

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

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

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

RE: Las Varas Ranch Project EIR

Dear Chair Wolf and Members of the Board of Supervisors,

This office represents the Gaviota Coast Conservancy (GCC) in this matter. The Las Varas Ranch Project (Project) is critically important to the character and future of the Gaviota Coast. Currently a working ranch, Las Varas Ranch (which refers to the Las Varas and Edwards Ranches) is a rare remaining example of coastal California's agricultural history. The Project will cause the fragmentation of this working Gaviota Coast ranch into saleable parcels to be developed with luxury residential estates. Las Varas Ranch is located on the eastern Gaviota Coast between El Capitan State Beach and Dos Pueblos Ranch, and includes lands on both sides of Highway 101. The Project would effectively shift one residentially developable lot from the inland to the coastal side of Highway 101, adding a lot within the Rural Historic Landscape. The Project would also increase the development potential of the coastal bluff, by adjusting the lot lines between one larger lot and one marginally developable lot to create two lots large enough to support the proposed two contiguous acres of residential development.

The Las Varas Ranch Project delineates development envelopes within each of the parcels, and includes a private water system and roadway infrastructure to serve future residential development. However residential development itself (including up to seven principal residences, seven guest houses, and untold numbers of residential accessory structures amounting to *two contiguous acres of residential development* per parcel itself) is not part of the "Project Description" analyzed in the Environmental Impact Report (EIR). There are currently no designs or site plans for future residential development, and no specific restrictions on structure size or siting of the up to 2 acres of development within each development envelope. As a result of this, the Las Varas Ranch Project EIR fails to adequately describe, analyze, and mitigate the myriad significant impacts that will result from future residential development. This failure renders the document inadequate under the California Environmental Quality Act (CEQA), which prohibits conducting environmental review in a piece-meal fashion, and requires sufficiently detailed analysis and effective mitigation measures. As a result, neither the public nor decisionmakers are properly apprised of the Project's significant impacts as required by CEQA.

Further adding to its inadequacy, the Las Varas Ranch Project EIR's conclusions regarding impact significance and mitigation measure efficacy are speculative and/or erroneous. Substantial

LAW OFFICE OF MARC CHYTILO
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email(s): marc@lomcsb.com (Marc); ana@lomcsb.com (Ana)

evidence in the record demonstrates that the Project will have significant unmitigated impacts to the site's sensitive visual, biological, cultural and historic resources, to agricultural productivity, land use, and recreation.

For these reasons, we urge the Board follow the Planning Commission's direction and reject the EIR as inadequate and failing to reflect the Board's independent judgment and analysis. We urge the Board *not* to direct additional environmental review because the Project should be denied for its failure to conform to County policy.

1. The EIR Is Inadequate

"A legally adequate EIR . . . 'must contain sufficient detail to help ensure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.'" *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 733. "An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal. 3d 376, 404-405. All phases of a project must be considered when evaluating its impact on the environment. Guidelines § 15126. Agencies have a duty under CEQA to avoid or minimize environmental damage whenever feasible to do so, and must give major consideration to preventing environmental damage. Guidelines § 15021 (a). Moreover, certification of a final EIR is only authorized if the Board finds that the final EIR has been completed in compliance with CEQA, *and that the final EIR reflects the Board's independent judgment and analysis.* (CEQA Guidelines § 15090 (a) (*emphasis added*)).

Although the Las Varas Ranch Project EIR has already undergone one revision at the Board's direction, it continues to fail CEQA's standards of adequacy. Unfortunately, important issues raised by Supervisor Farr were not adequately addressed in the RDEIR or RFEIR, including the need for mitigation measures beyond CC&Rs to mitigate agricultural and biological impacts, and the need to explore limiting square footage of overall development within each envelope or limiting square footage on house size to mitigate visual impacts. Moreover, the EIR is fundamentally flawed in that it "piece-meals" environmental review of the lot adjustment/infrastructure project and residential development. Additionally, the EIR's conclusions are speculative, and in many cases the evidence demonstrates that the conclusions are erroneous. A major overhaul of the document would be required to bring it into compliance with CEQA.

a. The EIR Impermissibly Piecemeals the Project

The CEQA guidelines define "Project" as the "whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment". (Guidelines § 15378 (a)). An "agency should not "piecemeal" or "segment" a project by splitting it into two or more segments." (Remy et al., *Guide to CEQA* (Solano Press, 11ed, 2007), p. 89). The RFEIR is fatally flawed for failing to describe a large

component of the Project, namely the future development intended to result from the proposed lot reconfiguration. The RFEIR acknowledges that residential development of the readjusted and subdivided lots will follow the Project, but no meaningful information including size, footprint, location, design, and number of structures is included in the project description. This failure infects the entire document, precluding meaningful analysis of the Project's impacts, and undermining the effectiveness of proposed mitigation and the analysis of alternatives.

b. The EIR's Conclusions Are Speculative and Erroneous

i. Visual/Aesthetic Impacts

The aesthetic impacts of the Project are not adequately identified in the RFEIR due to the failure of the project description to define the specifics of the future development anticipated on the site (*see above*). The approach of using hypothetical structures (240 x 130 foot rectangular boxes) based on the total development area of a residential estate and accessory structures proposed under the Santa Barbara Ranch Project to represent Project structures (*see* RFEIR p. 4.1-17) is wholly inadequate to identify the specific nature or severity of Project impacts and more importantly to evaluate the effectiveness of proposed mitigation measures. Moreover, placing each box "in the most logical area within each envelope based on envelope location and configuration" is highly subjective and results in visual simulations that do not accurately reflect the actual location of any future development. The specific location and ridgeline of a structure within a development envelope is critical to assessing visual impacts. Even the EIR admits that "impacts would be largely dependent on the specific design, height, and exact siting of a residence" (RFEIR p. 4.1-19).

Concluding that mitigation measures will be effective at reducing the Project's visual impacts below significance is purely speculative. Future CBAR review will address each house separately, and will be limited to considering siting *within* the already established development envelope. Because the location of the development envelopes will already be determined, CBAR will have limited ability to ensure that the Project conforms to the Coastal Zoning Ordinance which requires that BAR review plans for conformance with several standards, including that "[s]tructures shall be sited and designed to preserve unobstructed broad views of the ocean from Highway 101, and shall be clustered to the maximum extent feasible." (CZO § 35-96 3 (a); RFEIR p. 4.1-14). In approving the lot reconfiguration prior to any review by BAR, the RFEIR effectively constrains the ability of BAR to ensure consistency with this standard through clustering and the reconfiguration of the proposed development envelopes.

The EIR provides that the development envelopes "could accommodate large estate-style residences and residential accessory structures and improvements that could potentially be out of character with the surrounding rural agricultural setting and existing development which has historically been modest in scale, as there are no limits placed on the size or scale of future residential development." (RFEIR p. 4.9-7). However, the EIR fails to include size restrictions on future structures. When the Board of Supervisors considered this Project on April 17, 2012, Supervisor Farr

specifically requested additional discussion about further minimizing visual impacts (as well as impacts to biology and agriculture) by limiting the amount of square footage of overall development within the envelope, or limiting square footage of the homes. It is unfortunate that the RDEIR and now RFEIR did not include additional mitigation limiting development envelope and/or home size to effectively reduce Project impacts to the maximum extent feasible as required. The RFEIR includes additional language attempting to explain why no additional mitigation is provided for in the document, however the addition falls short in justifying the RFEIR's failure to include additional mitigation. For example, the RFEIR claims that size limits would be "arbitrary", however no one has proposed an "arbitrary" limit – rather an appropriate size limit should be developed based on a consideration of the specific features and constraints of the site, as well as the size of existing structures onsite and the average or median size of residences elsewhere on the Gaviota Coast. The RFEIR also misinterprets quotes from the historical report which provide that limiting square footage "would not, *in and of itself*, retain and preserve the historic character" of the ranch. (RDEIR p. 4.1-37.) Of course, no one has suggested that square footage limitations *alone* would be sufficient mitigation, rather that they are feasible mitigation that could serve to substantially reduce impacts in several impact categories beyond what is achievable from the mitigation measures already included in the EIR.

The proposed lot reconfiguration is itself problematic from a visual resources perspective because it increases development potential in the most visually sensitive portion of the Project site. Specifically, the whole coastal project is within the View Corridor Overlay District (*see* Figure 4.9-1) and highly visible to the public from Highway 101, the railroad, and from the beach and nearby recreational areas. The Project proposes to increase the number of buildable lots in this exceptionally visually sensitive area from 4 to 5, increasing the potential for significant aesthetic impacts from future development.

ii. Impacts to Agriculture

The EIR systematically understates the Project's impacts to agriculture, including both its direct, indirect, and cumulative impacts. With respect to direct impacts, the EIR relies on several incorrect assumptions in reaching its conclusion of insignificance. First, the EIR erroneously states that "the amount of land that would become unavailable for agricultural uses [is] approximately 14 acres site wide." RFEIR p. 4.2-8. However, within the residential development envelope framework, a minimum of 30 acres could become unavailable for agriculture, plus additional acreage lost from access road construction. Second, the EIR states that the development envelopes do not contain land that is "currently" in active agricultural production (RFEIR p. 4.2-8) but ignores the future agricultural potential of areas into the future. Then the EIR goes on to clarify that the development envelope areas "do contribute towards the ongoing cattle grazing operation" but "only" result in the loss of 2 animal units per year.

The EIR takes pains to articulate the potential impacts to cattle from any public access trail that skirts the heifer pasture, however simultaneously strains to argue that developing large homes within the pasture will have no impact. For example the EIR states

The proposed development envelope on proposed Parcel 5, which contains the heifer weaning field and first calf heifer calving pasture, is located adjacent to and includes an existing residence on the west side of the pasture . . . Since the heifers and heifer calves tend to congregate in the southeast corner and along the southern edge of these two pastures, there would be considerable separation between the continued and future residential use within the Parcel 5 development envelope and the heifer and heifer calving activities

RFEIR p. 4.2-9.

Contrast that analysis with the EIR's analysis of the coastal trail's impacts on cattle, which describes highly sensitive animals and significant and unavoidable impacts, associated with increased human presence within sight of the pasture. For example, the EIR explains that "Cattle typically have a "flight zone" where human intrusion into their habitat will cause them to retreat or move away, often leaving their calves behind. The flight zone can vary from a few feet to hundreds of feet depending on the specific animal and the environment." RFEIR p. 6-48. The EIR's conclusions that impacts to the cattle operation from future residential uses is insignificant, but that the impacts from trail use is significant defies logic.

The RFEIR explains that the proposed project "could fragment the ownership of the Ranch into separately owned lots or break up the contiguity of production areas or grazing areas which could in turn reduce the feasibility and likelihood that the property would continue to be used for agricultural purposes in the long-term." RFEIR p. 4.2-13. However, despite significant limitations associated with enforcing CC&Rs (even if included as a condition of approval¹), the EIR relies on CC&Rs as the exclusive means of addressing future agricultural use of the property². The EIR's conclusion that the Project's potentially significant agricultural impacts are reduced to insignificance with CC&Rs is baseless. County Staff recommended an Agricultural Conservation Easement to provide additional long-term protection to agricultural operations, and to ensure consistency with applicable agricultural protection policies including CLUP Policy 8-4 (see below). PC Staff Report

¹ Because the County's enforcement of Project conditions is a complaint-driven process, and the challenges associated with observing and documenting the condition of agricultural operations on the property, it is wholly unreasonable to expect that adding the CC&Rs as a condition of approval will make them enforceable.

² The EIR also includes a Buyer Notification requirement, designed to warn new buyers that the area is used for agriculture and that they will not have a nuisance claim against existing agricultural operations. This mitigation measure however does nothing to preclude a future owner from ceasing agriculture on their property.

(7/10/14), p. 11. However, the Applicant adamantly refuses to accept any condition requiring an Agricultural Conservation Easement.

iii. Growth Inducement

The EIR summarily concludes that the Project would not be growth inducing, without thoroughly analyzing the various facets of the Project that contribute to its growth inducing effect. The Project is fundamentally growth inducing-both in terms of the conversion of agricultural lands for estate-sized residential living at Las Varas, but also the consequent pressure on other sites in the vicinity already vulnerable to development. Existing development at Las Varas is limited and, by in large, the residential and agricultural buildings on site contribute to the historical and rural quality of the Ranch. First, the Project is designed to increase development pressure on the most sensitive and important part of Las Varas South of the Highway 101 ("US 101"). The Project actually shifts development pressure into the Coastal zone. The result of the lot line adjustments will increase residential development potential³ by at least one lot on the South side of US 101.

Second, the Project will result in a bare minimum of 14 houses of virtually unlimited size, 2 in each of the 7 development envelopes. The Project description is misleading and disguises this true buildout potential. The RFEIR repeatedly asserts that as many as 7 estate homes will be developed-2 North of US 101 and 5 South of US 101. The reality is that the Project is virtually certain to result in the construction of 4 homes on the North side of US 101 and 10 homes on the South side, for a total of 14 large estate style homes. This is because the Project allows each lot to include not only the primary estate residence, but also a guesthouse. In fact, the Small Water System ("water system"⁴) for which the applicant is seeking a Conditional Use Permit ("CUP"), is designed to support two residential water connections for each parcel and overtly provides for a guest house on each parcel.

³ Although the Property is zoned for agriculture and it is well established that luxury residential uses are often highly incompatible with bona fide production agriculture, the coastal zoning ordinance and Land Use and Development Code grants to each owner of a legal parcel, even if non-conforming as to parcel size, the right to build a house of virtually any size. This loophole has been generously exploited by developers under the guise of agriculture to build massive luxury homes that attract non-agriculturalists, and skews land uses on agricultural lands in favor of large homes to the detriment of agricultural viability. This project seeks to reparcelize Las Varas Ranch for maximum residential development.

⁴ Water would be supplied by surface water from existing water diversion and storage facilities within the Ranch and groundwater from a recently drilled well. The water system would include a water well, 2 booster pumps, treatment facility, and two above-ground water tanks to serve two different pressure zones(one located above the northern end of building area 6c and the other located adjacent to an existing ranch road approximately 150 feet east of Gato Creek and west of the middle of building area 6c). The treatment facility would be located on Parcel 6 adjacent to an existing ranch road near Gato Creek and would include a building of approximately 960 square feet (24 feet x 40 feet) for treatment, equipment, chemicals and supplies. RFEIR Section 2-4-5 p. 2-9.

RFEIR Section 2-4-5 p. 2-9. Furthermore, it is highly likely that the future owners will take advantage of the "farmworker housing" options permitted under the current Project. Under this option, each parcel could include a potentially significant number of other residential structures that could be built outside of development envelopes with very limited County or public review. See e.g. RFEIR Section E-2 p ES-1 ("Each newly configured parcel would include restriction of future non-agricultural development to [the development envelope]" emphasis added). The farm worker housing proposals are one of two growth inducing "wild cards".

Third, the Project's proposed Parcel 6 is the other "wild card" with tremendous growth inducing potential. Proposed Parcel 6 covers 1,115 acres. PC Staff Report (7/10/14), p. 16. Importantly, the vast majority of Parcel 6 does not appear on most of the parcel maps provided in the RFEIR, including Staffs "Recommended Hybrid Alternative" Map.⁵ This Parcel would be zoned AG-11-100, which means that technically it could be split into as many as 11 parcels. The likelihood of future lot splits at Parcel 6 are extremely likely, and therefore the 14 house (**plus** farmworker housing) minimum is actually itself a substantial understatement of the actual growth inducing potential of the Project.

Fourth, the water system discussed above is itself a growth-inducing component of the Project. The water system is initially designed to support 14 residential connections, but under the terms of the Project, may be expanded to facilitate growth on Parcel 6 or as necessary for additional development on the other lots. See RFEIR Section 4.9-9 and 4.9-10. GCC has another grave concern with respect to Project's water supply proposals. Growth patterns throughout the Country, but in particular in California, have placed agricultural and environmental water needs in direct conflict with residential water uses. These conflicts are especially troubling in times of drought, and are likely to be exacerbated with increasing impacts of human-induced climate change on California's water supply and the Gaviota Coast's small watersheds and limited groundwater basins that can easily be overdrawn beyond their annual safe yield. History observes that in cases of such conflicts, high priced residential uses always trump agricultural uses of water, with tragic and often cascading impacts on agricultural viability. And while the RFEIR notes the potential for conflict, it fails to properly disclose the potential significant impacts from water supply shortfalls on agricultural resources once the Project is approved. Unfortunately, it would be illogical to assume that without adequate mitigation measures or specific conditions being placed on the project, in the event of such conflict, residential uses will trump the needs of agricultural operations and the environment. In this way, the Project's water program is not only growth inducing, but simultaneously threatens the long-term viability of agriculture and the sensitive environment at Las Varas.

iv. Impacts to Recreation

The long history of public use of Las Varas Ranch and access to Edwards Point dates back to

⁵ The expanse of Parcel 6 can be seen in the RFEIR Section 2-4-1, Figure 2-2.

the 1950's and before, and continues to this day. That access is and has been undertaken because Las Varas Ranch is an undeveloped and rural area that invites, allows and enhances these uses. Development will both chill public use, and degrade the experience in the future.

The EIR incorrectly concludes that Impact REC-1 – Conflicts with Established Recreational Uses – insignificant. The EIR relies on a number of erroneous assumptions and without factual support, that the Applicant's proposed vertical access easement mitigates the loss of the existing beach access routes. In fact, the proposed vertical access easement is inadequate mitigation, both because it is not in a comparable location to where public access currently exists (Edwards Point), does not provide access to Edwards Point during high-to-moderate tides, and may not be constructed and available for public use in the foreseeable future due to regulatory and funding hurdles. The EIR acknowledges that "[r]elying upon the County to fund and construct the necessary improvements [for beach access] would potentially result in a temporal loss of beach access due to a lack of funding, as residential development on the two coastal lots before construction and operation of the trail would curtail the ability for surfers to continue accessing Edwards Point as they do currently." (RFEIR p. 4.10-12.) Indeed due to current funding shortfalls at the County and the inability to secure and qualify for most state funding for such improvements, this temporal loss of beach access is likely to last for many years or even decades, and may in fact be permanent. In addition to securing funding, it also requires discretionary approval of an easement by UPRR, which may be denied or experience prolonged delays. With sea level rise, it is conceivable the beach may largely disappear before the beach trail is perfected, and at least there will be increased periods of time when the beach is impassible due to higher tides. Additionally, even assuming that the vertical access trail is completed and open to the public before construction begins, the EIR acknowledges that "[d]uring winter months, the beach would potentially be impassible during periods of high tides due to its narrow width in places, which is a common occurrence along the south coast beaches backed by steep bluffs." (RFEIR p. 4.10-12.)

The EIR also incorrectly concludes that Impact REC-2 – Effects on the Quality and Quantity of Existing Recreational Opportunities – is insignificant. The large homes envisioned by the Project will have a dramatic physical effect on the landscape, especially if unlimited as to size, as proposed. The presence of large homes will deter the informal public use of historical access trails that are visible from those homes. Large expensive homes, many of which may be secondary residences, will trigger the perceived need for security guards and other devices for occupant security and safety, such as motion activated lighting, dogs that will bark and potentially chase members of the public, and other facilities, methods, personnel and actions that generally chill and deter continued exercise of historical public use. Discussed above, mitigation that relies on future CBAR review of specific home designs is insufficient to reduce impacts below significance, particularly here where the home-sites are so prominent from the beach and will have significant impacts regardless of their design.

v. Impacts to the Rural Historic Landscape

The historic significance of Las Varas Ranch extends far beyond the historically significant structures present on the site, and as discussed in the Historic Landscape Study, the Ranch is

significant under Criterion A of the National Register of Historic Places because of its association with the broad historical pattern of Goleta ranching. The Study concludes that the Ranch

has retained important character-defining landscape features that reflect this association: land uses such as cattle grazing and orchard crop production; spatial organization that is arranged around terraces and drainage troughs; cultural traditions that reflect the era of American ranching, such as the planting of windrows, erection of wood sided buildings and the growing of irrigated orchards; vegetation that evokes a feeling of historical agricultural land uses; buildings that reflect their historical era and original spatial organization; and historic views and vistas.

(RFEIR Appendix F, p. 50). The Study goes on to state that “The ranch has the ability to represent the type of nineteenth and early twentieth century agricultural complexes once seen all over the larger Goleta area, but are now removed as a result as extensive suburban tract development.” (*Id.*). The Study also concluded that the Ranch retains its historic integrity because most of its important landscape characteristics are unchanged since the period of significance. (RFEIR Appendix F, p. 51).

To mitigate significant impacts to the Rural Historic Landscape, the RFEIR focuses exclusively on the visual compatibility of proposed residential and accessory structures (*See* MM Cult 5, DEIR p. 4.5-31, MM Cult 6-1 and Cult 6-2, RFEIR p. 4.5-32)). This approach does not fully mitigate the significant impacts of the Project for two distinct reasons. First, the mitigation measures are inadequate to achieve their intended goal of ensuring the consistency of new structures. The plans for new buildings will not be reviewed until the CDP stage, long after approval of the location and size of proposed development envelopes. Discussed in the project description section above, plans for future development must be developed and integrated into this Project, and analyzed in this environmental review process following story-poling and visual simulation. Historical experts then must develop specific limitations on the size and number of allowed structures, and the design of structures, to determine whether impacts can be mitigated. Otherwise proposed development envelopes must be relocated as necessary to avoid impacts to the Rural Historic Landscape.

The impact analysis and above mitigation measures are inadequate with respect to the Rural Historic Landscape for a second distinct reason. The RFEIR does not address how the Project affects other key components of the landscape’s historic significance including land uses, spatial organization, and cultural traditions. The Project proposes to divide the historic Las Varas Ranch into saleable parcels, intended for residential estates. In this respect the Project fundamentally alters the existing nature of Las Varas Ranch as one cohesive working ranch. The RFEIR is severely defective for failing to recognize and analyze the potential impact to the Rural Historic Landscape caused by the future division in ownership and conversion of uses. The CC&Rs proposed are wholly inadequate to ensure that existing agricultural operations continue into the future, as future landowners can change the CC&Rs to modify or eliminate aspects of the agricultural operation that they find undesirable. Without more robust protections such as an agricultural conservation easement coupled with affirmative production requirements, a key character defining feature of the Rural Historic Landscape could be lost.

vi. Cultural Resource Impacts

The subsurface testing demonstrated that two of the cultural sites are located outside proposed development envelopes, but that the development envelope and proposed location for buried utilities on Parcel 3 encroaches into CA-SBA-80. (RFEIR p. 4.5-10). Because the potentially affected areas of CA-SBA-80 are considered “low density”, the EIR does not attempt to avoid this significant cultural resource. The RFEIR does not claim that it is infeasible to avoid the resource entirely, and fails to articulate any basis for the failure to attempt avoidance. CEQA (*see* Guidelines § 15126.4) and by CLUP Policies 10-1, 10-2 and 10-3 which require avoidance where feasible, and the present proposal does not comply with these provisions, or ensure that cultural resource impacts are mitigated to insignificance. Avoidance of CA-SBA-80 (including “low density” areas) to the maximum extent feasible, through additional reduction and/or relocation of the development envelope and relocation of proposed utility lines, is required before turning to mitigation measures.

Because no testing was done in areas proposed for development that are not within the boundaries of previously identified sites, there is the potential for Project development to disturb previously unrecorded resources. The RFEIR concludes that impacts associated with disturbing these previously unrecorded resources is potentially significant but mitigable with archaeological monitoring at the time of actual earth disturbance for construction. (RFEIR pp. 4.5-25.) Because the location of the development envelopes is proposed to be determined as part of this Project, it is imperative that additional subsurface testing of the development envelopes, and locations for the proposed roads and buried utilities occur as part of the environmental review process. Without this additional testing, avoidance of the resource as required by CEQA (*see* Guidelines § 15126.4) and by CLUP Policies 10-1, 10-2 and 10-3 (discussed further below) may be impossible.

vii. Impacts to Biological Resources

Las Varas Ranch includes a host of sensitive species and native habitats, that will be significantly and adversely affected by the Project. The EIR understates many of these impacts, and overstates the efficacy of proposed mitigation. The potentially significant impacts to sensitive wildlife species include wildlife mortality and disturbance from introduction of non-native species and interaction with humans (Impact BIO-8). The EIR finds that “wildlife mortality due to interactions with humans during occupation could be significant and extend well beyond the development envelopes”. (RFEIR p. 4.4-44.) However, the EIR fails to recognize this impact as significant, and proposes ineffective mitigation to address it. Specifically, the EIR includes a “recommended” mitigation measure of a Resident Education Program, without any evidence that such a program will prevent significant impacts to sensitive species and their habitats.

viii. Land Use Impacts from Conflicts with Policies

The RFEIR's analysis of conflicts with County Policy (Impact LU-2) identifies only two policies with which the proposed Project would potentially conflict, and concludes that Impact LU-2 is reduced to less than significant with two mitigation measures addressing each of the policy inconsistencies. (RDEIR p. 4.9-8.) However, there are a host of additional policies that the Project is inconsistent with, discussed below. These policy conflicts demonstrate that the EIR's conclusion regarding the insignificance of Impact LU-2 is erroneous. These policy conflicts also demonstrate that the Project cannot be approved.

1. Agricultural Resource Protection Policy

For reasons discussed above, the proposed land division will diminish the long-term agricultural productivity of the property. CC&Rs are fundamentally ineffective and unenforceable, and the EIR does not include an Agricultural Conservation Easement as required mitigation. This precludes the County from making the finding required by CLUP Policy 8-4, which provides:

As a requirement for approval of any proposed land division of agricultural land designated as Agriculture I or II in the land use plan, the County shall make a finding that the long-term agricultural productivity of the property will not be diminished by the proposed division.

County Staff recommended an Agricultural Conservation Easement to provide additional long-term protection to agricultural operations, and to ensure consistency with applicable agricultural protection policies including CLUP Policy 8-4. PC Staff Report (7/10/14), p. 11. However, the Applicant adamantly refuses to accept any condition requiring an Agricultural Conservation Easement. Without this necessary protection, the Project is inconsistent with CLUP Policy 8-4.

Additionally, Coastal Act section 30242 (incorporated into the CLUP via Policy 1-1) provides:

All other lands suitable for agricultural use shall not be converted to non-agricultural uses unless: (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development . . . Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

The Project directly converts the land within the development envelopes to non-agricultural use, and also is likely to convert the larger ranch to non-agricultural use in the long-term. Here, continued agricultural use clearly is feasible, and the Project would not preserve prime agricultural land or concentrate development. As such, the Project is inconsistent with this which prohibits the conversion of agricultural land to non-agricultural uses except under circumstances not present here.

2. Visual Policy

Future development of the Project site has the potential to conflict with LCP Policy 4-3 and Comprehensive Plan Visual Resources Policy 2, which require:

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

The RFEIR acknowledges that certain project structures have the potential to intrude into the skyline and identifies mitigation measures to address skyline intrusion and associated visual impacts (*see e.g.* Impact AES-1 re. Parcel 6 building area #1, DEIR p. 4.1-19 and Figure 4.1-3). However, the RFEIR fails to recognize potentially significant impacts related to skyline intrusion on other project lots. For example, future development within the Parcel 3 development envelope clearly intrudes into the skyline as seen from Southbound Highway 101 (*see* Figure 4.1-6). The RFEIR states that reducing the height of future development on Parcel 3 would virtually eliminate visibility from this viewshed, however there is no visual simulation showing more proximate views of the Parcel 3 development as Highway 101 travelers approach Lot 3. Substantial skyline intrusion of Parcel 3 and Parcel 1 development is also apparent as seen from UPRR (Figures 4.1-9 and 4.1-10). The RFEIR treats skyline intrusion of Parcels 1 and 2 development from UPRR in a similar fashion (*see* DEIR Figures 4.1-10 and 4.1-11).

In addition, the Project conflicts with Section 30251 of the Coastal Act (incorporated into the CLUP via Policy 1-1). Specifically this Coastal Act section provides as follows: "[t]he scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of the surrounding area and, where feasible, to restore and enhance visual quality in visually degraded areas..." For all the reasons articulated above, including increasing buildable lots between Highway 101 and the ocean, locating future development such that it obstructs ocean views and/or requires landform alteration to reduce its profile, and allowing a large amount of visually incompatible development in the viewshed, the Project conflicts with this provision.

3. Public access and recreation policies

The shoreline trail alignment is inconsistent with CLUP 7-3, which reads: "For all new development between the first public road and the ocean, granting of lateral easements to allow for public access along the shoreline shall be mandatory." A stand-alone clause of this policy states that the County's "minimum" responsibility under this policy is that "the dedicated easement shall be adequate to allow for lateral access during periods of high tide." Substantial portions of the beach trail will not be passible during moderate and high tides, or during high surf conditions. RFEIR 4.10-

12. Importantly, CLUP 7-3 has a variety of analogs that are independent sources of authority and to which the County is bound. Both Santa Barbara County's Land Use and Development Code § 35-30.040 and Coastal Zoning Ordinance § 35-63 contain a virtually identical mandate. As noted above, and as acknowledged by Staff (*see* RFEIR 4. L 0-12), the inadequacy of the proposed shoreline trail to allow for lateral access during periods of high tide makes its dedication an insufficient ground on which to find consistency with CLUP-7-3, § 35.30.040 or § 35-63.

The RFEIR asserts that “[c]onsistency with this policy does not require that an easement be dedicated on the bluff itself to allow for lateral access during periods of high tide, since the bluffs exceed five feet in height.” (RFEIR p. 5-13.) This assertion borders on nonsensical. The italicized provision above stands on its own, regardless of whether the bluff is more or less than five feet high. The purpose of the policy as described in the first sentence is the granting of lateral easements *to allow for public access along the shoreline*. The policy goes on to explain the circumstances under which the easement may be along the beach only, or must include an area above the beach to allow access during periods of high tide. Here, where the bluffs exceed five feet in height, and a beach-only easement would not be adequate to allow lateral access during periods of high tide, an easement *along the shoreline* is necessarily on the bluff.

The shoreline trail alignment is also inconsistent with CLUP Policy 7-25, a clearly worded policy that directs the County to require an easement as a condition of project approval for any portion of [PRTmapped] trail crossing the parcel upon which the project is proposed. Coastal Land Use Plan (repub. 2009), 101. Here, a PRT mapped trail, despite poor resolution, is clearly present along the coastline, and south of the Union Pacific Railroad (UPRR).

The Project continues to be inconsistent with CLUP 7-1. CLUP 7-1 states that the County “shall take all necessary steps” to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline. The County, given the clear and broad mandate of this policy, must take additional steps as part of the Project approval process to ensure consistency with CLUP 7-1.

The vertical trail alignment at Las Varas Creek in lieu of Gato Creek is also thwarts a key LCP goal of establishing vertical beach access and recreational facilities at Edwards Point. The RFEIR asserts that the policy’s requirement that a vertical easement connecting the proposed coastal bicycle trail to the beach “at Edward’s (near Gato Canyon)”, “is not interpreted so narrowly as to require vertical beach access along Gato Creek to Edwards Point as the only means of ensuring consistency with this policy.” However this rationale ignores several important points: the vertical access easement offered is at a wholly different canyon (Las Varas Canyon), the purpose of the policy is ensuring bicycle access to Edwards Point and access at Las Varas Canyon does not allow for *bicycles* to access Edwards Point and as they would have to pedal up the beach which is not suited to bicycle use, and even assuming bicycles could ride up the beach from Las Varas Canyon, they could not do so under all tidal conditions which could result in people becoming stranded upcoast, and finally that Edwards Point offers a wholly different and far superior recreational experience than Las

Varas Canyon as recognized by the fact that Edwards Point and not Las Varas Canyon beach is subject to a recreational overlay.

The PC Staff Report makes casual reference to the LCP's designation of Gato Creek as an access corridor from the LCP's "proposed coastal bicycle trail" (LCP Policy 7-18(a)) and of Edwards as an area that "should be acquired by a public agency." Id, policy 7-18(b). The PC Staff Report states that these are "more of a wish list and vision as opposed to a burden imposed in private Landowners." PC Staff Report (7/10/14), p. 47. Staff overlooks the expectation that the LCP would serve to guide both private regulatory decisions and stimulate public agency actions. LCP policy 7-7 directs the County to establish a schedule for the acquisition of new areas proposed for new or expanded access and/or recreation. While Policy 7-18 may announce a vision, it was not a vision to be ignored for decades. The County has systematically failed to advance the recreation goals of its LCP, and now seeks to throw up its hands and walk away.

Additionally, the coastal portion of the ranch in between the railroad tracks and the Pacific Ocean is subject to a Proposed Public or Private Park/Recreational Facility Overlay designation. (DEIR p. 5-12; Figure 4.9-1). As described in the DEIR,

This overlay designation is reserved for sites that are appropriate and prioritized for recreational development. Policy 7-18 of the Coastal Land Use Plan identifies sites and implementing actions for expanding recreational opportunities and access along the Gaviota Coast. The project site is designated for acquisition by the County for the establishment of low-intensity camping, parking, restrooms, bike racks, picnic tables, and a store. The proposed project and future residential development within this overlay area would preclude the establishment of at least some of these facilities.

(DEIR p. 5-12). The Project includes no recreational component in the overlay area, dedicating parcels 1 and 2 to residential use in addition to existing agricultural uses. Establishing luxury residential uses on these parcels will effectively preclude the use of these parcels for the recreational facilities proposed in the LCP. With respect to the recreational overlay, the Policy Consistency Analysis admits that "[t]he proposed project and future residential development within this overlay area would preclude the establishment of at least some of the[] facilities", however makes a blanket conclusion that the Project is "consistent" with Recreation and Access policies. This conclusion is not supportable. The DEIR must specifically assess the Project's consistency with each policy including the recreation overlay policy of the LCP, and identify the recreation impacts associated with any inconsistencies.

4. Cultural Resources Protection Policy

The current proposal for Parcel 3 continues to violate CLUP 10-2. CLUP 10-2 reads: "When developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids impacts to such cultural sites if possible." Here we

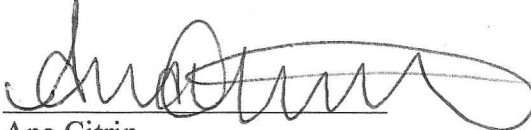
have an acknowledged cultural site at Parcel 3, but the imposition of Mitigation CULT 2-1 only "reduces impacts to cultural resources." Consistency with this policy requires either complete avoidance of the site, or a finding that avoiding the site is not possible. The proposal to further mitigate any impacts by providing for review of actual construction proposals is inadequate to bring the Project into conformity with CLUP I 0-2, and is disrespectful of our Chumash community.

2. Conclusion

Based on the foregoing, we urge the Board to determine that the EIR for the Las Varas Ranch Project is inadequate. The flaws in the document are fundamental and not worth attempting to address with additional environmental review where – as here – the Project is inconsistent with County policy and furthermore the Project applicant has refused to fund additional environmental review, and has insisted on a laundry-list of changes from Staff's recommended conditions that increase the Project's impacts and policy conflicts. Accordingly, **instead of directing additional environmental review, we urge the Board to return the matter to the Planning Commission for denial.**

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO

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

Ana Citrin

For Gaviota Coast Conservancy