

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW



# 10

July 11, 2008

Chairman Salud Carbajal  
Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, California 93101

RE: Ballantyne Residence, Item # 10, July 15, 2008

*Chairman Carbajal and Honorable Members of the Board of Supervisors:*

This office represents the Gaviota Coast Conservancy (GCC) in this matter. GCC seeks to preserve the rural character of the Gaviota Coast. GCC has a history of working cooperatively with Gaviota Coast landowners in resolving land use compatibility issues to allow projects to proceed, but unfortunately that has not been possible in this case. Additionally, there are several significant land use permitting issues that prevent the Board from approving this project as proposed. We ask the Board to deny the project and direct the applicant to work with CBAR to find a more suitable project for this parcel.

Attached as an exhibit are detailed comments on the technical and legal issues associated with this project. This letter summarizes the most important issues for your consideration.

**Issue # 1: The Negative Declaration Is Not An Appropriate Environmental Review Document**

A Mitigated Negative Declaration (MND) may not be used when there is substantial evidence supporting a fair argument of a significant project impact. This reflects CEQA's low threshold for preparation of an EIR. *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75. Comment to the draft MND included substantial evidence supporting a fair argument that the Project, including the berm (which constitutes a "structure" under the County zoning ordinance definition), will be visible from public viewing places, including Farren Road. There is substantial evidence that the impact to views from Farren Road will be significant.

CEQA requires that a project's inconsistency with an applicable General Plan policy be considered a significant impact. Here Project structures intrude into the skyline as viewed from public viewing places, violating Visual Policy 2 and Visual Resources Development Standard 1 (SBCLUDC §35.30.060) that require that structures "shall be sited so as to not intrude into the skyline as seen from public viewing places." (Emphasis added.) These policies also require that "[s]tructures shall be subordinate in appearance to natural landforms,[and] shall be designed to follow the natural contours of the landscape." This Project does neither, as it is a dominant feature and involves major modification of the natural contours. Project inconsistency is a significant impact that precludes use of a Negative Declaration. *The Pocket Protectors v City of*

*Sacramento*, 124 Cal. App. 4<sup>th</sup> 903, 930 (“if substantial evidence supports a fair argument that the proposed project conflicts with the policies of the PUD, this constitutes grounds for requiring an EIR.”)

### **Issue # 2: The Negative Declaration is Flawed**

The Mitigated Negative Declaration has several critical flaws. Most glaring is the lack of analysis of the Project’s water supply, since none is definitively identified in the application materials. Initially the applicant proposed a well, but water quality was reportedly unacceptable. They then proposed to rely on Goleta Water District service, but the Goleta Water District has indicated they have no ready means to provide domestic service to this location, and suggested that the applicant secure water through other means, each of which involves other environmental impacts. Exhibit 1. CEQA requires a complete and accurate Project Description for the environmental impact analysis, but here the description is incomplete.

Another glaring defect is the absence of policy consistency analysis. The project’s inconsistency with the General Plan policies and zoning ordinance is substantial evidence of a potentially significant impact. *See* County of Santa Barbara Environmental Thresholds and Guidelines Manual, page 180, C.2b; CEQA Guidelines, Appendix G, IX; *Pocket Protectors, supra*.

### **Issue # 3: The Project is Inconsistent with General Plan Policies**

This project violates General Plan policies, necessitating Project denial or revision. Projects inconsistent with the General Plan may not be approved. *Families Unafraid to Uphold Rural El Dorado County v. County of El Dorado* (1998) 62 Cal.App.4th 1332, 1336.

General Plan Visual Resources Policy 2 and Design Compatibility Standard 1 in Section 35.30.060 of the Land Use and Development Code provide:

In an area designated rural on the Land Use Element Maps, the height, scale, and design of each structure shall be compatible with the character of the surrounding natural environment, as determined by the review authority, except where the review authority determines that 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.

The Project is located on land designated rural on the Land Use Element Maps. The character of the surrounding natural environment is agricultural. The CBAR has found that the Project’s size, scale and design is not compatible with the surrounding natural environment. Further, the extraordinary size of the residence, and the 600 foot berm, combine and are not subordinate in appearance to natural landforms; modify, rather than follow the natural contours of the

landscape; and intrude into the skyline. Conformity with this policy and its standards is to be achieved **through siting of structures**, not by berming, screening, or other methods.

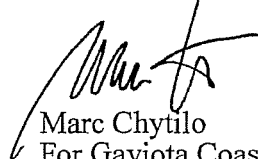
Land Use Development Policy # 4 requires findings "that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development." The Goleta Water District has stated that service to this site will be very complex and expensive, including "booster pumps, privately owned onsite water storage tanks and an onsite chlorination facility." **"The initial impression is that this pipeline extension would result in substandard water pressure and water quality conditions. We apparently cannot deliver the required fireflow, the static pressure and residual pressure would be too low, and we would probably not be able to meet DOHS minimum pressure requirements. Water quality may also be a major concern."** For all these reasons, the District urged the applicant to seek other sources of water. GWD memo 3/7/2007, Exhibit 1 (emphasis added). From this information, it is evident that adequate water service is not available to serve the Project, and that fire flows cannot be provided for fire protection. The Project is located in a high wildfire area - Farren Road was evacuated due to threats from the Gap fire.

The Applicant's attorney has submitted a largely rhetorical letter with no substantive treatment of the technical or legal issues associated with this project. Although they threaten various civil rights claims if the project is denied, the Applicant's inability to identify an adequate water supply provides a public safety basis for project denial.

The Gaviota Coast Conservancy has offered to work with the Applicant and their design team to identify a project that completely conforms to the applicable policies, as we have done with other Gaviota Coast landowners. The parcel is large enough that the house can likely be sited to conform to the applicable General Plan policies and still preserve views of the ocean and mountains. This would involve compromises in house design and location that most applicants resolve through the CBAR process. This applicant has been unwilling to compromise and has, through their intransigence, forced this issue to a head. It is unnecessary and unfortunate, but it is their doing.

We ask that your Board deny this project and direct the applicant to revise their application in consultation with CBAR by siting the structures out of the highly visible areas in order to conform to the General Plan.

Respectfully Submitted,



Marc Chytilo  
For Gaviota Coast Conservancy

Encls.

## Ballantyne Residential Project

### CEQA Defects and Policy Inconsistencies

The Ballantyne Residential Project (Project) is inconsistent with the clear language of County visual policies and hillside and watershed protection policies. Due to these policy inconsistencies the required findings of approval cannot be made. Further, although Planning and Development has conducted environmental review of the Ballantyne Project as ordered by the Board, the review process yielded a document which fails to comply with clear requirements of the California Environmental Quality Act (CEQA). If the Board is not prepared to deny the Project at this time, the Board must initiate preparation of an Environmental Impact Report (EIR) for the Project as CEQA clearly requires. Further, the applicant should identify their water supply and delivery infrastructure as part of the Project Description.

#### 1. The MND Is Materially Flawed

The sufficiency of a negative declaration as an informative document depends largely on “whether policymakers have been adequately informed of the consequences of their decisions, and whether the public has sufficient information to evaluate the performance of their elected officials.” *Long Beach Sav. & Loan Ass’n v. Long Beach Redevelopment Agency* (Cal. App. 2d Dist. 1986) 188 Cal. App. 3d 249, 259. The agency must in good faith strive to make the negative declaration as complete and comprehensive as possible. *Id.* at 264.

The MND for the Ballantyne Project omits discussion of Project elements described in the record, fails to include illustrative site plans and other diagrams included in the record, and relies on insufficient visual simulation, among other deficiencies. Considering the wealth of information available in the record, the MND’s highly constrained description and analysis of the Project does not evince a good faith effort to make the MND as comprehensive and complete as possible. Notably, the Project Description contains inaccurate information regarding the Project’s water supply, which undermines the environmental analysis and has implications for required findings. Omitting reference and consideration to important evidence in the record materially and adversely affects the impact analysis and resulting conclusions, deprives the public of their ability to comment, and precludes informed decisionmaking.

#### i. Omissions in the Project Description

"An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *McQueen v. Board of Directors* (6<sup>th</sup> Dist. 1988) 202 Cal. App. 3d 1136, 1143. The Project Description included in the MND does not accurately describe the Project, and omits various Project elements from its description including how and whether the Project will receive water, the Project’s anticipated water demand and water and gas delivery infrastructure. This approach precludes intelligent evaluation of potential environmental effects of the Project, and as such the MND must be thoroughly revised to provide a more accurate and complete description of the Project.

### 1. Provision of Water Service

The Project Description states that “[a] water service connection to the Goleta Water District would provide water...” MND p. 2. This statement is contradicted however by new language added to the document. Specifically, on page 39, the MND states “The applicant has submitted a preliminary application for water service, but has not submitted a formal application to date; therefore, no determination has been made with respect to whether or not the District will provide service.” Whether or not GWD will provide water service is critical to the assessment of the Project’s impacts. The environmental review process cannot be adequate without knowledge of whether the Project will have water. Further, this lack of certainty precludes the decisionmakers from making required findings that “adequate public or private services and resources (i.e., water...) are available to serve the proposed development.” Comprehensive Plan Land Use Development Policy 4.

### 2. Project Water Demand

The proposed Project includes structures totaling nearly 15,000 square feet in area, as well as a pool, reflecting pool, and substantial amount of irrigated landscaping. MND p. 2. The residence alone is anticipated to include 12 toilets and 22 sinks. The site has a large number of non-native trees and plants already installed, and consuming a considerable amount of water that is delivered by truck via a temporary Goleta Water District permit and use of a fire hydrant. The Project Description fails to include any data regarding the anticipated construction and operational water demand for water associated with the Project. Water usage associated with such would be anticipated to be substantially greater than water usage associated with a typical sized residential development, and may constitute a potentially significant environmental impact. The MND is defective in failing to describe the Project’s water demand; without this information, it is impossible to assess the impacts the Project may have on water resources, as well as on public services and fire protection.

### 3. Water and Gas Delivery Infrastructure

The Goleta Water District (GWD) has articulated significant concerns regarding their ability to provide adequate water service to the Project, and that additional infrastructure would likely be needed. Specifically, GWD Engineering Manager Gary McFarland stated “[t]o meet water quality, fireflow, and water pressure requirements, booster pumps, privately owned onsite water storage tanks and an onsite chlorination facility will probably required.” Letter from McFarland to Ballantyne (March 7, 2007), attached hereto as Exhibit 1 to the GCC DMND Comment Letter. Additionally, a letter from Allen Bell to Richard Adam, dated January 21, 2008 includes a site plan showing various elements associated with the water line, including pumps. Exhibit 2 to the GCC DMND Comment Letter. The draft Project Description included in the letter states “[t]he project includes the actual water and gas lines and pumps, valves, regulators, meters, electric lines and related components.” This site plan is not included with the MND and the pumps and other infrastructure is not described in the Project Description or elsewhere in the document.

The location of the proposed water and gas lines is not described, depicted or analyzed, even though it appears that these Project components will involve extensive trenching on highly visible steep slopes, one or more booster pumps involving surface and sub-surface components, excessive energy consumption, potential connection to other portions of the Goleta Water District water supply system, and other physical changes.

These additional infrastructure elements are part of the Project and must be considered in the environmental review process. The failure to include these infrastructure elements in the Project Description and following impact discussion constitutes an omission which materially affects the adequacy of the environmental review process.

ii. Inadequate Description of Environmental Setting

“Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.” CEQA Guidelines § 15125 (c). The proposed Project site is located at the eastern end of the Gaviota Coast, “one of the last remaining rural landscapes on the Southern California coast.” National Park Service, Gaviota Coast Draft Feasibility Study and Environmental Assessment, Part 1, Chapter 3, Exhibit 3 to the GCC DMND Comment Letter, p. 51. The area “has retained much of the character and scenery of its ranching history.” *Id.* The visual, biological, agricultural, recreational, cultural and other resources of the Gaviota Coast are unparalleled. The Gaviota Coast is one of the rarest global biomes meets all four National Park Service criteria for national significance, 1) it is an outstanding example of several types of resources, 2) it possesses exceptional value in illustrating both natural and cultural themes of our nation’s heritage, 3) it offers superlative opportunities for public use and enjoyment, and scientific study of rich biotic and cultural resources and 4) it retains a high degree of integrity as a true, accurate, and relatively unspoiled example of these natural and cultural resources. *Id.* pp. 52-53.

As stated by the Board of Architectural Review in its consideration of the Project, “[v]isually the subject parcel is part of the Gaviota Coast, which is at a crossroads. Projects that affect Gaviota must be closely scrutinized.” Board of Architectural Review Committee minutes, Meeting of November 18, 2005, item 9, attached hereto as Exhibit 4 to the GCC DMND Comment Letter.

Although some language describing the Gaviota Coast was added to the final version of the MND, the impact analysis fails to heed the Board of Architectural Review’s admonition to closely scrutinize Projects on the Gaviota Coast. The result of these failures is a wholesale discounting of the Project specific and cumulative impacts associated with the Ballantyne.

iii. Failure to Include a Site Plan

The MND does not include a site plan or other diagram depicting all elements of the proposed Project. Moreover, depictions of the residence may not be accurate, as discussed in the following section. The proposed water line is not depicted anywhere in the MND. A letter from Allen Bell to Richard Adam dated January 21, 2008 and regarding the application for the water

and gas line CDP, includes a site plan which depicts elements of the water delivery system including pumps, fire hydrants and other features. Exhibit 2 to the GCC DMND Comment Letter. This letter and attached site plan are part of the record and should be included in the MND for the public's review and comment.

iv. Reliance on Outdated Visual Simulations from Highway 101

The visual simulations submitted with the MND were prepared in October of 2006 by B3 Architects. *See e.g.* Figure 10. B3 Architects originally designed the proposed residence, however we understand that a dispute arose which caused B3 to withdraw from the Project and deny the Ballantynes' use of the plans. For this reason we believe that the photosimulations may no longer accurately depict the proposed Project. Concern with the accuracy of the visual simulations was also raised in public comment on the DMND by Nancy Gardner. The accuracy of the visual simulations from Highway 101 prepared by B3 Architects must be determined, and if inaccurate, new visual simulations must be prepared.

Inexplicably it was determined that no new visual simulations needed to be prepared or submitted as part of the environmental review process. *See* Letter from Planning and Development Director John Baker to Richard Adam, attorney for the Applicant, dated September 18, 2007 and attached hereto as Exhibit 2. The lack of new simulations reflecting any changes in architecture, configuration or other elements precludes an accurate assessment of the Projects aesthetic impacts.

v. Failure to Identify Public Viewing Places

As acknowledged in the MND, the Project site is also highly visible from Farren Road, but the MND improperly discounts the significance of Farren Road public viewing places and fails to provide visual simulations of the Project as seen from Farren Road.

The MND discounts the significance of Farren Road as a public viewing place, indicating for example "Travelers along Farren Road are primarily limited to recreational users and the handful of residents along the Farren Road corridor." P. 7. The MND's arbitrary definition of public viewing place undermines a series of General Plan policies, Zoning Ordinance development standards and is inconsistent with the definition used other environmental impact reports prepared by the county. For example the Santa Barbara Ranch EIR, discussed further below, expressly includes Farren Road as a public viewing place based in part on its recreational use. Exhibit 9 to the GCC DMND Comment Letter. Santa Barbara's Local Coastal Plan is illustrative of the proper definition. It states "[t]he primary concern of the Coastal Act is to protect views to these scenic resources from public areas such as highways, roads, beaches, parks, coastal trails and accessways, and vista points." P. 33. Based on the Santa Barbara Ranch EIR and the Local Coastal Plan, the definition of 'public viewing place' is broad and does not require 'formal designation as a public view corridor' or limit public viewing places to 'throughway[s] for the general public'.

In fact, Farren Road is renowned for its recreational value and is heavily used by a variety of public user groups for a variety of recreational purposes. Farren Road is depicted on the Comprehensive Plan Parks Recreation and Trails Map for the Santa Barbara –Goleta Area (PRT-3), attached hereto as Exhibit 5 to the GCC DMND Comment Letter. This map, which is part of the General Plan, designates Farren Road as a proposed public trail consisting of both on-road and off-road components. In public testimony at the DMND hearing on May 14, 2008, Nancy Gardner, who resides in the vicinity of the Project site stated that Farren Road is heavily used recreationally, including use by the UCSB and City College track teams, as well as by photographers, artists, bird watchers, hikers and other recreational users.

There is extensive additional evidence of recreational use of the site, its surrounding area, and Farren Road. The site and surrounding lands are a popular birding location. The Santa Barbara Audubon Society sponsors bird walks and field trips on Farren Road. Exhibit 6 to the GCC DMND Comment Letter. Santa Barbara County Birding's website lists 174 messages regarding bird sightings and birding excursions on Farren Road. Exhibit 7 to the GCC DMND Comment Letter. The SBSlopers, a local sailplane and glider enthusiast group lists Farren Road as one of the four "best known and most easily accessible flying sites in Santa Barbara." Exhibit 8 to the GCC DMND Comment Letter. Farren Road is also a popular bike route described and rated on "mapmyride.com" a cycling website. Exhibit 19 to the GCC DMND Comment Letter. In short, Farren Road is a well known recreational destination for many recreational users and the MND arbitrarily discounts its significance as a public viewing place.

The evidence establishes that there is extensive public recreational use of Farren Road and environs. Cases establish that the Project impacts to recreational users may be considered significant impacts. The General Plan, Local Coastal Plan and Zoning Ordinance establish various objective and subjective standards that the Project must meet. The only way to determine the significance of the Project's impacts to views is to conduct visual simulations, and the failure of MND to include such visual simulations necessitates recirculation of a revised environmental review document before the County may consider action on this Project.

This conclusion is supported by the County's own practices in a nearby Project also under environmental review. The County's EIR for the Santa Barbara Ranch Project included Farren Road as a key observation point (KOP) from which views of the proposed Project were simulated and Project impacts and policy inconsistencies were analyzed. The Santa Barbara Ranch EIR specifically notes the sensitivity of recreational users viewing the Project from Farren Road, stating:

Due to the elevation of this vantage point...in addition to the lack of intervening structures or development, long scenic vistas are maintained from almost every angle in this area...Due to the nature of the existing scenic vistas, the overall visual quality from this KOP is rated as high. Since most viewers have chosen to visit this area for recreational purposes or are permanent residential viewers, the overall scenic quality is an essential component of these viewer types. Viewer sensitivity is therefore rated high. Although the number of viewers at this KOP might be low in relation to other KOP



locations, the duration of views is high, the primary focus for recreational trail users is high, and therefore, viewer exposure in aggregate is rated moderate to high.

P. 3.9-27., attached hereto as Exhibit 9 to the GCC DMND Comment Letter.

In light of this substantial evidence of moderate to high levels of aggregate viewer exposure at Farren Road, it is imperative that the MND for the Ballantyne Project acknowledge that Farren Road is a public viewing place, simulate views of the Project as seen from Farren Road, and thoroughly analyze Project impacts and policy inconsistencies resulting from the visibility of Project structures from vantage points along Farren Road. The additional language added to the final draft of the MND does not negate the recreational use of Farren Road, or the visibility of Project structures from Farren Road. *See* MND pp. 7-8.

In addition to Highway 101, Calle Real and Farren Road, there are public streets east and southeast of the Project site from which the Project may be visible. Dianne Meester Black Memorandum (October 27, 2006), p. 2, Exhibit 10 to the GCC DMND Comment Letter. The MND does not simulate views of the Project from this location, making analysis of visual impacts and policy inconsistencies from these vantage points impossible.

vi. Failure to Simulate Views of the Project from Public Viewing Places

Farren Road is identified in the MND as a location from which the Project would be “highly visible.” P. 7. Discussed above, Farren Road is a public viewing place. The environmental consultant identified views from Farren Road as possible grounds for preparation of an EIR. *See* Exhibit 3. Yet, the MND provides no visual simulations of views of the Project from any point along Farren Rd. The only depiction of views from Farren Road is of the Project site without structures, indicating the “general area” in which proposed structures would be located. *See* Figure 19. Without visual simulations of the proposed Project from locations along Farren Road from which the Project site is visible, visual impacts and policy inconsistencies cannot be meaningfully analyzed.

Visual simulations of the Project site from Highway 101 are also lacking. Staff articulated concern regarding the southeast view photo simulation which shows the residence would not be visible without the berm, and stated that “[n]ew story poles would be required in order for us to verify the results of this photosimulation.” Exhibit 10 to the GCC DMND Comment Letter, p. 2. It appears that these additional story poles were not erected and therefore this photosimulation may be inaccurate. Further, locations along Highway 101 from which the Project may be visible are identified, but not simulated, in the MND. The specific issue, also raised in public testimony on the DMND by Joan Bolton, is that Figure 13 in the MND identifies nine ‘lines of sight’ from Highway 101 to the Project site, yet the MND provides no visual simulation of the Project site as seen from most of these vantage points.

The overall lack of adequate visual simulation may be related to the unexplained direction to the Applicant that no further visual simulations were needed. *See* Exhibit 2. These simulations however are essential to the environmental review process.

The MND also fails to assess the Project's visibility from trails and roads in the Los Padres National Forest, including West Camino Cielo and residences in that area. The fabled Slippery Rock Trail is located north of the Project site, and views from that trail corridor should be included in the environmental review document and analysis.

The County Staff Report for Appeal of Land Use Permit Denial contains relatively detailed visual depictions of Project structures. Exhibit 11 to the GCC DMND Comment Letter, Attachments D and E. No such visual depictions are now provided in the MND. Overall, the MND lacks sufficient information and visual simulation to justify conclusions that the Project will not violate visual policies and development standards, and will not generate visual impacts. The MND's conclusions lack a reasoned analysis and basis, and are contrary to the previous conclusions reached by County Staff, the Board of Architectural Review, and many members of the public. In order to allay concerns that this controversial Project will comply County policy and not generate visual impacts, it is imperative that the County supply new information and photo simulations, and thoroughly revise the MND's discussion of visual impacts and visual policy consistency.

vii. Failure to Include Proposed Access Roadway in Visual Simulations

The Board of Architectural Review Committee reviewed the Ballantyne Project in 2005, and expressed concern about the visual impacts of the access roadway. Specifically, the Committee stated “[p]rominence and visibility of access roadway need to be diminished, not strengthened, Road is fighting the natural contours of land. Row of trees proposed along length of road only emphasizes it.” Board of Architectural Review Committee minutes, Meeting of September 9, 2005, item 10, Exhibit 12 to the GCC DMND Comment Letter. There is no indication that the proposal regarding the access roadway has changed since the BAR Committee discussion. The row of trees remains visually intrusive and incongruent. In light of this concern, and because CEQA requires the whole of a Project be analyzed in the environmental review document (*See Laurel Heights v. Regents of the University of California* (1988) 47 Cal. 3d 376, 396), the failure of the MND to include simulations of the access roadway, or engage in any discussion whatsoever of potential visual impacts associated with the proposed roadway constitutes a serious failure which undermines the impact analysis and conclusions regarding visual impacts.

viii. Failure to Simulate Views of the Project from the Ocean

Under CEQA, significant aesthetic impacts can arise where views from the ocean are adversely affected. The Project site appears to be visible from the Pacific, and the MND should have included a simulation of these views. The Santa Barbara Ranch EIR simulated views of the Project from the ocean, and utilized those simulations to analyze the Project's environmental impacts. Exhibit 9 to the GCC DMND Comment Letter, pp.3.9-37 – 3.9-38. The MND's failure to simulate views of the Project from the Pacific affects the impact analysis. It is imperative that these simulations be prepared and analyzed in a an EIR.

ix. Failure to Simulate Night Views of the Project

Given its extremely prominent ridgeline location, night lighting in and on the Project site could potentially be highly visible from a number of locations in the region. It could also result in night sky lighting and cloud and fog illumination. The Board of Architectural Review noted the “[u]se of glass, reflectivity of materials, internal lighting would make [the] house very visible, especially at night.” Exhibit 12 to the GCC DMND Comment Letter. Given these characteristics of Project structures, simulations of the Project at night are necessary to evaluate whether the Project may have a significant impact in this regard.

x. Failure to Characterize Affected Biological Resources

The area surrounding the site is rich in bird populations and diversity. Farren Road is a popular destination for birders due to the many raptors and other birds that routinely use the area and whose activities may be adversely affected by the Project. Notable species observed on or near the Project site include white tailed Kites, Golden Eagle, Costa's Hummingbird, Blue Grosbeak, Phainopepla, Raven, Lazuli Bunting, grasshopper sparrow and migrants. See Exhibit 7 to the GCC DMND Comment Letter. The ecology of this area provides habitat for grassland and coastal sage scrub ecotone species. These bird populations have suffered from cumulative habitat loss and are projected to lose considerable additional habitat of this type as San Marcos Foothills and other Gaviota Coast lands are developed. Combined with other Gaviota Coast development, the cumulative effect of the Project upon the roosting, feeding, sheltering, nesting and rearing activities could be significant. The MND is silent about this important feature of this site.

xi. Omission of Required Approval and Policy Discussion

County Land Use and Development Code Chapter 35.63, Ridgeline and Hillside Development, requires that any structure proposed “where there is a 16-foot drop in elevation within 100 feet in any direction from the proposed building footprint” must conform to development guidelines for ridgeline and hillside development. Compliance with these guidelines must be assessed by the Board of Architectural Review. These guidelines include that “Building rake and ridge line should conform to or reflect the surrounding terrain”, “Grading shall be minimized, in compliance with the Comprehensive Plan” and “Development on ridgelines shall be discouraged if suitable alternative locations are available on the lot.”

The Board of Architectural Review discussed the Ballantyne Project in 2005, and commented that the [l]ocation brings the project within the spirit, if not the letter, of the Hillside/Ridgeline Guidelines. House is in a de facto ridgeline location.” Exhibit 12 to the GCC DMND Comment Letter. At a subsequent meeting, the BAR Committee stated more authoritatively, “Ridgeline development guidelines apply to this site.” Exhibit 4 to the GCC DMND Comment Letter.

Notwithstanding BAR’s comments regarding the applicability of these policies to the Project, these policies are not even referenced in the MND. The “required approvals” listed in the Initial Study do not include BAR review required by the Land Use and Development Code. Substantial

evidence in the record supports an argument that these policies are applicable and that the Project violates these policies; the MND's omission constitutes a serious flaw in the document.

If, as Staff indicated in the Planning Commission hearing on October 6, 2006, the failure to reference these policies stems from documentation submitted by the applicant showing the Project is just shy of the 16 foot drop required to trigger these policies, we would urge the County to conduct its own independent review of the site to independently determine the applicability of these policies.

xii. Coastal Development Poorly Described

The MND fails to provide any detail whatsoever concerning the elements of the Project located within the coastal zone and/or entailing Coastal Development Permits.

xiii. Agricultural resources

The MND fails to evaluate the effect of covering agricultural soils and the conversion of the open, undeveloped agricultural site to a sprawling residential complex.

2. The County Must Prepare an EIR for the Ballantyne Project

CEQA establishes a low threshold for the preparation of an EIR, “which reflects a preference for resolving doubts in favor of environmental review.” *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal. App. 4th 689, 703. Accordingly, the lead agency must prepare an EIR, as opposed to a Negative Declaration or Mitigated Negative Declaration, whenever substantial evidence in the record supports a “fair argument” that the Project may have significant environmental impacts, even where substantial evidence also supports the opposite conclusion. *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75. “[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” Guidelines § 12080 (e)(1). Here, substantial evidence in the record supports a fair argument that the Ballantyne Residential Project may have significant environmental impacts; as such, the County must prepare an EIR in order to comply with CEQA. *See Id.*

The MND systematically understates Project impacts with regards to land use impacts and policy inconsistencies, visual impacts, geologic impacts, water resource impacts and associated impacts to public services, fire protection as well as growth inducement impacts, among others. In numerous instances the MND's analysis of whether the Project may have a significant impact according to the County's checklist lacks reasoned analysis. In other instances the particular effect at issue was not even addressed despite being raised extensively in public comment, by Staff, and during BAR review of the Project. These failures are particularly troubling considering that County Staff, BAR as well as members of the public reached opposite conclusions based on carefully reasoned analyses. The below discussion addresses defects in the MND's analysis, and presents substantial evidence in the record supporting a fair argument that the Project may have significant environmental effects requiring evaluation in an EIR.

a. Substantial Evidence of Land Use Conflicts and Policy Inconsistency

Conflicts with applicable policies designed at least in part to mitigate or avoid environmental effects are considered significant impacts under CEQA, requiring the preparation of an EIR. CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4<sup>th</sup> 903, 934, 936. (EIR required where petitioner demonstrated substantial evidence supporting a fair argument that the Project conflicted with land use policy that was “adopted for the purpose of avoiding or mitigation an environmental effect”). Reflecting this CEQA standard, the checklist used by the County to assess whether a Project may have land use related impacts includes the following factor: whether the proposal would “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigation an environmental effect.” For this factor, the MND checks to box for “less than significant impact.” P. 27.

The following impact discussion in the MND states “[n]o conflicts with adopted land use plans and policies are anticipated and impacts would be less than significant.” This statement is incomprehensible given the substantial policy conflicts involving the proposed Project, and the Project’s history, including its initial denial based primarily upon violations of these policies. The minor changes made to the Project since its denial by the Planning and Development Director do not resolve all or even most of the policy violations. There is substantial evidence in the record that the proposed Project conflicts with numerous policies designed for the purpose of avoiding and/or mitigating environmental effects, specifically aesthetic and geologic effects. These policies are found in the General Plan, the Goleta Community Plan as well as with provisions of the Land Use and Development Code including Design Compatibility Standards. The Project’s inconsistency with each of these policies is detailed in the last section of this letter. These policy inconsistencies are significant impacts under CEQA which must be analyzed in an EIR. CEQA Guidelines Appendix G (IX)(b); *Pocket Protectors*, 124 Cal. App. 4<sup>th</sup> at 934, 936.

b. Substantial Evidence of Impacts Associated with Providing Water to the Project

Discussed above, the MND gives inconsistent information regarding whether water service can and will be provided for the Project. An addition to the final version of the MND states “no determination has been made with respect to whether or not the District will provide service.” P. 39. Indeed the Goleta Water District (GWD) has articulated numerous concerns related to providing water to the Project site. A letter from GWD’s Engineering Manager Gary McFarland to Randy Ballantyne, dated March 7, 2007 and attached hereto as Exhibit 1, presents GWD staff’s analysis of the preliminary application for water service to the Project site. These concerns include that GWD will be unable to provide water pressure sufficient for fire protection purposes, that GWD may be unable to deliver water of adequate quality for residential use given the long distance the water would need to travel, and that a private treatment facility, other infrastructure, and/or an alternative pipeline size and configuration may be required. These articulated concerns, made by qualified agency experts and based on fact, constitute substantial

evidence in the record that the Project may have significant impacts to water resources, public services and fire protection.

i. Impacts to Water Resources

Water is generally regarded to be a scarce resource in Santa Barbara County, and global climate change threatens to further reduce water available in the area. Notwithstanding this reality, the MND fails entirely to describe the proposed Project demand for water and to address the Project's potential impacts related to water resources. As compared with an average size house, the Project will consume a disproportional volume of water based on the 22 sinks and 12 toilets for a family of 2. There is substantial evidence in the record that the Project may have a significant effect on water resources; an EIR is therefore required.

1. Water Supply

The County's checklist for assessing water resources impacts includes whether the Project would result in "[s]ubstantial reduction in the amount of water otherwise available for public water supplies?" MND p. 38. The subsequent discussion concerning this factor is conclusory and lacks foundation. The MND states "[t]he proposed project would not substantially reduce the amount of water available for the public supply as water service would be through a proposed connection the Goleta Water District." The word 'proposed' was added in the final version because GWD has not agreed to provide water to the site (MND p. 39) and may have substantial difficulty providing water of adequate pressure and quality, as discussed in the March 7, 2007 McFarland letter.

The MND provides that the water line would be the minimum size necessary to provide service to the proposed single-family residence and accessory structures, and would not serve existing or future residences or development and that "there has been no indication that the connection to the District is infeasible and the costs of needed onsite water infrastructure would be borne by the project applicant." P. 40.

These assumptions on which the MND's relies are directly contrary to evidence contained in the March 7, 2007 letter from GWD. The letter raises significant concerns about the feasibility of providing water to the site, and suggests various alternative mechanisms to the pipeline described in the MND, that may be necessary in order to provide water of sufficient quality and pressure for the Project. The alternatives suggested include providing a looped system by extending the water main from Vereda Leyenda to the east, and extending a water main from the Goleta West Conduit in conjunction with constructing a privately owned water treatment facility. Given the cost and logistical concerns with each of these alternatives, the letter suggests that "[d]ue to these conditions, you may want to consider drilling a well and constructing your own well water system for your project." The letter also specifically states that "[a] main larger than 8" in diameter may be required."

The evidence contained in this letter is substantial and reveals that the MND did not properly examine water resource issues, and that supplying water to the Project may entail significant

environmental impacts in the form of growth inducement that must be evaluated in an EIR. The fact that the Project applicant would bear the cost of required water infrastructure is an insufficient basis for concluding there will not be significant impacts relating to water resources, where, as here, the required infrastructure may itself cause significant environmental impacts.

Additionally, in public comment on the adequacy of the MND, Ms. Gardner, who lives near the Project site and witnesses daily operations on and around the Project site, described that truckload after truckload of water is currently transported up Farren Road to irrigate landscaping on the Project site. The frequency and amount of water application greatly concerns Ms. Gardner, and provides evidence that the Project will require excessive amounts of water related to landscaping, which also could entail impacts related to increased runoff and erosion. Further, in the event of water shortage, irrigation of the landscaping trees may be impossible, and any beneficial screening effect sought to be achieved by the landscaping would be compromised or lost.

Simply put, the water supply and related analysis in the MND is based on faulty assumptions and fundamentally misleads decisionmakers and the public. The MND glosses over very real concerns that the Project will require unreasonable amounts of water, and ignores the opinion of the Goleta Water District itself that delivering such water may require substantial amounts of infrastructure and a larger diameter pipe or alternate routing. A larger diameter pipe could facilitate unreasonable water usage and, if sufficient to serve multiple residences, would entail growth inducing effects. Alternative routing may also enable further development and generate growth inducement impacts. An EIR is required to assess the full extent of the Project's impacts on water supply and related issues including runoff, erosion, loss of visual screening and growth inducement.

## 2. Water Quality

The County's checklist regarding water resources/flooding includes whether the Project will result in "alteration of surface water quality, including but not limited to temperature, dissolved oxygen, turbidity, or thermal water pollution." The MND checks the box for 'less than significant impact' in this regard (p. 38), however does not discuss the water quality issue at all in the document. There is in fact substantial evidence in the record that the steep and lengthy pipeline proposed to deliver water to the site will cause a significant water quality impact.

The March 7, 2007 letter from GWD provides under no uncertain terms that water quality is a potential problem associated with delivering water to the Project. The letter states

[t]he 2,300 feet of proposed pipeline would probably create a water quality problem as well. It is estimated that the water in this proposed pipeline will age about 7 days before it gets to the proposed water meter. The water will be much older than 7 days because it has to go through a long pipeline from the Corona del Mar Water Treatment Plant at the north end of Glen Annie Rd. to this location. Chlorine residual may be non-existent and bacterial growth may occur with taste, odor, or health issues. Increasing the pipe size from the proposed 8 inches would make this even worse. It is recommended that a

thorough hydrolic (modeling) analysis be done including a water quality (modeling) analysis. The initial impression is that this pipeline extension would result in substandard water pressure and water quality conditions.

These statements by the GWD's Engineering Manager constitute substantial evidence in the record supporting a fair argument that the Project as proposed may have significant water quality impacts.

### 3 . Growth Inducement

Mr. McFarland of the Goleta Water District suggested that the applicant may wish to consider connecting their water system with a potential future water delivery system that would be associated with the Bacara owner's Tecolote Canyon residential Project. *See* Exhibit 1. The growth inducing effects of any such potential future water delivery configuration must be analyzed. The final MND inserts one sentence on p. 40 which reads "...onsite water infrastructure would not induce or facilitate development of other parcels located to the north or west." This statement is based on the unsubstantiated assumption that it is feasible to extend a water line to serve only the Project. GWD has already indicated that this may not be possible.

#### ii. Impacts to Public Services

The County's checklist for assessing Project impacts to public services includes whether the Project would require "[t]he construction of new storm water drainage or water quality control facilities or expansion of existing facilities, the construction of which could cause significant environmental effects." In addressing this factor the MND states that "[n]o construction of stormwater drainage or water quality control facilities beyond what is necessary to handle runoff from the building site is proposed." P. 34. The MND's discussion of this factor omits reference to water quality control facilities that will likely be required to treat water being delivered to the site. Substantial evidence in the record, presented above, shows that water quality is a major problem given the distance water would have to travel to reach the site, and that to resolve this problem "an onsite chlorination facility will probably be required." Exhibit 1.

Additionally the March 7, 2007 letter documents the considerable difficulty GWD will face in providing water service to this Project. In light of this evidence, it is entirely improper for the MND to have given such short shrift to Project impacts associated with delivering water service.

#### iii. Impacts to Fire Protection

The County's checklist for assessing whether the Project would result in "[i]ntroduction of development into an area without adequate water pressure, fires hydrants or adequate access for firefighting." Substantial evidence in the record however supports a fair argument that there is inadequate water pressure available for firefighting at the Project site. Further, firefighting access to the site may require significant improvements. The required improvements, and the timeline for their completion is critical information that must be included in the environmental



review of the Project. Moreover, because the Project's water supply is in doubt, any conclusions relying on that water supply are premature.

The MND states that the Goleta Water District would provide water to the Project site for purposes including fire protection. The March 7, 2007 letter from GWD's engineering manager McFarland to Ballantyne however, articulates significant concern regarding providing sufficient water pressure to the site for fire protection purposes. Exhibit 1. Specifically, the letter states "[o]n-site water pressure is calculated at being marginal if not adequate. A booster pump system by Applicant subject to GWD's acceptance will most likely be needed." The letter then goes on to state that "[w]e apparently cannot deliver the required fireflow, the static pressure and residual pressure would be too low... Even if you add a booster pump to get the water to a useable pressure, you would probably still have the stagnant water issue [discussed above]"

Significant concerns regarding the ability of fire trucks to access the Project site were also raised in public testimony, discussed further in the Traffic Impacts section, below. The final MND acknowledges these difficulties, stating "To access the project site, fire trucks would need to navigate a series of curves in the road as well as a steeply-sloped segment. The County Fire Department is currently investigating methods to improve fire truck access along this roadway."

Vegetation management required for wildfire fuel reduction may result in less screening vegetation for the Project. Similarly, drought conditions could necessitate cessation of landscape watering and loss of many of the exotic trees and landscape plants. If these plants dry out and die, they increase fire risks.

#### b. Traffic and Circulation Impacts

Public testimony at the Planning and Development Staff hearing on the MND by Nancy Gardner included comments regarding Project traffic impacts. Ms. Gardner, who lives near the Project site, reported that Farren Road is in a state of disrepair and that trucks headed for the Project site have considerable difficulty traversing the steep road. She recounted an event she witnessed in which a truck headed up Farren Road could not make the turn, could not turn around, so had to back down the steep hill in reverse. Based on this, Ms. Gardner suggested that fire trucks would have a very hard time negotiating the turns on Farren Road. The MND does not appear to adequately address this issue.

Further, the same public commenter testified that Farren Road is heavily used for recreational purposes, including by the running teams of both UCSB and City College and by photographers and artists as well as more typical recreational users. This heavy usage is not accounted for in the MND, leaving open the possibility that the Project will have cumulatively considerable impacts on traffic and circulation.

The MND must analyze the evacuation capacity of Farren Road in the event of a wildfire burning up canyon. The absence of an alternative evacuation route, combined with the high fire hazard area, indicates this is a serious public safety risk issue. Given the steep slopes of Farren

Road, it appears that emergency vehicles would have difficulty accessing the Project if there were evacuating traffic heading down-canyon, such as in a upper canyon wildfire scenario.

c. Impacts to Visual Resources

A central concern of County Staff, BAR and members of the public is the visual impact of the Project. Berming, as discussed previously, does not fully resolve the visual impacts of the Project and generates its own impacts and policy inconsistencies. The record is laden with testimony constituting substantial evidence of visual impacts. Rather than acknowledge this, the MND relies on numerous faulty assumptions and improperly disregards views of the Project from public viewing places other than Highway 101.

The checklist utilized by Santa Barbara County in assessing the impacts of the proposed Project lists four factors relating to Aesthetics. The first of these factors is whether the Project would result in “obstruction of any scenic vista or view open to the public or the creation of an aesthetically offensive site open to public view?” The second factor is whether the Project will “change the visual character of an area?” The fourth factor, whether the Project will result in “visually incompatible structures.” The third factor relates to glare or night lighting. Substantial evidence in the record, indeed in the MND itself, supports a fair argument that the project will result in the obstruction of scenic vistas and views open to public view, will create an aesthetically offensive site open to public views, and will change the visual character of the area. The new language added to the final MND attempting to reconcile view impacts from Farren Road by discounting its importance as a public viewing place is not based on CEQA and is inconsistent with the County’s CEQA guidelines.

Moreover, the environmental consultant responsible for preparing the MND all but admitted that an EIR is required to assess the Project’s impact to views from Farren Road. Specifically, after preparing a Draft MND and receiving public comment on its adequacy, Rincon Consultants communicated the following to the County via a Memorandum dated June 12, 2008 and attached hereto as Exhibit 3:

Given that [the] County has released a public document suggesting that Farren Road is an important view location, and in light of Mr. Chytilo’s documentation of the ongoing recreational use of Farren Road, *we believe that it could reasonably be argued that the EIR commenters have raised a “fair argument” that this is the case* [emphasis added]. The IS/MND acknowledges that the proposed residence would be highly visible from Farren Road and relies heavily on the notion that Farren Road is not an important view corridor to support the conclusion that the visual change from Farren Road is not a significant impact under CEQA and would not violate County visual policies. Therefore, we believe that the identification of Farren Road as a key observation point in the Santa Barbara Ranch EIR could be found to contradict this position.

In instances where evidence in the record supports a fair argument that a significant impact may occur, CEQA suggests that an EIR should be prepared rather than an MND (No Oil Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75). The EIR need not

necessarily conclude that impacts would be significant, but would need to air the differences of opinion regarding the significance of project impacts.

*Based on the above, our recommendation would be to prepare a focused EIR that, at a minimum, addresses aesthetics and County visual policies [emphasis added]. Otherwise, we believe that the County would be vulnerable to legal challenge with respect to the above points.*

Rincon’s statements corroborate our position that substantial evidence in the record shows the Project may have a significant adverse environmental impact on views from Farren Road, and as such, an EIR must be prepared.

i. The Project will Obstruct Scenic and Public Views

The MND states, “the proposed 11,535-square foot residence...would be located on a ridge that is at the highest point of the...site. Therefore it would be in a location that is visually prominent from portions of both Highway 101, a heavily traveled scenic corridor, and Farren Road, a lightly-traveled County road...” P. 6. The MND further states “[b]ecause the residence would be elevated above Farren Road and along the ridge, it would interrupt views of the existing skyline from Farren Road.” P. 49. Figure 15 shows the public view that would be interrupted by the proposed Project.<sup>1</sup>

Even without a visual simulation, the image provided of the existing view from Farren Road, coupled with the massive elongated nature of the structure, supports a fair argument that skyline intrusion and the obstruction of public views from Farren Road may be substantial. Further, County policy and land use standards mandate avoidance of skyline intrusion as seen from public viewing places. It follows that where structures result in such intrusion, they cause a significant adverse aesthetic impact. Moreover, the issue of skyline intrusion has been raised repeatedly by County Staff and members of the public, discussed in the above section on visual policy.

The berm itself is a structure, as defined by the County Zoning Ordinance. Given the small size of the visual simulations included in the MND, it is difficult to ascertain the magnitude of the intrusion caused by the berm itself. Larger versions of the visual simulations should be prepared to illustrate the magnitude of skyline intrusion associated with the proposed berm.

ii. The Project will Create an Aesthetically Offensive Site Open to Public View

“[T]he opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic.” *Pocket Protectors*, 124 Cal. App. 4<sup>th</sup> 903, 937, citing *Ocean View Estates*, *supra*, 116 Cal.App.4<sup>th</sup> at p. 402.

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<sup>1</sup> The lack of a visual simulation of the Project from this viewpoint is a serious omission that prevents an accurate assessment of the Project’s visual impacts and consistency with General Plan Visual Policy 2.

Numerous members of the public have expressed significant concern, even disgust, regarding the proposed Project's design and conformity with surrounding landscape. For example Mike Lunsford commented at the November 18, 2005 BAR Committee Meeting "Project is starkly in contrast to [the] surrounding environment, disrespectful of landscape." Exhibit 4 to the GCC DMND Comment Letter. At the same meeting, Ed Easton commented that the "[p]roject design [is] not acceptable on the Gaviota Coast. Size, stark modern design, contrived landscaping make [the] house stand out. Highly visible on ridgeline, [and] breaks [the] skyline" and Susan and David Schwartz, neighbors to the site found the Project "[v]ery intrusive to public views." Under *Pocket Protectors* and *Ocean View Estates*, these opinions constitute substantial evidence supporting a fair argument that the Project may have a significant aesthetic impact. Further, as discussed previously, BAR comments provide additional evidence that the Project will be aesthetically offensive as seen from public viewing places.

iii. The Project will Change the Visual Character of the Area and Includes Visually Incompatible Structures

The proposed Project will change the visual character of the area in two regards. First, the addition of the earthen berm will change the visual character of the topography. Second, even with the berm however, "the proposed residence would be highly visible from the adjacent segment of Farren Road" and will change the agricultural nature of the surrounding landscape. Further, the proposed residence is grossly disproportionate in size and style to other residences on the Gaviota Coast, further changing the area's visual character.

The MND states "[t]he proposed project involves the development of a 11,535 square-foot residence...on a prominent ridge in the central portion of the site...[t]herefore the project would therefore change the character of the site to some degree." Immediately following this statement, the MND states "[h]owever, the proposed structure would occupy only about 2% of the 17.1-acre site. In addition, the proposed residence would be similar in scale to other residences farther west...as well as those farther north... Finally...the change to views from Highway 101, the primary view corridor in the area, would be minimal." On this basis, the MND concludes "[t]herefore, although the proposed project would change visual conditions on portions of the project site, it would not fundamentally alter the visual character of the project area. Impacts would be less than significant." P. 9.

The above reasoning is flawed in several regards. First, the proposed residence is not similar in scale to other residences in the area. The average size of proposed and existing residences on the Gaviota Coast is 2,852 square feet. See Exhibit 18 to the GCC DMND Comment Letter. The proposed residence therefore is *over four times the size of the average home in the area*. Indeed, the size discrepancy between the proposed residences and residences in the development located immediately to the east is readily evident from a cursory examination of the Photosimulation Key Plan (MND Figure 9). Further, the discussion regarding the floor-to-area ratio added in the final MND (p. 7) is much less relevant to visual impacts than the structure size, particularly in rural areas where structures are spread out. Moreover, although changes from Highway 101 may be minimal, the Project site is visible from other public viewing places including Farren Road.

Among the observations of area residents found to constitute substantial evidence of aesthetic impacts in *Pocket Protectors* is that the Project resulted in “the overall degradation of the existing visual character of the site from the excessive massing of housing with insufficient front, rear, and side yard setbacks.” 124 Cal. App. 4<sup>th</sup> at 937. Observations by members of the public regarding the Ballantyne Project include that the prominent location, as well as the massive size and length of the residences degrade the visual character of the site. See above section and Exhibit 16 to the GCC DMND Comment Letter. Under *Pocket Protectors*, the evidence that the Project may adversely change the visual character of the area is substantial and therefore an EIR is required.

iv. Landscaping Insufficient to Resolve Visual Impacts and Inconsistencies with Visual Policies and Standards

Planning and Development Staff has raised significant concern regarding the adequacy of the landscaping plan. “Based on the limited information in the revised landscape plan, staff concluded that the proposed trees are unlikely to fully block or screen the residence as seen from Farren Road to the north.” Planning and Development Memorandum, October 27, 2006, p. 4. Further, in its previous denial of the Project, Planning and Development Staff raises two additional concerns, 1) the three-year period required for the trees to mature will delay screening and 2) that “[t]here are many uncertainties about establishing and maintaining an orchard on this steep south-facing slope.” Planning and Development, Denial Letter, P. 2. Public comment also expresses deep concern with the adequacy of the landscape plan. For example, Joan Bolton wrote “the applicant proposes planting eight oak trees and 10 California white elders...Alders are native to moist streambeds, not bare, windswept hillsides, and they drop all their leaves during winter. Furthermore, I fail to understand how eight oaks and 10 deciduous trees can sufficiently block views of a highly visible structure that intrudes into the skyline by more than the length of a football field.” Exhibit 14 to the GCC DMND Comment Letter, p. 2.

d. Substantial Evidence of Impacts to Geology and Soils

The checklist used to assess whether a Project may have impacts to geology and soils lists various factors includes whether the Project would result in “permanent changes in topography.” For this factor, the DND checks the box for “less than significant impact.” The impact discussion which follows states “[t]he proposed project would require permanent topographic changes.” This discussion is contradictory and substantial evidence in the record supports a fair argument that the permanent topographic change affected by the berm is significant.

Additionally, the amount of grading required for the berm generates other potential impacts. For example, the MND states that “site grading could potentially increase erosion and sedimentation, which could affect nearby drainages.” P. 24. These impacts should be quantified. Further, sedimentation will impact coastal areas, including ESHA. The effects of the loss of vegetation on the site and extensive use of coir rolls to contain soils and slow erosion have created an unstable current condition. This is a Project impact that must be examined in the environmental review document.

e. Mandatory Findings of Significance Are Required

CEQA provides for certain situations in which the County must find that a Project may have a significant effect on the environment. *See* Guidelines Appendix G, § XVII. The County’s checklist for mandatory findings of significance includes the following situation: where “disagreement supported by facts, reasonable assumptions predicated upon facts and/or expert opinion supported by facts over the significance of an effect which would warrant investigation in an EIR[.]” MND, p. 45.

The record in this case reveals substantial evidence of disagreement regarding the significance of the Project’s effect on visual resources and consistency with visual resource policy. As quoted throughout this letter, Planning Commission, Planning and Development staff, the Board of Architectural Review as well as the Project applicant and members of the public have all articulated opinions regarding the Project’s visual impact and consistency with visual policy, and have reached conflicting conclusions. This topic remains an area of significant disagreement, and indicates that an EIR must be prepared.

3. Deferral of Necessary Mitigation in Violation of CEQA

“The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA.” *Sundstrom v. Mendocino* (1988) 202 Cal. App. 3d 296, 306. Regarding impacts to geology and soils, the MND defers a critical study required to determine the footprint of the proposed berm, and the amount of grading required. Discussed below, this approach masques potential impacts and stands in direct violation of CEQA. *See id.*

The MND assumes that all conditions of approval applied by the Planning Commission would be implemented. Condition 4 of the draft Land Use Permit contains the following requirement: “[a] detailed geological and/or soils engineering study addressing the berm, structure sites and driveway shall be prepared to determine structural design criteria, as recommended by the P&D Building & Safety Division. The Study shall be submitted for review and approval by Public Works.” MND, p. 23. Planning and Development Staff has stated that a “soils report and preliminary grading plan are required before we can accurately delineate the full extent of the grading for the berm or provide consistent cut and fill estimates for the berm. The amount of fill required for the berm may be greater than 4,600 cubic yards. The grading may extend beyond the footprint of the berm shown in the revised plans.” Exhibit 10, to the GCC DMND Comment Letter, p. 2. It does not appear from the MND that these issues were clarified, rather a ‘detailed geological and/or soils engineering study addressing the berm’ is required as a Land Use Permit condition.

Environmental review of this Project is severely hampered without the results of this study, particularly because the berm is relied upon to achieve consistency with applicable policies. If for example this study were to find significant concerns with the berm design, the berm may

need to be altered. Subsequent environmental review would then be required to determine whether the new berm design sufficiently screens Project structures from public view.

In short, this study should be prepared prior to the drafting of the MND; postponing this critical study raises significant concerns regarding the accuracy of conclusions in the MND, particularly in the areas of aesthetics, geology, and land use/policy consistency.

#### 4. The Ballantyne Residential Project Violates County Policy

##### i. Visual Resources Policy 2 and Visual Resources Development Standard 1

General Plan Visual Resources Policy 2 and Design Compatibility Standard 1 in Section 35.30.060 of the Land Use and Development Code contain near identical language. Quoting the latter,

In an area designated rural on the Land Use Element Maps, the height, scale, and design of each structure shall be compatible with the character of the surrounding natural environment, as determined by the review authority, except where the review authority determines that 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.

The proposed Project violates this policy/standard in several regards. 1) the Project will result in skyline intrusion from public viewing places including Farren Rd. and public roads in the Rancho Embarcadero community, as well as from HW 101 as a result of the proposed berm; 2) the height, scale and design of the structures is incompatible with the character of the surrounding natural environment and technical requirements do not dictate otherwise (mere applicant preference); 3) structures are not subordinate in appearance to natural landforms; 4) the Project is not designed to follow the natural contours of the landscape.

The policy analysis contained in other County environmental review documents is illustrative. For example, the Final Mitigated Negative Declaration for Burinda Vesting Tentative Parcel Map (April 30, 2007) states regarding Visual Policy 2, “[i]n order for a structure to meet this policy requirement, careful design consideration will need to be given to the location of the structure, as well as the height, bulk and scale.” Exhibit 13 to the GCC DMND Comment Letter, P. 17.

##### 1. Impermissible Skyline Intrusion

The proposed residence will intrude into the skyline as seen from public viewing places. The residence will intrude into the skyline as seen from Farren Road, looking south. This fact is apparent from the photo of the Project site from Farren Road (MND Figure 15) and admitted in the MND (“Because the residence would be elevated above Farren Road and along the ridge, it

would interrupt views of the existing skyline from Farren Road.”) P. 49. Subsequent discounting of skyline intrusion from Farren Road, discussed at length above, is misplaced and inconsistent with fact and prior County practice. Farren Road is a public road, proposed public trail, and is heavily used recreationally. Revisions to the MND incorporated into the final draft do not refute this. See MND p. 7 and above discussion regarding substantial evidence of visual impacts. Skyline intrusion from Farren Road obstructs expansive and highly scenic public views of the ocean and constitutes a significant unresolved policy inconsistency, and significant environmental effect. Moreover, there is substantial evidence that the proposed Project structures may also result in skyline intrusion as seen from roads in the Rancho Embarcadero neighborhood to the east, also a public viewing place. Exhibits 14 and 15 to the GCC DMND Comment Letter.

Berms have been designed in an effort to resolve this policy inconsistency as it relates to views of the Project from Highway 101. The berm does not address skyline intrusion or Project visibility from Farren Road and other nearby public viewing places, and such is at best an incomplete solution to resolving this policy inconsistency. Additionally, the berm itself is a structure<sup>2</sup> that intrudes into the skyline as seen from public viewing places including Highway 101, obstructing public views of the mountains. The berm itself therefore generates a facial conflict with this visual policy.

Berms are ineffective in resolving this policy inconsistency for an additional reason. Visual Policy 2 and Visual Resources Development Standard 1 both require that *structures be sited* so as to avoid skyline intrusion from public viewing places. Rather than resiting the residence as required, the berming approach shields inappropriately sited structures.<sup>3</sup> These provisions require the residence be resited to avoid skyline intrusion; the minimal setback required by the Planning Commission is not sufficient resiting to does not resolve the skyline intrusion. County Staff has articulated this precise concern, stating for example, “[a]pplicable policies and zoning provisions requires structures to be sited so as not to intrude into the skyline. For that reason, the residence needs to be sited north of the ridge. This shift in location would lower the elevation of the residence and result in a structure that would not intrude into the skyline as seen from public viewing places to the south and north.” Exhibit 11 to the GCC DMND Comment Letter, p. 8.

## 2. Incompatibility with the Surrounding Natural Environment

The proposed residence is 11,535 square feet, not including the attached garage, guest house, barn, reflecting pool, entry gate and walls, driveway and associated grading. MND p. 2. This massive structure stands in stark contrast to the surrounding agricultural environment, described

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<sup>2</sup> Structure (inland) is defined broadly under § 35.110.020 of the Land Use Code as “[a]nything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground, excluding trailers and sidewalks.”

<sup>3</sup> The berming proposed for the Ballantyne Project is readily distinguishable from the Bean Blossom case. First of all, the reverse berming employed in the Bean Blossom project was not designed to resolve skyline intrusion. Second, structures in Bean Blossom were resited 200 feet to the north to avoid impacts, alteration of natural landforms and policy inconsistencies. Third, Bean Blossom involved very careful and minor surficial recontouring (deploying small volumes of soil in manners honoring and reflecting natural topography) rather than the construction of a uniform, unnatural and massive dirt pile as proposed.



as follows: “[t]he site is adjoined by large parcels that consist primarily of open grazing land. The site is generally surrounded by the larger agricultural parcels of the western extent of the South Coast Rural Region.” MND p. 4. Not discussed in the MND, this agricultural land also happens to be prized for its visual resources and the conservation of its rural character happens to be a paramount concern of the public and County government alike. Comparison with the Rancho Embarcadero subdivision is inappropriate as Visual Resources Policy 2 and Visual Resources Development Standard 1 applies to rural areas and is therefore inapplicable to the urban neighborhood.

“The proposed residence would be highly visible from the adjacent segment of Farren Road...” MND, p. 7. Notwithstanding this acknowledged fact, the MND concludes the Project could be found consistent with the above policy because Farren Road is only lightly used. P. 46. As stated previously, this is an erroneous assumption. Additional language added to the MND does not resolve this visual policy inconsistency.

The Santa Barbara Ranch EIR discusses views of that Project from Farren Road, stating: “The introduction of structures would contrast with the existing rural nature and character of the land, but visual contrast is rated only moderate because all of the structures would be in the midground and distant views, and only a small portion of the structures would be visible...” Exhibit 9 to the GCC DMND Comment Letter, p. 3.9-27. By contrast, the structures proposed here will be in the foreground as seen from Farren Road; borrowing the analysis from the Santa Barbara Ranch EIR, the Ballantyne Project has a significant impact in this regard and violates visual policy.

Regarding the requirements of this policy/standard, BAR commented that the “[s]cale and design of house [is] not compatible with [the] natural environment. House proposed is too large. Design does not take an organic enough approach. Program exceeds the site’s ‘carrying capacity.’” Exhibit 4 to the GCC DMND Comment Letter. At this same meeting BAR stated “[s]tylistically, a long mass of glass will not work in this setting.” Public comments have echoed these concerns. For example, comments submitted by Joseph Hackett state “The proposed design does not conform to the County’s visual resources policy in that the structure would have significant negative visual impacts. It would intrude into the skyline and would not be subordinate to surrounding landforms. Its large scale of approximately 14,000 square feet and more than 300 foot length, and its stark, massive glass and metal façade are incompatible with the character of the surrounding natural environment of grassland and pasture.” Exhibit 16 to the GCC DMND Comment Letter.

### 3. Structures Dominate Natural Landforms

Considerable concern has been raised concerning the Project’s lack of compliance with the requirement contained in Visual Resources Policy 2 and Visual Resources Development Standard 1, that structures be subordinate in appearance to natural landforms. For example, the BAR has stated “[the f]ootball field length of structure causes concern. The length of the structure increases its visual impact and apparent mass. The house reads as a large, unbroken mass.” BAR Committee Minutes, Meeting of September 9, 2005. Staff stated that the “combination of siting, scale, design and materials would result in a residence that would not be

subordinate in appearance to natural landforms.” Ballantyne Appeal Staff Report, October 4, 2006. Moreover, County Staff specifically stated that “The revised plans and proposed berm do not effect or otherwise change the scale, design or exterior of the residence...P&D continues to believe that the scale and design of the residence would result in a prominent structure not compatible with the surrounding natural environment.” Public comments also state that the Project structures, and the proposed berm is not subordinate to landforms. *See e.g.* Exhibit 14 to the GCC DMND Comment Letter.

#### 4. Structures Are not Designed to Follow Natural Contours of the Landscape

Visual Policy 2 and Visual Resources Development Standard 1 both require that structures be *designed* to follow the natural contours of the landscape. Comments from the BAR include “Building should be sited so that [it] can work more seamlessly with landscape, topography.” Exhibit 12 to the GCC DMND Comment Letter. Rather than resubmit a redesigned residence that better follows the natural contours of the landscape, the applicant proposed the berm. The proposed berm specifically alters the natural contours of the site in order to partially screen the massive proposed structures, and as such violates Visual Policy 2 and Visual Resources Development Standard 1.

At the public hearing on the adequacy of the MND, commenters including Ed Easton and Joan Bolton discussed the visual policy inconsistency generated by the structures proposed for the Ballantyne property, and specifically noted the disconnect between the discussion with regards to this policy/standard in the MND as compared with all previous proceedings that have taken place in the course of this Project’s history. Planning and Development Staff emphasized this particular policy inconsistency as a primary reason for denying the Land Use Permit at the Director Level. Exhibit 17 to the GCC DMND Comment Letter. In sum, not only is there substantial evidence in the record including expert BAR opinion that the Project may conflict with Visual Policy 2 and Visual Resources Development Standard 1, in fact far more evidence in the record supports this conclusion than the conclusion reached in the MND.

#### ii. The Project Violates Hillside and Watershed Protection Policy

The Santa Barbara County General Plan includes the following policies on hillside and watershed protection:

Policy 1: Plans for development shall minimize cut and fill operations. Plans requiring excessive cutting and filling may be denied if it is determined that the development could be carried out with less alteration of the natural terrain.

Policy 2: All developments shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the

site which are not suited to development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.

The MND's discussion of these policies verges on being self contradictory and all but admits the necessity of an EIR to evaluate these issues. The MND states

The project would require approximately 8,900 cubic yards of cut and 8,100 cubic yards of fill and would involve grading along a ridgeline. Location of the structures farther north on the project site, below the ridgeline, may incrementally reduce the amount of earthwork required and the alteration of natural terrain. In addition, elimination of the berm proposed to shield onsite structures from Highway 101 would reduce overall landform alteration...It could be argued that relocating the structure to another location onsite may incrementally reduce grading and landform modification. Similarly, reducing the size of the residence would reduce overall grading requirements.

P. 50.

In admitting that grading and landform modification could be reduced is an admission that the development could be carried out with less alteration of the natural terrain. Given this, the proposed Project is contrary to Policy 1.

Of the concerns previously expressed regarding the Ballantyne Project, two which come up frequently in the record are 1) that the development involves unnecessary cut and fill operations and 2) that the development is not designed to fit the site topography. These concerns have also been expressed precisely in the context of the above Hillside and Watershed Protection Policies. For example, County Staff stated "Contrary to Policy 1, updated preliminary grading estimates indicate that the proposed berm would require 10,000 cubic yards of fill. Contrary to Policy 2, constructing the berm would alter natural landforms seen from public viewing places." Exhibit 11 to the GCC DMND Comment Letter, p. 10.

These concerns, expressed by experts and non-experts alike constitutes substantial evidence that the Project may have significant environmental effects related to its inconsistency with these policies.

iii. The Proposed Project Violates Goleta Community Plan Policy

Goleta Community Plan Land Use Policy LU-GV-5 requires that "[a]ppropriate planning tools should be explored and adopted which provide for the clustering or relocation of development from environmentally sensitive or visually prominent areas, or other sites which are deemed unsuitable for development, to less sensitive areas or parcels." As discussed at length above, the proposed residence could be relocated away from visually prominent areas. As stated by County Staff, "[t]he area north of the ridge is less visually prominent. Consistent with Policy LU-GV-5, relocation of the residence approximately 200 feet north could minimize visual impacts. The residence would be screened by existing natural landforms and would not intrude into the skyline." Exhibit 11 to the GCC DMND Comment Letter, p. 8. No relocation north of the ridge

has been proposed; rather the applicant relies on berming to screen Project structures from Highway 101. This approach is contrary to LU-GV-5.

iv. The Proposed Project Violates Ridgeline and Hillside Development Guidelines

County Land Use and Development Code Chapter 35.63, Ridgeline and Hillside Development, requires that any structure proposed “where there is a 16-foot drop in elevation within 100 feet in any direction from the proposed building footprint” must conform to development guidelines for ridgeline and hillside development. Compliance with these guidelines must be assessed by the Board of Architectural Review. These guidelines include that “Building rake and ridge line should conform to or reflect the surrounding terrain”, “Grading shall be minimized, in compliance with the Comprehensive Plan” and “Development on ridgelines shall be discouraged if suitable alternative locations are available on the lot.”

As discussed in the context of other applicable policies, the proposed Project was not designed in such a way to conform or reflect the surrounding terrain, and does not minimize grading in compliance with the Comprehensive Plan. Alternative locations on the lot, specifically 200 feet to the north and away from the ridgeline are available. Compliance with the above policy requires the County discourage Project as currently proposed.

v. The Proposed Project Is Inconsistent with the General Plan as a Whole

The General Plan is the constitution for all future development; any decision of the County affecting land use and development must be consistent with the General Plan. *Citizens for Goleta Valley v. Board of Supervisors* (1990), 52 Cal. 3d 553, 570. Projects inconsistent with the General Plan may not be approved. *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (Cal. App. 3d Dist. 1998) 62 Cal. App. 4<sup>th</sup> 1332, 1336. “An action, program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.” Governor’s Office of Planning and Research, General Plan Guidelines 128 (1998). A Project may be inconsistent with the General Plan even where the proposed development violates only one policy in the general plan. *See San Bernardino Valley Audubon Soc’y v. County of San Bernardino*, 155 Cal. App. 3d 738, 753 (Cal. App. 4th Dist. 1984); *see also Families Unafraid*, 62 Cal. App. 4<sup>th</sup> at 1341.

The situation in *San Bernardino Valley Audubon* is analogous to the Ballantyne Project in several respects (though the Ballantyne Project involves more than one policy inconsistency). The San Bernardino Development Code required the Board to find that a proposed Project is consistent with the goals, policies and standards of the General Plan. *Id.* A General Plan policy required protection of rare plants and animals and Staff had recommended denial of the Project because it would have an adverse impact on biota and cultural resources and therefore would conflict with the policy. The Board found “[t]he proposed use is consistent with the General Plan because although there are natural and cultural resources on the site, the potential impact of other uses currently permitted without approval are much more severe in nature.” The court

rejected the adequacy of this finding in upholding the trial court's determination that the record did not contain substantial evidence to support the Board's consistency determination<sup>4</sup>. *Id.*

The conclusions in the MND regarding visual policy consistency and hillside and watershed policy consistency, among others, lack foundation and unjustifiably reject sound conclusions of Planning and Development Staff. Under *San Bernardino Valley Audubon*, the findings in the MND cannot be sustained. *See Id.* The below discussion demonstrates that there is substantial evidence in the record, overwhelming evidence in certain regards, that the Ballantyne Project is inconsistent with General Plan policies and that an EIR is required under CEQA.

vi. Findings Required for Land Use Permit Approval Cannot Be Made

The County cannot issue a use permit until it finds “based on information provided by the environmental review documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water...) are available to serve the proposed development.” Comprehensive Plan Land Use Development Policy 4. To date, water service for the Project has not been secured. The MND states “[t]he applicant has submitted a preliminary application for water service, but has not submitted a formal application to date; therefore, *no determination has been made with respect to whether or not the District will provide service.*” P. 39 (emphasis added). Without information on whether or not GWD will provide water this required finding cannot be made and the Project cannot be approved.

Further, the Land Use and Development Code provides that land use applications cannot be approved or conditionally approved unless the decisionmaker finds that “the proposed development...[w]ill conform to the applicable provisions of the Comprehensive Plan including any applicable community plan or area plan and this Development Code.” Because the Ballantyne Project conflicts with the Comprehensive Plan, Goleta Community Plan and numerous provisions of the Development Code, discussed above, this required finding cannot be made and the Project cannot be approved.

Based on the foregoing, an EIR must be prepared for the Ballantyne Project. Only through the EIR process can the environmental impacts of the Project be sufficiently assessed, particularly impacts to visual resources, geology and water-related impacts. Also, through the EIR process alternatives and mitigation measures can be developed which better site the structure, reducing its visibility from both Highway 101 and Farren Road and other public viewing places. This in turn could resolve the glaring policy inconsistencies presented by this Project, and permit decisionmakers to make the required findings for approval.

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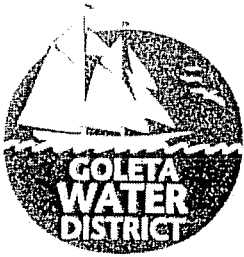
<sup>4</sup> Note, the *San Bernardino Valley Audubon* case concerned the adequacy of an EIR and therefore was judged under a higher standard of review than the standard used for determining whether an EIR must be prepared instead of a Negative Declaration, as is the case with the Ballantyne Project.

Exhibit 1: Letter from Gary McFarland of Goleta Water District to Randy Ballantyne (March 7, 2007)

Exhibit 2: Letter from John Baker to Richard Adam, September 18, 2007.

Exhibit 3: Memorandum from Rincon Consultants to Allen Bell, June 12, 2008.





4699 HOLLISTER AVENUE  
GOLETA, CALIFORNIA 93110-1999  
TELEPHONE 805/964-6761  
FAX 805/964-7002

## Preliminary Application Staff Analysis

March 7, 2007

Randy Ballantyne  
P.O. Box 8184  
Goleta, CA 93118

**Subject: Results of Preliminary Application Staff Analysis  
Ballantyne Residence - 1500 Farren Road - APN 079-090-036  
GWD Project No. 06-3665**

Dear Mr. Ballantyne:

We have reviewed your Preliminary Application with the following results. These findings are in fact Preliminary and may change upon regular Application for Water Service.

### Summary

This proposed project is at the periphery of GWD's distribution system, and will require significantly more construction for water service to meet public water supply standards as well as minimum allowable pressures for fire protection. To meet water quality, fireflow, and water pressure requirements, booster pumps, privately owned onsite water storage tanks and an onsite chlorination facility will probably be required.

### Details

Applicant's contractor would probably be required to install approximately 2,300 lineal feet of minimum 8" diameter PVC cl. 200 pipe from existing GWD end drain no. 12502 to proposed onsite fire hydrant, with isolation valves at approximately 600 foot intervals. Onsite water pressure is calculated at being marginal if not inadequate. A booster pump system by Applicant subject to GWD's acceptance will most likely be needed. Applicant's contractor would also need to install the proposed fire hydrant and 4 meters along with backflow prevention devices. All proposed GWD facilities not fitting within public road right-of-ways require easements to be granted to GWD. Hydraulic calculations for all proposed uses are required. A main larger than 8" in diameter may be required along with a cost sharing with GWD. A Benefited Property designation may be associated with this proposed water main as there are indications of proposed construction/development to the north of subject parcel on Farren Rd. \$54,424.00 is the estimated New Water Supply Charge. \$2,546.00 is estimated new meter/installation charge. All is subject to revision based on further information provided by Applicant, other governing Agencies, or changes in the proposed project.

The estimated static pressure in the proposed pipeline at its highest point is 25 psi. The proposed fireflow of 750 gpm with system demand of 50 psi would create a pressure loss in the 2300 ft pipe line of approximately 14 psi. This does not include pressure losses of the



existing pipeline which would further reduce the residual pressure, but just considering the approximately 14 psi loss would create a residual pressure at the proposed fire hydrant of 11 psi which is unacceptable. In fact, a static pressure of 25 psi in the proposed pipeline is unacceptable. The 2,300 feet of proposed pipeline would probably create a water quality problem as well. It is estimated that the water in this proposed pipeline will age about 7 days before it gets to the proposed water meter. The water will be much older than 7 days because it has to go through a long pipeline from the Corona del Mar Water Treatment Plant at the north end of Glen Annie Rd. to this location. Chlorine residual may be non-existent and bacterial growth may occur with taste, odor, or health issues. Increasing the pipe size from the proposed 8 inches would make this even worse. It is recommended that a thorough hydraulic (modeling) analysis be done including a water quality (modeling) analysis. The initial impression is that this pipeline extension would result in substandard water pressure and water quality conditions. We apparently cannot deliver the required fireflow, the static pressure and residual pressure would be too low, and we would probably not be able to meet DOHS minimum pressure requirements. Water quality may also be a major concern.

Even if you add a booster pump to get the water to a useable pressure, you would probably still have the stagnant water issue. And the Fire Dept. may prefer tanks instead of boosted water dependent on electricity which could be cut off in a fire. The cost of a tank/water storage system could be costly.

To provide a looped system, an approximately 2,200 lineal foot water main extension from Vereda Leyenda to the east could provide a loop, but this may not be feasible or recommended. The elevation at the proposed branch or take off point from Vereda Leyenda for such a loop is 76 feet. The loop would have to go up the undeveloped side of a hill across private property to the east and adjacent to subject parcel winding up at about 332 feet in elevation at the proposed hydrant for this Application. From the proposed hydrant to the other end of the loop in Farren road it's another 2,300 feet of pipeline, for a grand total of approximately 4,500 lineal feet of pipe, probably 8" diameter PVC class 200 pipe. The cost for installation of such a pipeline could be significant.

Due to these conditions, you may want to consider drilling a well and constructing your own well water system for your project.

Another option might be to install an approximately 8,000 foot long water main extension from the Goleta West Conduit (GWC) and construct a privately owned water treatment facility to get GWC up to Title 17 compliance. This MIGHT be a possibility. We've had several information requests for other parcels in the Farren Rd. vicinity. One such inquiry is Tecolote Preserve, which appears to cover property surrounding and adjacent to yours. For this reason we suggest you contact the following person with whom you may want to discuss a mutually beneficial arrangement for water supply.

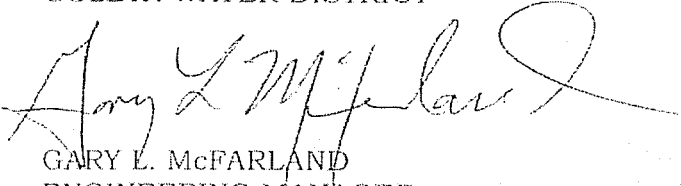
Eric Zickler, P.E.  
Senior Designer, Sherwood Design Engineers  
One Union Street  
San Francisco, CA 94111  
tel. 415-677-7300  
[ezickler@sherwoodengineers.com](mailto:ezickler@sherwoodengineers.com)

Ballantyne  
Address: 1500 Farren Road-APN 079-090-036

March 7, 2007  
Preliminary Application Staff Analysis

Please contact me for any questions at 805-879-4624.

Sincerely,  
GOLETA WATER DISTRICT

A handwritten signature in cursive script, appearing to read "Gary L. McFarland". The signature is written in black ink and is positioned above the printed name and title.

GARY L. McFARLAND  
ENGINEERING MANAGER

GLM/ddi





# County of Santa Barbara Planning and Development

John Baker, Director

Dianne Black, Director Development Services

John McInnes, Director Long Range Planning

September 18, 2007

Richard E. Adam, Jr.  
Brenneman, Juarez & Adam LLP  
625 East Chapel Street  
Santa Maria, CA 93454

RE: Revised Request for Additional Information for CEQA Review  
Ballantyne Single-Family Residence and Accessory Structures  
Assessor Parcel Number: 079-090-036; 500 Farren Road, Goleta Area  
Case Numbers: Residence/Accessory Structures, 06APL-00000-00045 and 05LUP-00000-00611  
Water Tanks, 07LUP-00000-00184  
Mobile Home, 07CUP-00000-00020

Dear Mr. Adam:

We appreciate the time that you, Lynn Ballantyne, Randy Welty and Andy Caldwell spent meeting with Michael Brown, Dave Ward, June Pujo, Mike Glizzoni, Allen Bell and me on September 12, 2007. The purpose of this letter is to document the decisions that Mr. Brown made regarding the information that the applicants need to submit for the environmental review process for the residence and accessory structures. This letter updates and supersedes the County's previous requests for information, including the letters from Allen Bell to you dated July 13, 2007 and August 9, 2007. This letter also summarizes our discussions regarding the unpermitted water tanks and mobile home on the property.

## **Additional Information**

Visual Simulations and Site Sections. Visual simulations and additional site sections and story poles will not be required provided you adequately document the information and methodology used to prepare the photo compositions and site sections submitted to the County on October 18, 2006. The documentation that you need to submit is outlined on the enclosure titled "Documentation for Photo Compositions and Site Sections."

For your information, the photo compositions submitted on October 18, 2006 are titled "Southwest View from Calle Real," "South View from Hwy 101" and "Southwest View from Hwy 101" (B3 Architects, October 14, 2006). There are three separate photographs for each viewpoint, including existing site photo, proposed residence without berm and proposed residence with berm. The site sections are titled "Site Sections," Sheets A1.2, A1.3 and A1.4 (B3 Architects, October 14, 2007).

Development Review  
Building & Safety  
Energy, Administration  
123 E. Anapamu Street  
Santa Barbara, CA 93101  
Phone: (805) 568-2000  
FAX: (805) 568-2030

Long Range Planning  
30 E. Figueroa St, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Phone: (805) 568-3380  
FAX: (805) 568-2076

Building & Safety  
185 West Hwy 246, Ste 101  
Buellton, CA 93427  
Phone: (805) 686-5020  
FAX: (805) 686-5028

Development Review  
Building & Safety  
Agricultural Planning  
624 W. Foster Road  
Santa Maria, CA 93455  
Phone: (805) 934-6250  
FAX: (805) 934-6258

Final Plans. You do not need to submit copies of the revised plans that the applicant submitted to the County on October 18, 2006. As necessary, the County will make copies of the revised plans for our internal use. The County will bill the applicant for copying costs.

Utilities. Please show the location of electric, telephone and other public utilities on a separate version of the "Conceptual Grading and Drainage Plan" (Flowers and Associates) or a similar site plan. If the utilities would be extended from points beyond the area shown on the "Conceptual Grading and Drainage Plan," please submit an additional site plan showing the existing public utilities and the subject parcel. Specify whether the utilities would be above or below ground and identify the point of connection to the existing public utilities.

Water Supply. At our meeting on September 12, 2007, Mr. Welty described several water supply options for the project. Please make a determination and describe in writing the type of water supply system that would be used (e.g., on-site water well, public water supply). Show the location of all water supply infrastructure on a separate version of the "Conceptual Grading and Drainage Plan" (Flowers and Associates) or a similar site plan. If a public connection would be extended from a point beyond the area shown on the "Conceptual Grading and Plan," please submit an additional site plan showing the existing water line and the subject property.

The applicant submitted a "Water Service Classification Notice" from the Goleta Water District (GWD), dated April 18, 2005. This notice is sufficient if the applicant chooses to obtain water from the Goleta Water District. You do not need to submit a "Can and Will Serve Letter" or other similar letter or notice for the environmental review process.

Sewage Disposal. Please have a qualified engineer describe in writing the sewage disposal system (e.g., dry well, septic field). Submit three percolation tests and one deep boring and show the location of all sewage disposal infrastructure on a version of the "Conceptual Grading and Drainage Plan" or a similar site plan. Please ensure that your engineer explains whether the sewage disposal system would incorporate the two unpermitted water storage water tanks on the property. (See further discussion below under "Water Tanks.") Your engineer may contact Paul Jenzen, Environmental Health Services, at (805) 346-8461 for more information on the percolation tests, deep boring and other requirements for sewage disposal systems.

Height Calculations. You do not need to submit new height calculations based on the current height calculation methodology. ~~The environmental review process will use the height calculations included~~ on Sheets A2.4 and A3.1 as well as building elevations and related information previously submitted to extrapolate information regarding applicable height regulations.

Preliminary Grading Plan. You do not need to submit a geotechnical (soil) engineering report for the environmental review process. However, the "Conceptual Grading and Drainage Plan" does omit some information required to evaluate various aspects of the project. In addition, the estimated earthwork quantities on the plan do not match the quantities provided in other application materials. Please have your engineer submit the following information:

- Delineate limits of grading on the grading plan on the "Conceptual Grading and Drainage Plan."
- Specify grading estimates for the quantity of material to be graded, excavated and filled, including over excavation (subsurface) for the keyways and benches for the berm. Please provide a total grading estimate and individual grading estimates for the driveway, main residence, accessory structures and berm. This information needs to be included on the "Conceptual Grading and Drainage Plan."
- Provide cross sections for the project. In part, the cross sections need to include an elevation scale, existing grade, finished grade, keyways and benches for the berm and finished grade slopes (e.g., 3:1, 2:1). Please identify and show the location of the cross sections on the "Conceptual Grading and Drainage Plan."

Landscape Plan. Thank you for submitting a landscape plan on July 26, 2007, titled "500 Farren Road, Residence" (Charles E. Kaczmarek, no date). Please submit three additional copies of this plan.

Building Material/Color Sample Board. The applicant's representatives presented a color/building material board to the Planning Commission on October 4, 2006. Please submit this or an identical board.

Archaeological Report. We understand you have hired an archaeologist to prepare a Phase 1 archaeological survey report. Please submit a copy of the final report.

Project Description. Allen Bell's letter to you dated July 13, 2007 included a draft project description. Please review this project description carefully and suggest any necessary changes. At a minimum, we expect to update information on water supply, sewage disposal, building height and grading. The Initial Study will be based on the final project description.

### **Unpermitted Water Tanks and Mobile Home**

Water Tanks. During the Planning Commission hearing on October 4, 2006, the applicant's representatives stated that the two unpermitted water tanks on the property would be part of a wastewater treatment system. Water from these tanks would be used for irrigation. As a result, the Planning Commission approved the residence and accessory structures with a condition of approval requiring the applicant to obtain a Minor Conditional Use Permit for the water tanks. Alternatively, the applicant could remove the water tanks from the property (Condition 3).

In April 2007, the applicant submitted an application for a Land Use Permit for the water tanks (Case Number 07LUP-00000-00184). The application states that the water tanks would be used as agricultural accessory structures for irrigating on-site trees and a nursery. The application did not specify a source of permanent water for the water tanks.

Please confirm the use of the water tanks and identify the source of permanent water for the water tanks. Also clarify whether the water tanks would be part of the sewage disposal system. This information will be used to analyze the water tanks in the Initial Study and related environmental documents. In addition, P&D will use this information to determine whether the water tanks can be

Richard E. Adam, Jr.  
Ballantyne Project  
September 18, 2007  
Page 4

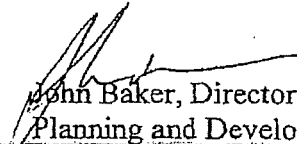
incorporated into the Land Use Permit for the residence and accessory structures or whether they will require a separate Minor Conditional Use Permit.

Watchman's Trailer. In March 2007, the applicant submitted an application for a Minor Conditional Use Permit for the unpermitted mobile home on the property (Case Number 07CUP-00000-00020). During our meeting last week, Ms. Ballantyne and Mr. Welty stated that they plan to remove the mobile home from the property. This would allow P&D to close this application and apply the remaining permit fees to your account for the residence and accessory structures (Case Number 05LUP-00000-00611). Please notify us in writing as soon as the mobile home has been removed from the property.

### **Conclusion**

Please send me letter or email stating when you expect to submit the information outlined above. As we discussed, Rincon Consultants cannot begin preparing the Initial Study and related environmental documents until we receive the required information. Please contact me at (805) 568-2085 if you have any questions or need additional details.

Sincerely,

  
John Baker, Director  
Planning and Development Department

Enclosure: Documentation for Photo Compositions and Site Sections

cc: Case File (Allen Bell)  
Lynn Ballantyne (P.O. Box 8184, Goleta, CA 93117)  
Michael Brown, Chief Executive Officer  
Dianne Black, Assistant Director, P&D  
Dave Ward, Deputy Director, Development Review Division, P&D  
June Pujo, Supervising Planner, Development Review Division, P&D  
Michael Ghizzoni, Chief Deputy, County Counsel  
David Allen, Deputy, County Counsel

**Documentation for Photo Compositions and Site Sections**  
**Ballantyne Single-Family Residence and Accessory Structures**

**September 18, 2007**

**Photo Compositions**

- Provide the name and qualifications of surveyor, architect or other person(s) who prepared photo compositions.
- Submit a vicinity map with topography showing locations of camera positions relative to location of residence. Describe locations of camera positions with GPS coordinates and elevations.
- Identify the title, source and date of architectural plans (e.g., plan views/footprints, roof plans, elevations) previously submitted to the County which were used to prepare the photo compositions. If the photo compositions were based on architectural plans not previously submitted to the County, submit a copy of the applicable architectural plans.
- Identify and submit topographic data used to prepare photo compositions, including current and proposed topography of building site and berm. Indicate whether three-dimensional topography of project site and vicinity was used. Provide a digital copy, if available.
- Submit a copy of any air photograph(s) used to prepare photo compositions (title, source and date), including resolution.
- Provide camera specifications, such as resolution(s), tilt(s), bearing (s) and focal length(s).
- Describe the software (e.g., Photoshop, Print Shop Pro, Autodesk 3ds Max) and the methodology used to prepare photo compositions.
- Indicate whether three-dimensional model of residence was used to prepare photo compositions. Provide a digital copy, if available.
- Describe any methodology used to verify accuracy of photo compositions, such as story poles or field survey by professional surveyor. If story poles were used, provide the following details: name of person who erected poles, date poles were erected, site plan showing location of poles, description of poles, photographs of poles taken from project site and nearby roads and highways. ~~If a field survey was used, provide the following details: name of surveyor, steps taken to analyze~~ accuracy of photo compositions and results of analysis.
- Submit digital version of photo compositions, if available.



## Site Sections

- Provide the name and qualifications of surveyor, architect or other person(s) who prepared site sections.
- Submit a vicinity map with topography showing locations of viewpoint positions relative to location of residence. Describe locations of viewpoints with GPS coordinates and elevations.
- Identify the title, source and date of architectural plans (e.g., plan views/footprints, roof plans, elevations) previously submitted to the County which were used to prepare the site sections. If the site sections were based on architectural plans not previously submitted to the County, submit a copy of the applicable architectural plans.
- Submit topographic data used to prepare site sections (title, source and date), including current and proposed topography of building site and berm. Show individual site sections on topographic map, grading plan or similar map or plan with contour lines drawn to scale.
- Submit field notes and survey data used to prepare site sections.
- Describe the software and methodology used to prepare site sections.
- Describe any methodology used to verify accuracy of site sections. If story poles were used, provide the following details: name of person who erected poles, date poles were erected, site plan showing location of poles, description of poles, photographs of poles taken from project site and nearby roads and highways.

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JUN 12 2008

S.B. COUNTY  
PLANNING & DEVELOPMENT

## Rincon Consultants, Inc.

Environmental Scientists      Planners      Engineers

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**Date:** June 12, 2008

**To:** Allen Bell, Senior Planner

**Organization:** County of Santa Barbara

**From:** Joe Power, Abe Leider

**Email:** [jpowers@rinconconsultants.com](mailto:jpowers@rinconconsultants.com), [aleider@rinconconsultants.com](mailto:aleider@rinconconsultants.com)

**cc:**

**Re:** Ballantyne Single Family Residence IS/MND Revisions

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As requested, this memorandum provides Rincon's suggestions with respect to addressing the public comments regarding the analysis of aesthetic impacts to the Farren Road corridor contained in the Ballantyne Single Family Residence Initial Study/Mitigated Negative Declaration (IS/MND). As you are aware, the draft IS/MND concludes that aesthetic impacts would be less than significant and that the project would not violate County visual policies, based largely on the conclusion that Farren Road is not an important public view location. This conclusion was reached based on the limited public use of the roadway and lack of any formal designation as a scenic corridor.

A number of commenters on the draft IS/MND stated disagreement with the conclusion regarding the importance of Farren Road as a view location. At least one commenter, Marc Chytilo, provided evidence of fairly extensive recreational activity (hiking, biking) along Farren Road and, more importantly, noted that the Santa Barbara Ranch EIR prepared by the County specifically identifies a point along Farren Road as a "key observation point." That EIR describes key observation points as "locations that represent key sensitive viewer types or potentially significant visual impact locations." Although the impact of the Santa Barbara Ranch project was determined to be mitigable, the EIR stated that "due to the nature of the existing scenic vistas, the overall visual quality from this KOP is rated as high." The EIR also states that "[s]ince most viewers have chosen to visit this area for recreational purposes or are permanent residential viewers, the overall scenic quality is an essential component to these viewer types."

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Given that County has released a public document suggesting that Farren Road is an important view location, and in light of Mr. Chytilo's documentation of the ongoing recreational use of Farren Road, we believe that it could reasonably be argued that the EIR commenters have raised a "fair argument" that this is the case. The IS/MND acknowledges that the proposed residence would be highly visible from Farren Road and relies heavily on the notion that Farren Road is not an important view corridor to support the conclusion that the visual change from Farren Road is not a significant impact under CEQA and would not violate County visual policies. Therefore, we believe that the identification of Farren Road as a key observation point in the Santa Barbara Ranch EIR could be found to contradict this position.

In instances where evidence in the record supports a fair argument that a significant impact may occur, CEQA suggests that an EIR should be prepared rather than an MND (*No Oil Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75). The EIR need not necessarily conclude that impacts would be significant, but would need to air the differences of opinion regarding the significance of project impacts.

Based on the above, our recommendation would be to prepare a focused EIR that, at a minimum, addresses aesthetics and County visual policies. Otherwise, we believe that the County would be vulnerable to legal challenge with respect to the above points. Of course, this is a legal question so we also suggest consulting with the County Counsel in order to determine an appropriate course of action.

If the County elects to move forward with the processing of an MND for the proposed project, we would suggest making the following revisions to the discussion to address the various comments made with respect to the analysis of impacts and policy consistency with respect to Farren Road.

Revise the fourth paragraph under Item I.a to read as follows:

The proposed residence would be highly visible from the adjacent segment of Farren Road, intruding on foreground views from portions of this road (Figure 15 shows the location of the proposed residence as seen from Farren Road – the residence would be near the top of the ridge in the central portion of the photograph). The new structures would alter views from various vantage points along Farren Road, but would not block views of an identified scenic resource as views of the Pacific Ocean would be retained. The Goleta Community Plan designates the segment of Farren Road that fronts the project site as a "proposed on-road trail" and the paved road is currently used informally as a recreational trail by both hikers and bicyclists. However, Farren Road is not identified as a scenic corridor and travelers along Farren Road are largely primarily limited to recreational users and the handful of residents along the Farren Road corridor. In addition, ~~the project would be visually similar to existing residences along this corridor~~ although the proposed residence would be larger than existing residences in the area, other residences are present along the Farren Road corridor and other residences, including those associated with the Embarcadero West subdivision, are readily visible from Farren Road. Therefore, the proposed project would not introduce a new use that is not already present and readily visible. Finally, the Land Use Permit approved by the Planning Commission at their hearing of October 4, 2006 includes the following conditions to ensure that site development blends in with the surrounding environment and minimize the visual impact from Farren Road:

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Also, revise the second paragraph under Section 9.2 of the Policy Consistency section to read as follows:

The proposed residence would be located on a ridge that is at the highest point of the project site and is therefore in a location that is visually prominent from portions of both Highway 101, a designated scenic corridor, and Farren Road, a lightly traveled County road that has no formal designation as a view corridor, but that is used regularly by hikers and bicyclists accessing points north of the site. As illustrated on figures 10, 11, and 12, the proposed structures would be only minimally visible from Highway 101 and the berm proposed along the south side of the residence would completely shield the structure from Highway 101; therefore, the residence would not intrude into the skyline from Highway 101. Because the residence would be elevated above Farren Road and along the ridge, it would interrupt views of the existing skyline from Farren Road. However, although it is a public roadway, travelers on Farren Road only provides access to are limited to recreational users (bicyclists and hikers) and motorists accessing a minimal number of private properties along Farren Road itself. and As such, views from Farren Road are available to a limited number users and the roadway does not provide a throughway for the general public. In addition, because other residences are already present within the Farren Road viewshed, the proposed project would not introduce a new use that conflicts with the visual character of the area. Finally, it Farren Road is not formally designated as a public view corridor, nor has it been formally identified as an important public viewing location in any adopted County policy document ~~and other residences are already present along Farren Road north of the project site.~~ Consequently, Farren Road does not appear to meet any reasonable criteria for classification as an important "public viewing place" and, although the proposed project would be visually prominent from portions of Farren Road, it could be found to be consistent with this policy.

**Brennan, Kaitlin**

# 10

**From:** Kimball Wells [kimbapoly@cox.net]  
**Sent:** Wednesday, July 09, 2008 5:53 PM  
**To:** Board Letters  
**Subject:** 0715-D3 Ballantyne Project  
**Follow Up Flag:** Follow up  
**Flag Status:** Yellow



To Whom It May Concern:

My name is Kimball Wells and I am asking that the Board either denies the Ballantyne Project completely or at the least, order the preparation of an EIR. Please uphold the visual protection policies in SB County which the Ballantyne Project would clearly violate.

Also, I request that the Board initiates an inquiry into the manipulation of the P & D project and environmental review process by County managers. We need an independent P & D Department, with a professional planner as Director. The environmental review process has been totally politicized!

Thank you.

Kimball Wells