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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

AUG 21 2008

GARY M. BLAIR, Executive Officer
BY Merilee A. Jay
Merilee A. Jay, Deputy Clerk

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA BARBARA
12 ANACAPA DIVISION

13
14
15 GAVIOTA COAST CONSERVANCY,
16 a California Public Benefit Corporation,

17 Petitioners,

18 v.

19 SANTA BARBARA COUNTY; BOARD OF
20 SUPERVISORS OF SANTA BARBARA
21 COUNTY; and DOES 1-10,

22 Respondents,

23 LYNNE BALLANTYNE, and
24 ROES 11-20,

25 Real Party in Interest.
26
27
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Civil No. **1302380**

**VERIFIED PETITION FOR
WRIT OF MANDAMUS**

**CALIFORNIA
ENVIRONMENTAL
QUALITY ACT (CEQA),
Public Resources Code § 21,000
et seq.**

VERIFIED PETITION FOR WRIT OF MANDAMUS

1 of CEQA's mandates. Petitioner advised Respondent Board that the failure of the Project to
2 conform the applicable General Plan and zoning ordinance standards concerning visual
3 impacts, size, height and character of the structure in light of the surrounding environment,
4 conformity to natural topography and intrusion into the skyline prohibited Project approval as
5 proposed, and constituted an independent CEQA significant impact. Respondent Board's
6 approval of the Project under these circumstances constituted an abuse of discretion and a
7 failure to proceed in accordance with law.

8 4. Petitioner Gaviota Coast Conservancy filed this lawsuit because it is deeply concerned
9 about Respondent's failure to comply with CEQA and the General Plan. Petitioner is
10 concerned that the Project will cause significant impacts that can feasibly be avoided through
11 mitigation measures and/or consideration of alternatives, and that the failure of the County to
12 comply with CEQA and faithfully observe the standards established in the General Plan and
13 Land Use and Development Code will have negative consequences throughout the Gaviota
14 Coast from other proposed development.

15
16 **PARTIES**
17

18 5. Petitioner Gaviota Coast Conservancy (herein "GCC" or "Petitioner") is a California
19 public benefit, non-profit corporation. The Gaviota Coast Conservancy is dedicated to
20 protection of the environment on the Gaviota Coast by participating in local environmental and
21 land use policy and decision making, and dedicated to the enactment and implementation of
22 land use policies that will protect the rural character of the Gaviota Coast. Its members are
23 residents of the County of Santa Barbara and include individuals that routinely view the scenic
24 nature and aesthetic qualities of the project site, that cross the site for recreational activities,
25 that enjoy the ecological, cultural and spiritual resources on the project site, and are personally
26 and directly affected by the Project and from urbanization of the Gaviota Coast. GCC's and
27 their members' interests in preservation of the environmental integrity of the Gaviota Coast
28

1 will be adversely affected by the violations of CEQA and approval of the Project in the absence
2 of CEQA compliance.

3 6. Respondent Board of Supervisors of the County of Santa Barbara) is the highest
4 governing authority of the County of Santa Barbara, exercising legislative authority over
5 County land use matters and controlling, through the Chairman of the Board, the conduct of the
6 Board of Supervisors' hearings generally and specifically the hearings which led to the approval
7 of the Project.

8 7. Respondent Santa Barbara County is organized under the laws and Constitution of the
9 State of California. The County is empowered, among other duties, to provide for the orderly
10 planning and management of land use within its borders, including permitting of the Ballantyne
11 Residential Project, subject to the obligations and limitations of all applicable state, federal and
12 other laws, including the California Environmental Quality Act, the Planning and Zoning Law
13 (Government Code § 65,000 et seq.), and the California Coastal Act (Public Resources Code §
14 30,000 et seq.). The County is the lead agency under CEQA. As used herein, "Respondent
15 Board" refers to both Respondent Board of Supervisors and Respondent Santa Barbara County.

16 8. DOES 1 through 10, inclusive, are officers, agents or employees of Respondent Santa
17 Barbara County, or other unknown persons, entities or agencies with an interest in the subject
18 matter of this dispute. The identities and capacities of such DOES are unknown to Petitioners
19 at this time. Petitioners will seek leave to amend this Petition to identify the true name and
20 capacity of each such person when identified.

21 9. Real Party in Interest Lynne Ballantyne ("Ballantyne") is the applicant for the Project.

22 10. ROES 11 through 20, inclusive, are individuals, governmental agencies, entities,
23 corporations or other unknown persons that are Real Parties in Interest to this dispute. The
24 identities and capacities of such ROES are unknown to Petitioners at this time. Petitioners will
25 seek leave to amend this Petition to identify the true name and capacity of each such person
26 when identified.
27

28 JURISDICTION AND VENUE

1 11. This Court has subject matter jurisdiction pursuant to the California Constitution,
2 Article VI, Section 10, because this case is not a cause given by statute to other trial courts.
3 Jurisdiction of this court is invoked pursuant to California Code of Civil Procedure Section
4 1094.5; California Public Resources Code Section 21167; CEQA Guidelines Section 15112;
5 Government Code Section 54960; the Constitution of the State of California; the Constitution
6 of the United States; and applicable law.

7 12. Venue is proper in this Court pursuant to Code of Civil Procedure §§393, 394 because
8 both Petitioner and Respondent are located wholly within the County of Santa Barbara.

9 13. This Court has jurisdiction over the County of Santa Barbara and the Board of
10 Supervisors of the County of Santa Barbara because the County is an agency established by the
11 legislature of the State of California with its principal place of business located in the County of
12 Santa Barbara.

13 14. Approval of the Project will adversely affect the interests of Petitioner and its members.
14 Petitioner is a non-profit corporation dedicated and organized to preserving the environment of
15 the County of Santa Barbara, including the Gaviota Coast as set forth *supra*, and is concerned
16 with maintaining the environmental integrity of the County of Santa Barbara, in particular the
17 Gaviota Coast. Approval of the Project and the Mitigated Negative Declaration will adversely
18 affect these interests of Petitioner and its members. Members or representatives of Petitioner,
19 on behalf thereof, have submitted comments on and objections to the lack of CEQA
20 compliance and General Plan policy inconsistency, and have participated at public hearings
21 before the Planning Commission and Board of Supervisors. Accordingly, Petitioner is an
22 "aggrieved person" within the meaning of Public Resources Code Section 21177. The claims
23 asserted and relief requested are broad-based, so that participation in the litigation by individual
24 members is not required.

25 15. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law unless
26 this Court grants the requested writ of mandate to require the County to set aside its approval of
27 the Project. In the absence of such remedies, the County's approval will remain in effect in
28 violation of state law.

1
2 **STATEMENT OF FACTS**

3 16. The Gaviota Coast is largely undeveloped rural coastline, unique to southern California
4 and extremely important to the community and local ecology for its unparalleled beauty,
5 biological diversity, agricultural resources, and cultural history. The Project is located on a
6 prominent ridge overlooking the eastern end of the Gaviota Coast, visible to passing motorists,
7 train passengers, hikers, bikers, boaters and other recreationalists. The area is sparsely
8 populated, and the homes in the vicinity are considerably smaller. The Project is highly visible
9 from Farren Road, a public roadway that is designated in the County General Plan and on other
10 County planning documents as the location of a public hiking trail, providing recreational
11 opportunities in its current condition and serving as one leg of a proposed future trail network
12 linking the beach with inland foothill and mountainous terrain on private and public lands,
13 including the Los Padres National Forest. Farren Road is a well established recreational
14 destination for bicycling, remote-controlled airplane flying, sunset enjoyment and bird-
15 watching. The Project is located on and near lands rich with biological resources and which
16 contain sensitive habitats including native grasslands, grasslands dominated by non-native
17 grasses, and southern coastal bluff scrub. Farren Road is a popular trailhead and viewing spot
18 for persons seeking to observe local birds of prey, including peregrine falcon and white-
19 shouldered kite, as well as other rare and unusual birds, such as the grasshopper sparrow.

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24 17. The Project is also visible from public roads in Rancho Embarcadero, from Calle Real,
25 from Highway 101, from the Pacific Ocean and from recreational trails in the area.

26 18. The location of the Project, the particular environmental sensitivity of the surrounding
27 lands, the scenic qualities of the visual resources impacted by the Project, the cumulative
28 impact of the Project and its approval, and the significant impacts of Project approval preclude

1 the use of any CEQA categorical exemption.

2 19. The Project was proposed in July 2005 and notice given to Real Party in Interest of the
3 Project's policy inconsistencies later that same month by the County Planning and
4 Development Department. The Project was reviewed by the County Board of Architectural
5 Review three times, on September 9, 2005, November 18, 2005 and June 2, 2006. On each
6 occasion, the County Board of Architectural Review expressed substantive objections to
7 aspects of the Project, commenting that it was not compatible with the natural environment,
8 that the proposed house was too large, that the style, involving lots of glass, was not suitable for
9 the setting, that the house broke the skyline, that the house design does not meet policy, and
10 that the house could be sited differently to avoid visual impacts.

11
12
13 20. On June 14, 2006, the director of the Santa Barbara County Planning and Development
14 Department made a determination that the Project did not conform to applicable visual policies
15 and standards in the General Plan and Land Use and Development Code. County Planning and
16 Development Department Director Baker issued a denial of the project on the basis of these
17 General Plan and Development Code inconsistencies, and suggested that the applicant redesign
18 and re-site the project to better conform to these policies.

19
20 21. Instead, the applicant appealed Mr. Baker's denial to the Santa Barbara County
21 Planning Commission. On October 4, 2006, the Planning Commission considered staff's
22 recommendations and public comment, and after receiving direction from County Counsel
23 regarding the Commission's discretion over the Project, made various modifications to the
24 Project with the applicant's agreement to attempt to resolve the Project's policy inconsistencies
25 and environmental impacts, including shifting the house back slightly and adding an earthen
26 berm approximately 660 feet long to shield the Project from views from the south. The
27 Planning Commission granted the applicant's appeal and approved the revised Project, with the
28

1 berm, on a 3-2 vote. On November 8, 2006, the Planning Commission adopted findings and
2 conditions of approval, which Petitioner appealed to the Santa Barbara County Board of
3 Supervisors.

4 22. On June 19, 2007, the Board of Supervisors conducted a hearing on Petitioner Gaviota
5 Coast Conservancy's appeal of the Planning Commission action, and, in response to Gaviota
6 Coast Conservancy's arguments, determined that the discretionary actions and special
7 circumstances of the Project subjected the County to CEQA. The Board of Supervisors
8 directed staff to commence the environmental review process expeditiously, and return the
9 Project to the Board of Supervisors.
10

11 23. On September 12, 2007, the applicant met, along with Mr. Randy Welty and Mr. Andy
12 Caldwell, with County Administrator Michael F. Brown, Planning and Development
13 Department Director John Baker and various County Planning and Development Department
14 staffpersons. This meeting is described in a letter dated September 18, 2007 from Mr. Baker to
15 Mr. Richard Adam, Jr., attorney for the applicant.
16

17 24. At the September 12, 2007 meeting, various decisions were made by Mr. Brown
18 concerning the County's environmental review process, including a decision to forgo visual
19 simulations of the Project previously determined to be necessary by the Planning and
20 Development Department and to relax the specificity of information describing the Project and
21 its potential environmental consequences. Mr. Brown allowed the use of antiquated Project
22 plans from a prior architect that could not be used due to a contract dispute, allowed simplified
23 characterizations of the Project's utilities, water supply and delivery infrastructure, dispensed
24 with the submittal of current height calculations, waived the need to submit a geotechnical
25 (soil) engineering report, and granted various other dispensations pertaining to the County's
26 review of this project.
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1 25. The County hired Rincon Consultants (“Rincon”), an environmental consulting firm, to
2 perform the environmental review of the Project. Rincon conducted an initial study, which was
3 converted into a proposed draft Mitigated Negative Declaration that was circulated for public
4 comment. Petitioner Gaviota Coast Conservancy and others submitted public comment on the
5 draft Mitigated Negative Declaration, including technical information, expert opinion,
6 information from other County environmental review documents including the nearby Santa
7 Barbara Ranch project environmental impact report, Project-related correspondence from
8 county departments and other agencies and extensive legal and technical argument. This and
9 other public comment constituted substantial evidence supporting a fair argument that the
10 project would have significant impacts, that the Project violated applicable General Plan
11 policies and development standards, and that the Project Description lacked essential
12 information for a complete and adequate environmental review document.

15 26. In reviewing public comment and the evidence submitted, Rincon independently
16 concluded that there was substantial evidence to support a fair argument of significant Project
17 impacts, and thus that an EIR should be prepared. Rincon submitted this conclusion to the
18 County in two memos, the first dated June 5, 2008, where it suggested revisions to the MND to
19 better describe or confirm the Project’s utility infrastructure for delivery of water and gas to the
20 site, confirm the validity of the applicant-supplied visual simulations, confirm whether the
21 Project would undergo additional review by the Board of Architectural Review, and expressing
22 a desire to include additional geotechnical analysis. A second memo dated June 12, 2008
23 acknowledged that the MND’s visual impact analysis relied on an assumption of limited public
24 use of the Farren Road corridor and the lack of any formal designation as a scenic corridor.
25 Rincon cited the numerous public comments it had received disputing these assumptions,
26 including evidence submitted by Petitioner of another County EIR that identified Farren Road
27
28

1 as a location that “represent[s] key sensitive viewer types or [a] potentially significant visual
2 impact locations” and other evidence documenting the ongoing recreational use of Farren Road
3 as substantial evidence supporting a fair argument of a potential significant impact in light of
4 the conclusions and analysis in the MND, and recommending preparation of a focused EIR. In
5 response, on Thursday June 19, 2008 County staff directed Rincon to revise the aesthetic
6 analysis and resubmit it “as part of a revised Mitigated Negative Declaration” and noted that
7 the deadline to submit this revision was the following Monday, June 23, 2008. Rincon timely
8 submitted a revised Mitigated Negative Declaration as directed.
9

10 27. On July 15, 2008 the Board of Supervisors conducted a public hearing, considered
11 testimony, evidence and argument presented by Petitioner as a continuation of the prior appeal,
12 and approved the Project on a 3-2 vote, with Supervisors Firestone, Centeno, Gray supporting
13 the project and Supervisors Wolf and Carbajal casting opposing votes.
14

15 28. The record of the environmental review process for the Project reflects various unusual
16 and improper forms of interference by County management and officials. The applicant’s
17 counsel provided simultaneous communications to the three-person majority of the Board of
18 Supervisors that ultimately voted in support of the Project, excluding other Supervisors for the
19 apparent purpose of forming a collective concurrence as to the processing of this Project, and
20 County management intervened repeatedly in the environmental review and land use permitting
21 process to achieve the improper manipulation of the environmental review process to the
22 benefit of the Project.
23
24

25 29. Petitioner has provided written notice to the Respondent of its intention to file this
26 Petition, in compliance with Public Resources Code § 21167.5.

27 30. Petitioner and others, by and through their representatives and members, have
28 performed all conditions precedent to the filing of this petition by raising each and every issue

1 known to them before the Board of Supervisors, in compliance with Public Resources Code
2 Section 21177 and Code of Civil Procedure Sections 1085 and 1094.5. Petitioners have no
3 adequate remedy at law.

4
5 **FIRST CAUSE OF ACTION**

6 **CALIFORNIA ENVIRONMENTAL QUALITY ACT VIOLATIONS**

7 **[Cal. Public Resources Code §21000, et seq]**

8 31. Paragraphs 1-29 are incorporated by reference herein.

9 **Improper Approval of Mitigated Negative Declaration**

10 32. Respondent Board abused their discretion and failed to proceed in a manner required by
11 law by approving the Project without first complying with CEQA by preparing an
12 environmental review document considering the potential significant impacts associated with
13 the Project.
14

15 33. CEQA imposes a low threshold for the preparation of an EIR in these circumstances. A
16 Mitigated Negative Declaration may not be approved and an EIR must be prepared when the
17 record contains substantial evidence supporting a fair argument that the Project may have a
18 significant effect on the environment.
19

20 34. The record before Respondent Board contains substantial evidence supporting a fair
21 argument that the Project would have significant impacts to visual resources, to geology and
22 soils, from policy inconsistency, from an inadequate water supply, and due to other related
23 impacts.
24

25 **Significant Visual Impacts**

26 35. The MND relied upon by Respondent Board was founded on a factual assumption and
27 conclusion regarding the characterization of the Farren Road viewpoint and the nature of the
28 public's use and expectations concerning that viewpoint. Substantial evidence was submitted

1 establishing that the factual assumption was incorrect, and that the MND's conclusion
2 concerning the nature of the public's use and the importance of the view corridor was
3 mischaracterized in the environmental review process.

4
5 36. Public testimony and written comment established that the Project was highly visible
6 from several locations, including Farren Road, Rancho Embarcadero, Calle Real, Highway 101,
7 the Pacific Ocean and recreational trails in the area. These locations constitute public viewing
8 places as well as locations where the Project's stylistic non-compatibility creates a visual
9 conflict and significant impact.

10 **Significant Geotechnical and Erosion Impacts**

11
12 37. The Project involves considerable grading, including the construction of an earthen
13 berm, with no geotechnical evaluation of the feasibility and consequences of these activities.
14 The proposed berm is a structure and if not properly engineered, will cause excessive erosion
15 and creates risk of failure, jeopardizing public safety. The site is prone to erosion, with past
16 site modifications creating significant erosion problems on the south side visible from Farren
17 Road. The MND failed to consider or evaluate potentially significant geotechnical impacts in
18 spite of substantial evidence supporting a fair argument of potentially significant impacts.

19
20 **Significant Water Supply and Public Service Impacts**

21 38. The Project will cause significant impacts to public services due to the lack of a
22 dedicated water supply and delivery, and resulting public safety impacts from inadequate fire
23 suppression supplies,

24
25 **Policy Conflicts**

26 39. CEQA defines a project's inconsistency with an applicable policy designed at least in
27 part to mitigate or avoid environmental effects to be a significant impact. The Santa Barbara
28 County General Plan Visual Resources Policy 2 provides:

1 In an area designated rural on the Land Use Element Maps, the height, scale, and design
2 of each structure shall be compatible with the character of the surrounding natural
3 environment, as determined by the review authority, except where the review authority
4 determines that technical requirements dictate otherwise. Structures shall be
5 subordinate in appearance to natural landforms, shall be designed to follow the natural
6 contours of the landscape, and shall be sited so as not to intrude into the skyline as seen
7 from public viewing places.

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10
11 40. Santa Barbara County General Plan Hillside and Watershed Protection Policy 1

12 provides:

13
14 Plans for development shall minimize cut and fill operations. Plans requiring excessive
15 cutting and filling may be denied if it is determined that the development could be
16 carried out with less alteration of the natural terrain.

17
18
19
20 41. Santa Barbara County General Plan Hillside and Watershed Protection Policy 2

21 provides:

22 All developments shall be designed to fit the site topography, soils, geology, hydrology,
23 and any other existing conditions and be oriented so that grading and other site
24 preparation is kept to an absolute minimum. Natural features, landforms, and native
25 vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of
26 the site which are not suited to development because of known soil, geologic, flood,
27 erosion or other hazards shall remain in open space.

28
29 42. Goleta Community Plan Policy LU-GV-5 provides:

30 Appropriate planning tools should be explored and adopted which provide for the
31 clustering or relocation of development from environmentally sensitive or visually
32 prominent areas, or other sites which are deemed unsuitable for development, to less
33 sensitive areas or parcels.

34
35 43. The Project violates and is patently inconsistent with each of the aforementioned

36 General Plan policies and Development Standards. See Second Cause of Action, ¶¶ 51-67,
37 which is incorporated by reference as if repeated in its entirety.

38
39 **Project Description Inadequacies**

40 44. CEQA requires a complete, stable Project Description as the foundation of any
41 environmental review document. Gaps in the Project Description and changes to the Project

1 prevent an adequate environmental review document, since the impact analysis builds from the
2 Project Description.

3 45. The record before Respondent Board discloses that the Project Description was
4 incomplete and vague, impairing the ability of the environmental review documents to identify
5 and analyze potential Project impacts. The final water supply and delivery infrastructure was
6 never definitely identified, leaving unanswered questions concerning the storage of hazardous
7 treatment chemicals on the site, failing to describe the visual character of the multiple pumps
8 and treatment facilities identified by the Goleta Water District as necessary due to the location
9 and elevation of the Project, omitting the precise location of the pipeline corridor and providing a
10 general description of the pipeline alignment that proceeds up steep slopes that have
11 experienced excessive erosion due to past site disturbance.
12

13
14 46. The Goleta Water District identified substantial concerns over the ability to engineer a
15 water delivery system that would meet flow requirements but not cause stagnant water to create
16 water quality problems, and urged the applicant to combine their water system with a 26 unit
17 subdivision proposed on adjoining lands, clearly implicating growth inducement impacts. The
18 water demand was never calculated, although the Project's 22 sinks and 12 toilets were
19 recognized in the MND as entailing greater than normal water consumption levels. The Project
20 Description lacked any characterization of how water would be supplied to the Project for fire
21 suppression flows, yet the Project is located in a high wildfire hazard zone and Farren Road
22 was recently evacuated during the Gap Fire. In the absence of a complete Project Description,
23 the environmental review document could not identify and analyze the potentially significant
24 environmental impacts associated with the water supply issues. The problem was compounded
25 by the applicant's false statement to the Board of Supervisors that they possessed a Can and
26 Will Serve Letter from the Goleta Water District.
27
28

1 **Cumulative Impacts**

2 47. The MND failed to adequately address potentially significant cumulative impacts from
3 the water supply and delivery system, including growth-inducement from the connection to a
4 larger delivery system serving the proposed 26 unit Tecolote Preserve project as suggested by
5 the Goleta Water District. Other potential significant cumulative impacts include the over-
6 sizing of water pipelines to serve the project creating capacity to serve other development in the
7 vicinity. These are significant cumulative Projects impacts.

8
9 48. The MND failed to examine the potentially significant cumulative impacts from the
10 Project’s precedential interpretation of County General Plan policies to allow berms to serve as
11 a means of compliance with applicable General Plan policies and development standards for
12 other pending and potential development on ridges on the Gaviota Coast, including the Makar,
13 Las Varas Ranch, and Santa Barbara Ranch projects, as well as for other future projects and
14 development. These are significant cumulative Projects impacts.

15
16 49. For all the above reasons, Respondent Board has prejudicially abused its discretion and
17 failed to proceed in accordance with law in adopting the MND for this Project as adequate
18 under CEQA.
19

20 **SECOND CAUSE OF ACTION**

21 **GENERAL PLAN AND LAND USE AND DEVELOPMENT CODE**

22 **INCONSISTENCIES**

23
24 50. Petitioner re-alleges paragraphs 1-49 herein and incorporate the same herein by
25 reference.

26 51. The General Plan is the “constitution for all development” in a community, setting
27 common development standards and policy goals to guide development applications. All
28 development must be consistent with the General Plan. Projects that obstruct the attainment of

1 the General Plan’s objectives or which conflict with the applicable policies and objectives do
2 not conform and cannot be approved.

3 52. The County’s Land Use and Development Code (“LUDC”) establishes standards for all
4 regulated development in the County. The LUDC requires that all proposed development must
5 conform to development standards contained in the LUDC and the General Plan. Santa
6 Barbara County Code §§ 35.10.040 A; 35.20.020 C.

7
8 53. The Santa Barbara County General Plan Visual Resources Policy 2 and Design
9 Compatibility Standard 1 in LUDC § 35.30.060 each provide:

10
11 In an area designated rural on the Land Use Element Maps, the height, scale, and design
12 of each structure shall be compatible with the character of the surrounding natural
13 environment, as determined by the review authority, except where the review authority
14 determines that technical requirements dictate otherwise. Structures shall be
15 subordinate in appearance to natural landforms, shall be designed to follow the natural
16 contours of the landscape, and shall be sited so as not to intrude into the skyline as seen
17 from public viewing places.

18
19 54. The Project is sited on lands designated rural on the Land Use Element map and located
20 on a prominent open ridge overlooking the exceptionally scenic Gaviota Coast. Surrounding
21 lands to the west, south and north are undeveloped, with the Rancho Embarcadero community
22 at a considerably lower elevation to the east. The lands surrounding the proposed structure are
23 the open, undeveloped grasslands, with the Gaviota Coast’s rolling foothills and sculpted ridges
24 dominating the westerly aspect and the Pacific Ocean to the south.

25 55. The South Board of Architectural Review (“SBAR”) is the review authority for the
26 Project. SBAR reviewed the Project on three occasions and at the end of their review, could
27 not support the Project due to the Project’s inconsistency with Visual Resources Policy 2,
28 finding that the “[s]cale and design of house are not compatible with natural environment.”

The Project design is angular, cubic elements using metal and glass in a large format, over 300

1 feet long, modern theme creating “a long mass of glass.” The height, scale, and design of each
2 structure is not compatible with the character of the surrounding natural environment.

3 56. The Project’s structures are not subordinate in appearance to natural landforms.

4 Surrounding natural landforms are rolling foothills and curving slopes, while the structures are
5 metallic and angular in design and extremely large, dominating the landscape.
6

7 57. The Project is not designed to follow the natural contours of the landscape, but rather is
8 angular with a long blocky façade. A 660 foot long berm over 10 feet high at one end, imposes
9 a linear, artificial topography, obliterating the natural contours.

10 58. The Project is sited in such a way that structures intrude into the skyline as seen from
11 public viewing places. Public viewing places include public roadways and thoroughfares,
12 public hiking, equestrian and bicycle trails, common vistas and view locations, and public
13 recreational areas. A berm was added to the Project to screen it from public viewing places,
14 but the end result was a berm that intruded into the skyline, rather than siting the structure to
15 avoid the skyline intrusion. The site is large enough that re-siting the house could avoid the
16 skyline intrusion. SBAR and County Planning staff repeatedly advised the applicant that the
17 Project violated this policy, and encouraged the applicant re-site the house and structures to
18 eliminate this problem, to no avail.
19
20

21 59. In the preliminary stage of the project application, in July, 2005, the Planning and
22 Development Department concluded the project did not conform to the General Plan Visual
23 Resources Policy and informed the applicant accordingly at that time. In June, 2006, after
24 SBAR review and denial, the Planning and Development Department Director also concluded
25 the project failed to comply with General Plan Policies, and on that basis, denied the Project as
26 part of the Department’s routine implementation of the General Plan. Non-conforming projects
27 are typically redesigned and re-sited to better conform to those policies, but in this case, the
28

1 applicant refused to materially revise their project and instead sought to use political processes
2 to obtain their approval. As proposed, and as approved, the Project conflicts with applicable
3 General Plan policies and development standards.

4
5 60. The Project fails to further any of the General Plan visual policies, and instead
6 materially conflicts with it, and so obstructs the attainment of General Plan objectives. This
7 constitutes a significant CEQA impact, and creates a prohibition against Project approval.
8 Respondent Board abused its discretion and unreasonably found that the Project conformed to
9 the General Plan when there is no evidence that it did, and substantial evidence that it did not.

10
11 61. The Project facially conflicts with the Design Compatibility Standards for rural areas.
12 The height, scale, and design of each structure is not compatible with the character of the
13 surrounding natural environment. The Project's structures are not subordinate in appearance to
14 natural landforms, are not designed to follow the natural contours of the landscape, and are not
15 sited so as not to intrude into the skyline as seen from public viewing places. This constitutes a
16 significant CEQA impact, and creates a prohibition against Project approval. Respondent
17 Board abused its discretion and unreasonably found that the Project conformed to the Design
18 Compatibility Standards when there is no evidence that it did, and substantial evidence that it
19 did not.
20

21 62. The Santa Barbara County General Plan Hillside and Watershed Protection Policies
22 provide:

23
24 Policy 1: Plans for development shall minimize cut and fill operations. Plans requiring
25 excessive cutting and filling may be denied if it is determined that the development
26 could be carried out with less alteration of the natural terrain.

27
28 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,

1 erosion or other hazards shall remain in open space.

2
3 63. The Project, including but not limited to the berm, involves an excessive amount of cut
4 and fill grading that unnecessarily alters the natural terrain. The Project does not minimize cut
5 and fill operations. As such, the Project violates Santa Barbara County General Plan Hillside
6 and Watershed Protection Policy 1.

7
8 64. The Project, including but not limited to the berm, is not designed to fit the site
9 topography, and involves excessive grading and site preparation. The Project does not preserve
10 natural landforms. As such, the Project violates Santa Barbara County General Plan Hillside
11 and Watershed Protection Policy 2.

12 65. The Goleta Community Plan Land Use Policy LU-GV-5 provides:

13
14 Appropriate planning tools should be explored and adopted which provide for the
15 clustering or relocation of development from environmentally sensitive or visually
16 sensitive areas or parcels.

17 66. The Project is located on a visually prominent area in the Goleta Community Plan
18 planning area, and thus this policy applies. The County and the applicant failed to explore and
19 the County failed to adopt appropriate planning tools such as relocating the development to a
20 less visually prominent location on the site. As such, the Project violates Goleta Community
21 Plan Land Use Policy LU-GV-5.

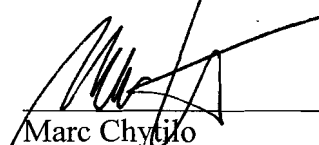
22
23 67. For all these reasons, the Project is inconsistent with the Santa Barbara County General
24 Plan and Land Use and Development Code, and thus the Board of Supervisors abused their
25 discretion in finding the Project in conformity with the General Plan and in approving the
26 Project.
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Respectfully submitted,

LAW OFFICE OF MARC CHYTILO

Dated: August 21, 2008



Marc Chytilo
Attorneys for Petitioner
GAVIOTA COAST CONSERVANCY

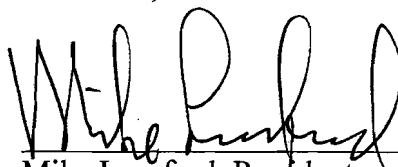
Exhibit 1: Notice of Commencement of Action, August 21, 2008

Verification

I, Mike Lunsford, in my capacity as the President of the Gaviota Coast Conservancy, one of the Petitioners in this matter and duly authorized to make such statement, declare that I have read the attached Petition and know its contents, which are true of my own knowledge except as to those matters stated on my information and belief, and as to those matters I believe the Petition to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 21, 2008, at Santa Barbara, California.



Mike Lunsford, President
Gaviota Coast Conservancy
Petitioner

1 Marc Chytilo (State Bar No. 132742)
2 Ana Citrin (State Bar No. 255587)
3 LAW OFFICE OF MARC CHYTILO
4 P.O. Box 92233
5 Santa Barbara, CA 93190
6 Telephone: 805-682-0585
7 Fax: 805-682-2379

8 Attorneys for Petitioner
9 GAVIOTA COAST CONSERVANCY

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA
ANACAPA DIVISION

GAVIOTA COAST CONSERVANCY,
a California Public Benefit Corporation,

Petitioners,

v.

COUNTY OF SANTA BARBARA; BOARD
OF SUPERVISORS OF THE COUNTY OF
SANTA BARBARA, and DOES 1-10,

Respondents,

LYNN BALLANTYNE, and
ROES 11-20,

Real Party in Interest.

Civil No.

**NOTICE OF INTENT TO
COMMENCE LITIGATION
PURSUANT TO THE
CALIFORNIA
ENVIRONMENTAL
QUALITY ACT (CEQA)**

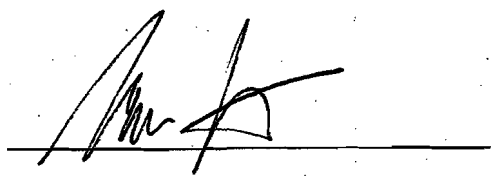
LAW
OFFICE
OF MARC
CHYTILO

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PLEASE TAKE NOTICE, pursuant to the requirements of Public Resources Code Section 21167.5, this will serve as notice of the commencement of litigation against the County of Santa Barbara and the Board of Supervisors of the County of Santa Barbara, by the Gaviota Coast Conservancy for approval of the Ballantyne Residential Project and related actions. This litigation is being commenced, *inter alia*, because the County has not complied with the California Environmental Quality Act (Public Resources Code Section 21000, et seq.).

LAW OFFICE OF MARC CHYTILO

Dated: August 21, 2008



By: Marc Chytilo
Attorneys for Petitioner
GAVIOTA COAST CONSERVANCY

LAW
OFFICE
OF MARC
CHYTILO

