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ENVIRONMENTAL LAW

November 27, 2013

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

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

RE: Initiation of the Draft Gaviota Coast Plan for Environmental Review

Dear Chair Carbajal and Members of the Board of Supervisors,

This office represents the Gaviota Coast Conservancy (GCC) and the Naples Coalition in this matter. The draft Gaviota Coast Plan (GCP) reflects the goals and objectives of the community, developed with the input of a diverse range of stakeholders during the GavPac process, the expertise of County Staff and Planning Commissioners, and the input of the community at large. Overall, the draft GCP strikes an appropriate balance between addressing the needs of agriculturalists to enhance production and retain agricultural viability, and the need to protect the world-class natural, cultural, visual, and recreational resources of the Gaviota Coast.

Addressed below, there are a handful of issues that the Board must grapple with, to ensure that the draft GCP and its Environmental Impact Report (EIR) are adequate to achieve the Plan's goals and objectives.

1. Initiate the Draft Plan by Resolution

We urge the Board to adopt the draft GCP by resolution. Staff has presented two options for initiation of the draft GCP for environmental review: by resolution, or by minute order. There is a meaningful distinction in the form of action the Board takes. Specifically, County regulations require that coastal development permits (CDPs) and land use permits (LUPs)¹ issued are consistent with both the existing land use and zoning regulations and any initiated land use and zoning regulations proposed as part of a community plan unless exclusions are made at the time of initiation. (June 11, 2013 Planning Commission Staff Report.)

¹ As explained in the June 11, 2013 Planning Commission Staff Report, "If the permit is a follow-up permit to an approved development plan, only the existing rules apply. Discretionary permits such as development plans or conditional use permits must only be consistent with the rules in place at the time of decision. Tentative parcel and tract maps (subdivisions) are governed by the rules in effect when the project application is deemed complete by P&D (Gov. Code Sec. 66474.2(a)). If new rules are initiated prior to map completeness, the rules in effect at the time of decision apply (Gov. Code Sec. 66474.2(b))."

As clarified in Article II, Sec. 35-169.4.1e (CDPs) and LUDC § 35.82.110D5 (LUPs), this effect on pending and future CDPs and LUPs ***only applies where the amendment is initiated by Board resolution***. Only if the Board initiates the draft GCP by resolution would permits including CDPs and ministerial LUPs be required to conform to the draft GCP. Initiation by minute order instead of by resolution could lead to a flood of permit applications seeking to avoid compliance with the draft GCP, that could compromise the Community's vision for the Gaviota Coast.

2. Defend Gaviota's Rural Character and Agricultural Heritage by Limiting House Size

The Gaviota Coast is unique in being the last stretch of relatively undeveloped coastline, and the last working agricultural coastal landscape in Southern California. (Gaviota Coast Study Group Report, September 2005). Perhaps the biggest threat to the rural character and agricultural viability of the Gaviota Coast is the conversion of working farms and ranches into luxury residential properties. The stunning beauty of the coastline and relative proximity to urban centers make the Gaviota Coast an attractive place for speculative luxury residential estate development, and accordingly agriculturally-zoned land on the Gaviota Coast has commanded prices far out of proportion with the value of the land for agricultural production. For example, the agriculturally zoned Bixby Ranch (Cojo and Jalama Ranches) sold in 2007 for \$136 million, "arguably the largest private land deal in the history of the county"². Agriculturally zoned lands on the eastern Gaviota Coast including Paradiso del Mare, Santa Barbara Ranch, Dos Pueblos Ranch, and Las Varas Ranch are all subject to pending applications for luxury residential estates.

The Draft Gaviota Coast Plan begins with the statement that "The Plan is intended to preserve the rural character of Gaviota". The agricultural resources section states "A key goal of the Gaviota Coast Plan is to maintain the rural character of the area that is dominated by working agriculture and natural landscapes." (draft GCP, p. 5-3.) The visual resources section states "The key role of the adopted visual and aesthetic resources policies is to ensure the retention of the vital rural character of the coast as experienced visually from public viewing places." (draft GCP, p. 6-5.) Policy AG-1.B: Long-Term Agricultural Production, states "To the extent feasible, the County shall protect agricultural land, continued agricultural uses and the agricultural economy by sustaining agricultural production and discouraging conversions or other uses that are incompatible with long-term agricultural production."

While the Plan acknowledges that "Higher urban densities are not appropriate given the area's rural character and substantial constraints, including high fire hazards in the area and policies prioritizing the preservation of agriculture" (draft GCP, p. 1-7), it fails to recognize the need to maintain the historical practice of reasonably modest house sizes to preserve the area's rural character. The failure to both recognize the trend of mansionization, and to include effective policies to address mansionization, results in a draft Plan that is fundamentally inadequate to accomplish its stated purpose.

² <http://www.independent.com/news/2007/jan/18/paradise-sold-1/>

Contrary to statements made at the Planning Commission, the draft GCP's visual resource policies are not adequate to guard against the threats posed by mansionization. Visual resource policies do not expressly limit the size of homes, and as discussed in section 7, below, the draft GCP's visual resource protection policies even fail to ensure that homes will not be visible and disrupt public views from important public viewing locations. Accordingly, while a massive house may not be visible from Highway 101, it may be visible and cause significant visual impacts from other public viewing locations including public roads, the railroad, public trails, and the ocean. As CBAR member Beverly Clough testified to at the Planning Commission, having an upper limit on building height is very helpful in the BAR review process – the same applies to having an upper limit on home size. Additionally, visual resource protection policies do nothing to address the impacts to agriculture posed by the influx of speculative real estate developers seeking to convert relatively inexpensive agricultural land in to lucrative luxury estate developments.

Large residences are not appropriate on the Gaviota Coast because they can dwarf or eliminate bona fide agricultural use of the land, converting agriculture to an ancillary use rather than the primary use as intended by the agricultural zoning. Because agricultural uses can change over time, if a large residence is approved on an active farm based merely on the expectation that the existing practices will continue,³ there is no future safeguard to ensure that the agricultural use remains the primary use of the land. Additionally, there is an inherent incompatibility between luxury residential estate uses and agriculture, which can be smelly and loud and disrupt the quiet enjoyment expected when purchasing an estate home for many millions of dollars.

Coastal Commission staff, during the failed LUDC update process, stated the following regarding large residences on agricultural land:

A limited amount of residential development is designated as a PPU [Principal Permitted Use] in the Allowed Land Use Tables on agriculturally-zoned lands. The purpose of allowing residential development as a PPU on ag-lands is to recognize that limited residential use may support the primary agricultural use of a property, while concurrently recognizing the primary importance of maintaining long-term agricultural viability. As a result, the primary residential dwelling is limited to 5,000 sq. ft. or less with a total development area of 10,000 sq. ft. or less, and occupied by operator or owner, in order to be considered part of the PPU. Any proposed development in excess of this size criteria would require an Appealable CDP.

While specifically referring to the different permit paths for principally permitted uses and non-principally permitted uses, Coastal Commission staff recognizes the important link between smaller

³ Such as occurred with the Dos Pueblos Ranch coastal zone houses approved as part of the Santa Barbara Ranch Project, where no agricultural buffers were required based on the applicant's oral assurances that these houses were expected to be only occupied by family members who would never object to the adjacent avocado orchard.

homes and maintaining long-term agricultural viability.

Large residences are also not appropriate for the Gaviota Coast because they are not compatible with the scale of the existing community. The median size of residences on the Gaviota Coast is 2,632 square feet, as calculated by County Staff. To retain the scale and character of the existing community, we propose that the Gaviota Coast Plan's environmental review document consider a policy limiting the size of primary residences to no more than 5,000 square feet. On small lots, a FAR based approach may be prudent, but in no case should homes be allowed to exceed 5,000 square feet.

Existing County Policy seeks to preserve the scale and character of the existing community within designated rural neighborhoods (Comprehensive Plan, Land Use Element Policy #3, "In designated rural neighborhoods new structures shall be in conformity with the scale and character of the existing community.") The draft Summerland Community Plan also recognizes the importance of ensuring that new development is not excessive in comparison to the community's scale, even on larger lots. Specifically, that draft includes the following policy: "Policy VIS-S-5: Floor Area Ratios (FAR) shall be established for commercial and residential developments to ensure that new development is compatible with the community's scale." The accompanying draft zoning ordinance amendment articulates the specific FAR based approach that includes a fixed limit on house size once lots reach a certain size. (See draft CZO amendment § 35-191.5).

An upper limit on house size has been successfully implemented in other communities⁴ and in Marin County, which includes large agricultural parcels and confronts many of the same challenges as the Gaviota Coast, a coalition of environmental organizations put forward a proposal called Community Marin 2013. One of two major new recommendations in this plan is: "A maximum size for new residences must be established, to reduce the impacts of very large houses on the environment, resource use, and community character." Specifically, Community Marin 2013 recommends the following:

Establish a maximum size of 3,500 square feet for new and remodeled homes, plus another 500 square feet for accessory buildings, unless a lower maximum is specified in adopted city or community plans. Allow a size larger than the maximum only if the unit is subject to design review, meets all planning standards, has no adverse impacts on sensitive habitat and service capacities, does not exceed the energy use of a typical 3,500 square foot floor area house, conforms to the average size of houses in the neighborhood, and the developer makes a compensatory contribution to a trust fund for support of environmental protection. Establish strict standards for floor area ratio, lot coverage, conformance with community character, bulk, mass, slope, height, accessory structures, and design review. The house size calculation should include

⁴ See e.g. <http://www.wickedlocal.com/wellfleet/news/x1197762352/Votesr-approve-restricting-size-of-homes-in-Seashore>; <http://mvgazette.com/news/2013/04/24/chilmark-overwhelmingly-passes-bylaw-limit-home-size?k=vg5293ad39d3a59>

all enclosed or partially enclosed space that is attached to the living space. Accessory structures include garages. Make it clear that a maximum is not an entitlement.

(Community Marin 2013, page 22⁵.)

An upper limit of 5,000 square feet for the Gaviota Coast is approximately twice the historical informal community standard, and appropriate to ensure that new development will be compatible with the scale of the existing community. Another option is establishing a general maximum that is less than 5,000 square feet (i.e. 3,000 square feet), then allowing landowners to pursue larger residences (up to 5,000 square feet) on an incentives basis. Given that the incentives program, a key feature of the Plan, includes only one incentive to secure much-needed public benefits, and that the one incentive may present unacceptable environmental impacts (*see* section 8, below), adding square footage as a tradable commodity would breathe life into the incentives program..

Limiting house size to 5,000 square feet is the single most effective means to effectuate the draft GCP's vision, retain the scale and character of the existing community, and to prevent the conversion of the Gaviota Coast from a relatively undeveloped rural agricultural landscape, into a high-end residential enclave. To ensure that limiting house size remains a viable option for consideration, we urge you to direct Staff to include a house size limitation policy for analysis in the GCP EIR. Doing so only keeps this option open for future consideration, provides the Board with important information and analysis, and does not bind the Board to adopting this in the future. This analysis will provide the Board with the necessary background to reach an informed decision on this critical issue.

3. Retain the Near-Shore Alignment for the Coastal Trail

The California Coastal Trail is intended to provide "a continuous trail as close to the ocean as possible". (Completing the California Coastal Trail, Coastal Conservancy (January 2003).) The Planning Commission recognized the importance of a near-shore alignment for the California Coastal Trail (CCT), and accordingly recommended an alignment that traverses the coastal bluffs wherever feasible. We urge the Board to maintain the near-shore alignment recommended by the Planning Commission, to ensure that the framework is in place to site and construct a coastal trail that is true to the vision for the CCT.

4. Retain Inland Trail Alignment Necessary for Trail Connectivity

Several trails are proposed in the Plan area besides the CCT, including a ridge-top trail segment that potentially enables the public to hike from Ojai all the way to Las Cruces, and connects the County's Baron Ranch trail to Camino Cielo. The critical missing segment of that trail traverses the southern boundary of the Reagan Ranch, which the owners of that property have vigorously

⁵ Available at <http://www.marinaudubon.org/pdf/Comm%20Marin%202013.pdf>

opposed, albeit with little substance to their concerns. As made clear during the Planning Commission's proceedings, there are insurmountable physical challenges to a northerly routing of this segment of the trail to avoid the Reagan Ranch entirely. Accordingly, the Planning Commission recommended that the trail alignment on the southern boundary of the Reagan Ranch be retained. We urge the Board to follow the GavPac's and the Planning Commission's recommendation.

5. Clarify Prescriptive Rights Policy to Avoid Confusion

The Gaviota Coast has experienced decades of historic public use along many areas, including most coastal bluff areas, many creek corridors, and to the ocean at numerous locations. Much of this historic public use has resulted in public prescriptive rights for continued public recreational use of such areas under California law and Constitutional doctrine. The Planning Commission recommended the inclusion of a narrative section to the Plan, describing public prescriptive rights, and a policy protecting the public's right of access to the sea where acquired through use. The recommended policy (below), while an important addition, does not meaningfully clarify the County's existing obligation pursuant to section 30211 of the Coastal Act ("Development shall not interfere with the public's right of access to the sea where acquired through use.") There is one addition that we recommend including in this policy (below) that would add clarity, borrowing language included in the County's LUDC⁶ and in the planning documents for other jurisdictions⁷. Specifically, we request that the underlined language be added to Policy REC-8:

⁶ For example, LUDC §§ 35.30.070, 35.30.090, 35.42.260, 35.42.050 exempt fences and similar structures, storage trailers, and agricultural sales, in the Coastal zone where (among other things) they will "not result in any potential adverse effects to public access to the beach or public hiking and equestrian trails (***including where there is substantial evidence of prescriptive rights***)."

⁷ Malibu LCP Policy 2.3: Public prescriptive rights may exist in certain areas along the shoreline and trails within the City. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions for new development, which incorporate measures to provide or protect access ***when there is substantial evidence that prescriptive rights exist***. (emphasis added.)

Newport Beach LCP Policy 3.1.1-7. Continue to protect the public's right of access to the sea where acquired through historic use or legislative authorization. ***Where substantial evidence of prescriptive rights exists***, actively pursue public acquisition or require access easements as a condition for new development. (emphasis added.)

Newport Beach LCP Policy 3.1.1-8. ***Where there is substantial evidence that prescriptive rights*** of access to the beach exist on a parcel, development on that parcel must be designed, or conditions must be imposed, to avoid interference with the prescriptive rights that may exist or to provide alternative, equivalent access. (emphasis added.)

Policy REC-8: Protection of Existing Coastal Access. Ensure that development does not interfere with the Public's right of access to the sea where acquired through use, including where substantial evidence of prescriptive rights exist.

Without this additional language, Policy REC-8 begs the question of how the County would know whether prescriptive rights have been acquired through use. Incorporating the substantial evidence standard gives the County clear direction. We urge the Board to make this important addition to Policy REC-8.

6. Avoid Creating Conflicting Skyline Intrusion Policies

Draft Policy VIS-13, Skyline Intrusion, provides that “[w]here feasible, development shall be sited so as not to intrude into the skyline as seen from public viewing places.” (emphasis added.) This draft policy conflicts with the Countywide rural skyline protection policy contained in the Comprehensive Plan, Visual Resources Policy 2, which provides:

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

(emphasis added.) This language is also currently present in the LCP and as a Development Standard in the zoning ordinance. Accordingly, existing policy categorically prohibits skyline intrusion as seen from public viewing places, without any provision for feasibility.

Adding draft Policy VIS-13 to the Plan only creates confusion for both landowners and the public as to which policy applies. Because all development must be consistent with the Comprehensive Plan as well as the Community Plan, the more stringent standard in the Comprehensive Plan would govern. Accordingly, we request that the Board either delete “where feasible” from draft Policy VIS-13, or eliminate it from the plan all-together, in which case the existing policy and language would apply.

7. Ensure the Critical Viewshed Corridor Overlay Enhances View Protection

The GavPac proposed a Critical Viewshed Corridor to provide heightened protections within a defined geographic area, designed to provide heightened protection to near-field views on either side of Highway 101. Under the GavPac's proposal, “Development within the Critical Viewshed Corridor shall be screened to the maximum extent feasible as seen *from public viewing places.*” (emphasis added.)

The Planning Commission made an unfortunate change to this policy (Policy VIS-13), such that as currently proposed, it would require “Development within the Critical Viewshed Corridor shall be screened to the maximum extent feasible as seen *from Highway 101*.” (emphasis added.)

The effect of this change (which we believe may have been unintended by the Planning Commission) is that public viewing places (other than Highway 101) within the Critical Viewshed Corridor (i.e. the Railroad), actually receive less protection than public viewing places outside the corridor. This is because Policy VIS-2 provides that “Development *outside* of the Critical Viewshed Corridor shall be visually subordinate as seen from public viewing places.” (emphasis added.) By contrast, development *within* the Critical Viewshed Corridor need not be visually subordinate as seen from public viewing places other than Highway 101, and must only be screened as seen from Highway 101.

To ensure that the Critical Viewshed Corridor policies actually strengthen as opposed to weaken visual protections in this vital coastal area, and to protect the existing world-class views from Amtrack’s Pacific Surfliner, we request two specific changes:

Policy VIS-2: Visually Subordinate Development. Development ~~outside of the Critical Viewshed Corridor~~ shall be visually subordinate as seen from public viewing places. Visual subordination shall be achieved through adherence to the Site Design Hierarchy and Design Guidelines.

Policy VIS-13: Development Visibility. Development within the Critical Viewshed Corridor shall be screened to the maximum extent feasible as seen from Highway 101 and the Railroad. Screening shall be achieved through adherence to the Site Design Hierarchy and Design Guidelines.

Without these changes, the Plan fails to include adequate protection for public views other than highway views within the Critical Viewshed Corridor. Accordingly we request that the Board direct Staff to make these changes in the draft Plan that is initiated for environmental review.

8. Meaningfully Consider Williamson Act Consistency

As noted in the Draft Plan, 76% of privately held land in the plan area is under Williamson Act contract. The tax incentive available through the Williamson Act program enables many farmers and ranchers to stay on the land, and preserves both agricultural land and agricultural production. Draft Plan Policy AG-1.I strongly encourages and supports use of the Williamson Act:

Policy AG-1.I: Williamson Act. The use of the Williamson Act (Agricultural Preserve Program) shall be strongly encouraged and supported. The County shall also explore and support other agricultural land protection programs.

Effectuating Policy AG-1.I, and the GCP's broader goals of protecting and promoting agriculture, requires that the GCP ***not create disincentives*** for farmers and ranchers to enter into and stay in Williamson Act contract. Expressly allowing a new use that is not consistent with the Williamson Act, may prompt farmers to file for non-renewal to pursue new potentially lucrative sources of income.

Specifically, we're concerned that the Residential Second Unit (RSU), which the draft Plan proposes to allow on an incentives basis, is not consistent with the Williamson Act, and accordingly would encourage landowners to cancel Williamson Act contracts to pursue RSUs. Given this Williamson Act conflict, how allowing RSUs on an incentives basis would impact the long-term agricultural viability of Gaviota's agricultural lands is something that must be fully evaluated in the EIR. Additionally, given the possibility that the EIR will find significant impacts, it is imperative that the Board direct Staff to include additional incentives for study in the EIR. One that we have put forward is capping house size, and allowing a landowner to pursue homes larger than the maximum only on an incentives basis (in return for the dedication of public trail easements, agricultural and/or conservation easements.)

9. Study Alternatives to Exempting all Agriculture from the ESH Overlay Protections

The draft GCP exempts agriculture from the ESH Overlay protections. This blanket exemption could result in the widespread degradation and elimination of ESH throughout the Plan area. We urge the Board to direct Staff to explore alternative approaches to this blanket exemption, and study those alternative approaches in the GCP EIR.

10. Do Not Revive the Agricultural Rural Clustering (ARC) Ordinance

The ARC was adopted in 1982, and has existed in the County's Zoning Ordinance since. The ARC allows for an increase in development potential on Bixby Ranch (Cojo/Jalama Ranches) from 47 or fewer homes, to between 240 and 480 homes plus a rustic lodge, cabins, hostel, and campgrounds. The "benefits" of the ARC would include a coastal trail segment, and some "clustering" of development. Simply put, these benefits dwarfed by the **510% - 1,021% increase in development potential** for the resource sensitive and access constrained Bixby Ranch.

The GavPac and the Planning Commission have both recommended deletion of the ARC from the draft GCP. Staff has supported retaining the ARC, as a "tool in the planning tool box" until a more general rural clustering ordinance can be adopted. However, under no circumstance could we envision a situation where the County would be better off with the ARC than without it, and retaining the ARC only gives the landowner the misimpression that such a drastic increase in development would ever be approved.

Finally, if an argument is made that the ARC should at least be included in the draft Plan for purposes of environmental review, it is important to understand that since the ARC is currently in the

County's Zoning Ordinance, it is part of the "environmental baseline", and accordingly the impacts of retaining the ARC would not be analyzed in the environmental document. *Deleting* the ARC by contrast is a change to the existing conditions that must receive the benefit of environmental review.

11. Conclusion

Based on the foregoing, we urge the Board to adopt the draft GCP by resolution, with the changes recommended herein. Some issues, like limiting home size, are appropriate for inclusion in the environmental review document as alternatives, to provide the Board with important information and analysis, and to keep options open for future consideration.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO

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

Ana Citrin
Marc Chytilo