience at the May 29<sup>th</sup> meeting and asked that they somehow be highlighted. Although Interacta may have captured its video using a hi-definition camera, that doesn't mean they produced a hi-definition simulation and that there will be a "melting away into the landscape" of homes as Interacta believes it demonstrated.

Dynamic range is a term used in photography and computer science to measure the difference between the brightest distinct subject tones possible and the darkest. It is often called the contrast ratio. Dynamic range refers to the ability to simultaneously resolve

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extremes of dark and light areas in a scene and plays a major role in image definition (i.e. the fullness or apparent completeness of an image), faithful reproduction and our making out the details of our surroundings.

Photographers often measure dynamic range by the number of exposure values (EV's) present in a scene or image with each change of EV doubling or halving the amount of light. In photography, an EV is often referred to as a stop.

The measurement of dynamic range is useful when comparing the fidelity of a device's content, or a screen image or print product to the original scene. In Interacta's simulation workflow each tool had its own dynamic range or contrast potential. Translating information between multi media devices affects image quality and the faithfulness of reproduction. The device and output option with the least potential limits the range of the scene to be reproduced. This is often a monitor, projector, or photo print.

When evaluating multi media "workflows" (camera, camera sensor, computer software, display, etc.), the lowest quality component determines the highest quality result. Clearly, at the May 29<sup>th</sup> workshop, that was the combination of the projector and screen suffering interference from ambient room lighting. Consequently, relative to an actual on site visual experience, the virtual version looked soft, faded, washed out, lacked detail, appeared to have poor dynamic range, low resolution and little sense of depth. Viewed on an LCD monitor with controlled room lighting would help some, but the definition and quality of none of these presentations can compare to the acuteness, clarity and dimensional impact of our eyes and mind being in contact with the sunlit real world.

A sunny Gaviota Coast scene pulsates with about 16-25 EV's of detail and luminous depth distributed in its highlights, mid-tones and shadows. Consider that our eyes can at once differentiate contrast up to 1:10,000 or about 14 EV's. To see into deep shadows and bright highlights, we can also apply variable sensitivity to the luminance of different areas of our field of view. This is called local adaptation. Through local adaptation we can perceive an expanded, enormous dynamic range as we alter the apparent contrast and brightness of tones. Our eyes and brain can actually adapt to almost any lighting situation and stretch the perceivable range to about 1:1,000,000,000. Our seeing constantly adjusts as we change environments and/or as illumination levels change.

There is this one particularly notable and illustrative shot. It is a still, looking west from northbound 101 at the mock-up of several buildings in the broad meadow between the frontage road and tracks. I believe the proposed configuration and design of buildings in this area are being tweaked; nevertheless the image exemplifies Interacta's poor control of contrast and one reason why the homes were hard to find. It, as well as the entire simulation, suffers from limited contrast associated with low dynamic range. More about this particular picture, but first, a bit about the importance of contrast to seeing.

Our brains process simple light signals from our eyes as patterns. Our eyes don't send pictures to our brains. Our brains form images based on pattern recognition via a highly evolved construction process. Visual patterns consist of lines, edges, shapes, highlights, shadows, etc. Our brains attempt to identify what the visual clues sent it represent in our

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building a recognizable, meaningful impression of what we see. Why is contrast so important? Pattern recognition. Patterns are dependent upon localized variations of contrasting light. Local contrast refers to the difference in the lights and darks of small discrete visual elements. On the other hand, general contrast applies to broad, large areas of a scene such as the difference between the overall collective of tones in a forest compared to those in the surface of an adjoining lake.

Our enjoyment of wind waves bending fields of wheat depends upon sunny levels of local contrast. So does our avoiding rattlesnakes when crossing a summer pasture. If the contrast of reality was set by Interacta we would not be so able to steer clear of potholes in a pitted road nor walk a cobbled trail safely nor find the unique pattern of young weeds in freshly cut lawn. To decipher the mosaic of letters on this page, quickly read passing road signs, and distinguish a distant oak from a bay tree, our brain depends upon local contrast. As easily as a hawk skimming low over hill and dale can dominate our view of a landscape as we drive by, so can a house on a Gaviota slope given realistic contrast.

Interacta's picture of the buildings between the frontage road and tracks had computer-generated structures inserted into a photographed meadow of dried grass. Zoom in on that scene, look closely at the grass and note the level of contrast there. Compare the tone of the lighted sides of the grass with the shaded. For a mediocre photo, there is contrast, quite flat, but photorealistic. Although the contrast is low, the grass looks three dimensional and photographed, as indeed it was. Now take a look at the amateur lighting on the virtual buildings. The buildings look sickly, faked, 2D, not photorealistic, nor actually part of the meadow shot. They appear like cut-outs, pasted-in, not seamlessly integrated. Their "sunny" elements are dull, don't pop, and the shadows are weak, shallow and uninteresting. The range of lighting of the buildings seems about 2-3 EV's at best and does not match the lighting in the photograph. This kind of dreary, lackluster not credible compositing work would not have passed in my class and is one of the reasons why it is difficult to track anything in their presentation.

I hope these comments help reveal some of the inadequacies and biases of computer visualizations like the Santa Barbara Ranch simulations and why, in spite of all of the bells and whistles in Interacta's presentation, we still sense a "certain something" is not right. Human visual perception is an evolutionary wonder, complex and dynamic, and our seeing, analyzing and understanding our surroundings is far superior to the capabilities of videography, CCD's and computer animators and their toys. The efficiency and thoroughness of human perception is unmatched by Interacta's inventiveness.

Sincerely,

Reeve Woolpert