

# LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

November 20, 2006

Clerk of the Board of Supervisors Mike Brown  
Santa Barbara County Board of Supervisors  
105 E. Anapamu Street  
Fourth Floor  
Santa Barbara, California 93101

RE: Appeal of Ballantyne Residence Approval by Planning Commission, 06APL-00000-00019

*Clerk Brown:*

This office represents the Gaviota Coast Conservancy (GCC) in this matter.

Please accept this appeal to the Board of Supervisors of the action of the Santa Barbara County Planning Commission on November 8, 2006 approving the Ballantyne residence. The Ballantyne matter was before the Planning Commission on the Applicant's appeal No. 06APL-00000-00019.

## Background and Summary of Appeal

The project is a large home proposed on a prominent ridge accessed from Farren Road near Rancho Embarcadero. Although it is technically in the Goleta Planning Area, it is also on the eastern end of the County's Gaviota Coast. It is located on a 17 acre lot with several alternative locations for this development, including some that would provide views of the Pacific Ocean and the mountains while remaining out of the public viewshed. Instead, the residence has been proposed to be sited on a prominent portion of the property.

This appeal raises the question of whether the County's land use policies mean what they say, or if not, whether applicants can propose projects facially inconsistent with policy and regulatory standards and hope a discretionary political decision will approve their project nevertheless. This appeal has substantial implications for how the County's elected authorities view land use planning and the planning process. Normally, when an applicant proposes a project that is facially inconsistent with applicable General Plan policies and zoning requirements, the project is denied at the staff level, and eventually resubmitted by the applicant in a more consistent form. In this case, the applicant elected to defy the applicable policies and standards, and succeeded in their appeal of staff's denial to the Planning Commission. This appeal asks the Board of Supervisors to endorse a plain reading of the language of the General Plan and zoning ordinance and deny the project with direction to the applicant to re-locate the residence and structures on a less prominent portion of the parcel to avoid the impacts and inconsistencies.

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The primary issue raised by this project concerns General Plan and zoning ordinance view policies. The residence will be visible from publicly-accessible viewing places and intrudes into the skyline, in violation of County policy. The applicant has proposed an large earthen berm to hide the project from many views, but the berm itself intrudes into the skyline. The use of berms is inconsistent with the view policy requiring structures be sited so as to not be visible.

Other issues include the improper findings since the applicant failed to secure permits before starting development and the need to conduct environmental review before the County takes action on the project.

### Details of Appeal

#### 1. General Land Use Planning Issues

Landowners, developers, neighbors, the public and planning staff all rely on the stability of local General Plan and zoning standards to guide development on land. Injecting raw political discretion into zoning matters deprives land use planning of integrity and defeats orderly community planning. It invites other applicants to “game” the planning process by proposing inappropriate projects and hoping they get lucky. The net result of this is increased burdens on staff and the planning process, with higher costs, longer delays, and community outcry. GCC encourages the Board to honor the guiding role of the General Plan and zoning ordinance in clearly defining acceptable development through a plain reading of the language.

#### 2. Applicable General Plan Policies

The General Plan has been described the “constitution for all future developments.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570. All projects must be consistent with the General Plan. “The consistency doctrine has been described as 'the linchpin of California's land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law.’” *Corona-Norco Unified School Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994 (citations omitted). The County invites substantial applicant mischief and community acrimony if it ignores the plain language of the General Plan and approves development impacting important community resources.

##### A. Visual Policies

Visual Resources Policy 2 in the Land Use Element of the Comprehensive Plan states the following:

*“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.”*

It is evident that the project, as initially proposed and as revised, does not achieve conformity with this policy.

As discussed in the Staff Report dated September 15, 2006, the project is not compatible with the character of the surrounding natural environment. The site is surrounded by open lands – to the south and west are all natural-appearing undeveloped grasslands and to the north is coastal sage scrub, grasslands and orchards. About 1000 feet to the east and at a substantially lower elevation lies the rural residential community of Rancho Embarcadero.

The Board of Architectural Review made numerous references to the lack of compatibility with surrounding lands, referencing the prominence of the project’s ridge top location, the “football field length,” the “large, unbroken mass,” the “use of glass, reflectivity of materials . . . making the house very visible, especially at night,” (BAR 9/9/05); the “scale and design of house” that “breaks skyline and is not subordinate to land forms” and “stylistically, a long mass of glass will not work in this setting,” (BAR 11/18/05); that “screening must be done by topography” and the BAR “supports P&D in their application of the Visual Resources Policy.” (BAR 6/2/06). Incompatibility is evident.

The record is replete with evidence that the massive project and the proposed berm is not subordinate to natural landforms and fails to follow the natural contours of the landscape. While the applicant cites the Bean Blossom case as an example of how such a project may proceed, the reference is not at all applicable. The applicant in Bean Blossom withdrew the previously designed and Planning Commission-approved house and relocated a redesigned house 200 feet to the north on the site, eliminating the second story, lowering it into the earth and tiering the elements so there was no apparent visibility from any publicly-accessible viewing place. In accordance with the policy, the project was sited to avoid visibility. The development envelope was minimized through project redesign, a far cry from the sprawling Ballantyne site plan. The minor surficial recontouring envisioned in Bean Blossom was considered appropriate to provide additional assurances of invisibility based on the uncertainties with far-distant views. That element was required to have a natural appearance and blend with the existing topographic landforms, and was limited to an 18 inch average in the short area where it was determined appropriate to ensure invisibility from 2 miles west on Highway 101. The Ballantyne project proposes a much more visually intrusive, much more massive and far less naturally appearing earthen berm to hide the project, as compared to the “slither fill” recontouring that was part of the Bean Blossom compromise project.

Importantly, the Bean Blossom project did not involve skyline intrusion at any point. This is a clear violation of an objective General Plan and zoning ordinance standard that mandates denial of the Ballantyne project.

Land Use Policy LU-GV-5, Goleta Community Plan:

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

As noted by Staff, “The residence would be sited on the most prominent portion of the subject parcel. Consequently, it would intrude into the skyline and would be highly visible as seen from Highway 101, Farren Road and Calle Real. The 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.”

As with the County’s Visual Resources policy, the Goleta Community Plan’s mandatory strategy to avoid view impacts is “relocation of development,” not screening behind artificial landforms. Moving the project approximately 200 feet north, like the distance moved in Bean Blossom, along with minor project modifications could eliminate the visual impact and bring the project into conformity with this policy.

## B. Grading Policies

Hillside and Watershed Protection Policies:

*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”.*

The project’s earthen berm substantially increases the amount of project grading, which could be avoided by relocated the residence. The plan should be denied due to inconsistency with Hillside and Watershed Protection Policy 1.

*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.”*

This policy also identifies site layout and project design modifications so the project fits the site as the mandatory method for achieving policy conformity. For all the reasons stated above, the project should be denied for its inconsistency with Hillside and Watershed Protection Policy 2.

### C. Open Space Plan

California requires that any land use action, including issuance of a building permit, be consistent with the County's local open space plan. Government Code § 65567. The fabric of Santa Barbara County General Plan policies have been cited by the County as principally representing its local open space plan mandated by Government Code § 65562(b). As the project does not conform to the applicable General Plan and zoning ordinance in ways that adversely affect open space resources (to wit, the scenic character of the Goleta and/or Gaviota foothills), the project is inconsistent with the County's local open space plan.

#### 3. Applicable zoning ordinance requirements

Visual Resources Development Standard 1 in § 35-212.1 of Article III, states the following:

*“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.”*

See the above analysis of Visual Resources Policy 2 in the Land Use Element of the Comprehensive Plan (which contains identical language). The project is inconsistent with the standards of Visual Resources Standard 1 in the same manner that it fails to conform to Visual Resources Policy 2 in the Land Use Element of the Comprehensive Plan.

#### 4. Findings

Findings are an essential element of decisionmaking concerning land use planning matters. They are required by the California law and the zoning ordinance and must be supported by substantial evidence in the record. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511-518. This appeal asks the Board of Supervisors to reject the findings made by the Planning Commission as they are without substantial evidence, they fail to identify the analytical route employed by the County in finding this project consistent with applicable policies and standards, and they fail to conform to applicable law.

The zoning ordinance specifies a land use permit may only be issued if three specific findings may be made.

First, § 35-314.5 requires that the project “conforms to the applicable policies of the Comprehensive (General) Plan.” Second, § 35-314.5 requires that the project “conforms to the applicable provisions of this Article (the zoning ordinance).” Finally, the land use permit cannot issue unless “the property is in compliance with all laws, rules and regulations pertaining to zoning uses, subdivisions, setbacks and any other applicable provisions of this Article.”

As noted herein, the proposed development does not conform to the applicable General Plan policies as it is not compatible with the character of the surrounding natural environment. The development does not conform to the natural contours, and proposes their modification. The project is overly massive and is constructed of reflective materials. The residence and the associated berm intrudes into the skyline as seen from publicly-accessible viewing places, and involves excessive grading that could be avoided by re-siting the house and avoiding use of the berm. Screening with vegetation does not achieve General Plan or zoning ordinance conformity. There is substantial evidence in the record to support appellant’s contention that the facts do not support the findings and no evidence in the record to support the findings themselves. As such, the findings are defective for failing to identify the relevant facts supporting the findings.

Additionally, there is substantial evidence that the project property remains in substantial non-compliance with land use permit requirements for development that has already occurred on the site. The zoning ordinance finding at § 35-314.5.3 is addressed in the present tense (“that the subject property is in compliance with . . .”), not the future tense (i.e., “that the subject property will be in compliance . . .”). Thus the property must be in compliance at the time the finding is made, not at some future time. The non-compliance issues are as follow:

A) Unpermitted development – Tanks

The water tanks present on the property are defined as “development” in the zoning ordinance that require a land use permit. No such land use permit has been issued and the tanks are illegal and unpermitted development. The property is not in compliance with all laws, rules and regulations pertaining to zoning uses, and the applicable provisions of this Article.

B) Unpermitted development – Landscaping

The landscape improvements already installed on the property is “development” that requires a land use permit. Section 35-209 of the zoning ordinance defines “development” as “[a]ny change made by a person . . . to unimproved real property . . . including but not limited to . . . landscaping improvements . . .” The applicant planted dozens of invasive pepper trees along the Farren Road fenceline and has a sizable active landscaping operation currently operating daily on

the site, with numerous workers, temporary structures, potted plants, storage piles, erosion control devices and heavy equipment operating routinely. The inland zoning ordinance defines “landscaping improvements” as development subject to land use permit. § 35-314.1. The applicant has plainly constructed landscaping improvement without a land use permit and as such, the property is not in compliance with all laws, rules and regulations pertaining to zoning uses, and the applicable provisions of this Article.

C) Unpermitted development - native vegetation and habitat destruction

The Applicant conducted widespread clearing of vegetation on the parcel in anticipation of its application for development, including the removal of substantial amounts of native vegetation in the coastal zone. A Coastal Development Permit (CDP) is mandatory for all “development,” including “the removal . . . of major vegetation.” Coastal Zoning Ordinance § 35-269.2; 35-58. Clearing a hillside of native coastal sage scrub and native grasses constitutes the removal of major vegetation under the Coastal Act. The California Coastal Act protects environmentally sensitive habitat areas “against any significant disruption of habitat values.” Pub. Res. Code § 30240. Coastal sage scrub and native grassland habitat in the coastal zone are considered environmentally sensitive habitat areas. Coastal sage scrub has been described as a threatened ecosystem in California by the U.S. Department of the Interior.<sup>1</sup> In light of the unpermitted native habitat destruction conducted in anticipation of development, the property is not in compliance with all laws, rules and regulations pertaining to zoning uses, and the applicable provisions of this Article.

Further, the applicant has undertaken various forms of erosion control in apparent response to the stripping of the parcel of native vegetation. Within the past 15 months, the applicant graded portions of the land in anticipation of development (installation of roadways, fence installation, and landscaping installation) and denuded the natural vegetative cover. These actions have naturally increased runoff and erosion from the site. Numerous waterbars were then installed to control the runoff and erosion, which are visually prominent from publicly-accessible viewing places. The erosion is a water quality issue that resulted from the elimination of native and naturalized vegetation that previously interrupted sheet flow of storm water, anchored soils on hillsides and promoted infiltration. The waterbars in the coastal zone portion of the parcel falls within the definition of “development.” Coastal Zoning Ordinance § 35-58. This definition includes “the placement . . . of any solid material or structure [on land].” Placing dozens of solid erosion control devices on the property and in the drainages below the property adjacent to Farren Road is plainly development as defined by the Coastal Zoning Ordinance necessitating a Coastal Development Permit (CDP). No CDP has been issued for this development, and thus the

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<sup>1</sup> Reed F. Noss, E.T. LaRoe III, and J.M. Scott. 1995. *Endangered ecosystems of the United States: A preliminary assessment of loss and degradation*. Biological Report 28. US Department of the Interior. Washington, DC. <http://biology.usgs.gov/pubs/ecosys.htm>.

property is not in compliance with all laws, rules and regulations pertaining to zoning uses, and the applicable provisions of this Article.

5. CEQA Applies to This Project

Although the zoning ordinance labels the issuance of a land use permit a ministerial action and thereby potentially exempt from CEQA, appellants contend that the project is still subject to CEQA in light of the discretionary determinations and actions necessary for project approval. There are many examples of land use actions labeled ministerial that are in fact discretionary in nature, and it is well-established that in those instances, CEQA's environmental review process applies with full force. This is one such case.

Reflecting the central nature of the ministerial/discretionary action issue, the CEQA Guidelines define the characteristics of a ministerial action as follows:

“Ministerial' describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.” Cal. Code Regs., tit. 14, § 15369 (hereafter CEQA “Guidelines” § 15369).

Courts look to the nature of the action, not its label. The County's classification is not conclusive. *Friends of Westwood v. City of Los Angeles* (1987) 191 Cal.App.3d 259, \*\*\* (at hn. 4). “The applicability of CEQA cannot be made to depend upon the unfettered discretion of local agencies, for local agencies must act in accordance with state guidelines and the objectives of CEQA.” *Day v. City of Glendale* (1975) 51 Cal.App.3d 817, 822. CEQA's objectives include the identification, avoidance and mitigation of adverse impacts so that “major consideration is given to preventing environmental damage.” Pub. Res. Code § 21000(d); 21001.1. Projects that have both ministerial and discretionary elements are deemed by CEQA to be discretionary subject to CEQA environmental review process. Guidelines § 15268(d).

In this case, there is overwhelming evidence in the record of the discretion properly exercised by the County over this project. The record shows that the project was repeatedly modified after adverse comment by various officials and decisionmakers, a hallmark of discretionary action. “[T]he touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.” *Friends of Westwood v. City of Los Angeles, supra*, 191 Cal.App.3d 259, \*\*\* (at hn. 2) (emphasis added). Approval of this project entailed adoption of 26 specific conditions addressing view issues, requirements for grading, drainage, erosion

control, air pollution control, building materials and colors, landscaping, exterior lighting, interior improvements, uses of guest houses, archaeological issues and the like. The County process clearly embodied a discretionary process in fitting this “square peg into a round hole” in attempting to make findings of conformity. This is the type of discretion that CEQA demands be preceded by an investigation and disclosure of potential adverse effects.

Further, actions that involve the exercise of subjective judgment are considered discretionary. See Guidelines § 15369, *supra*. The statements of the applicant, County Counsel, Planning Commissioners and the public at the Planning Commission hearings all displayed express recognition of the considerable amount of subjective judgment employed in the review of this project. Planning Commissioners spoke at length about the difficulty of findings of neighborhood compatibility, of the lack of objective standards of size bulk and scale, and the subjective interpretation of applicable policies controlling the decision whether the project should be approved or denied. The subjective nature of Planning Commission review is evident in the record.

As noted in the Addendum hereto, there are several environmental impact areas where the project will cause potentially significant impacts. These include views and scenic resources, biological resources, drainage and erosion, grading, land use and neighborhood incompatibility as well as cumulative impacts from the use of berms to achieve visual policy conformity on the Gaviota Coast.

As the administrative process, including the instant appeal, reflects the exercise of discretion, including project changes addressing impact issues and the exercise of decisionmakers’ personal and professional judgment, it is clear that the County’s review of this project is a discretionary action subject to CEQA. *Friends of Westwood v. City of Los Angeles*, *supra*, 191 Cal.App.3d 259 (“It is enough the city possesses discretion to require changes which would mitigate in whole or in part one or more of the environmental consequences an EIR might conceivably uncover.”). CEQA was intended to ensure that the potential significant adverse environmental consequences of projects such as this are reviewed, avoided and mitigated before final action.

#### 6. The Appeal Must Be Granted

For all of the above-stated reasons, the Gaviota Coast Conservancy requests that the Board of Supervisors approve this appeal and deny the Ballantyne residential project. The project has not been sited to avoid visibility from publicly-accessible viewing place, although the record shows that siting could be used to achieve policy conformity. Various attempts to (unsuccessfully) mitigate the project’s adverse visual and other impacts, and the purported finding of General Plan and zoning ordinance conformity display a discretionary review of the project. In order for the County to defend the position that the applicable process and policies actually ministerial, the project must be summarily denied.

Ballanytne Appeal  
November 20, 2006  
Page 10

We reserve the ability to submit additional materials in this matter prior to your Board's consideration of this appeal.

Thank you for your careful consideration of the important issues contained herein.

Sincerely,

LAW OFFICE OF MARC CHYTILO

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Marc Chytilo  
For Gaviota Coast Conservancy

**Addendum  
CEQA Issues  
Ballantyne Appeal  
November 20, 2006**

Several issues were reviewed in the Planning and Development (P&D) Staff Report that demonstrate the need for the project's impacts to be addressed in an environmental document under the California Environmental Quality Act (CEQA). Specifically, while the assumption was initially made by P&D that a Land Use Permit for a single family residence would not trigger any environmental impacts under CEQA and is automatically a ministerial permit, the approval process for this proposed project has shown otherwise.

P&D Staff's recommendation for denial of the project was based on many issues that directly pertain to items in CEQA's Appendix G Environmental Checklist Form. (These issues are explained below). Comments from various South County Board of Architectural Review (SBAR) members offered many points that also demonstrate the project's potential impacts and the discretionary nature of the process. Finally, the Planning Commission's approval of the project represents an unsubstantiated dismissal of the Staff's recommendation for denial of the project. The Planning Commission's approval represents a discretionary action without the benefit of an environmental document that examines environmental impacts and other CEQA issues.

In order to clarify the issues that must receive a full disclosure as a discretionary project, the relevant questions from CEQA's Appendix G are highlighted and briefly described below in the context of P&D Staff's policy review and analysis, as well as the SBAR's comments:

**Aesthetics**

Would the project:

- Have a substantial adverse effect on a scenic vista?
- Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?
- Substantially degrade the existing visual character or quality of the site and its surroundings?
- Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Discussion:

Given the level of controversy regarding the visual impact the project would have on the surrounding environment, the above-listed questions from the CEQA Appendix G checklist cannot be discounted. The proposed berm's alteration of a natural landform, the size and scale of the structure, and the proposed night lighting would create potential environmental impacts that should be evaluated in an environmental document. In addition, P&D staff determined that the

project would not conform to several visual resources provisions, including Visual Resource Policy 2 in the Comprehensive Plan, Visual Resources Development Standard 1 in Article III and Land Use Policy LU-GV-5 in the Goleta Community Plan. Of particular note is the following policy:

Visual Resources Policy 2 in the Land Use Element of the Comprehensive Plan and Visual Resources Development Standard 1 in Section 35-212.1 of Article III:

*“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 project is also inconsistent with the following Hillside and Watershed Protection Policies:

*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 P&D Staff Report prepared for the October 4, 2006 hearing recommended denial of this project “...because it did not conform to applicable visual resources provisions in the Comprehensive Plan, Goleta Community Plan and Article III... After filing an appeal related to the project denial, the applicant proposed a berm to screen the residence from public viewing places. **P&D reviewed this proposal and concluded that the addition of a berm would not have changed its original decision to deny the project. Contrary to the visual resources provisions, constructing the berm would not address the fundamental issues regarding the scale and design of the residence or the requirement that the residence must be sited so as not to intrude into the skyline as seen from public viewing places. Additionally, the berm would require significant cutting and filling and would not conform to the hillside and watershed protection policies that require development to minimize cut and fill operations and preserve natural landforms (emphasis added).**”

The applicant was required by the Planning Commission to reduce the height of the berm one to two feet and site the residence 20 to 30 feet north of the current location. However, the berm *itself* represents a visual impact and an alteration of the natural landform, and is inconsistent with the above policies.

The P&D Staff report for the November 8, 2006 Planning Commission Hearing states that although the revised berm would require less fill than the original berm, this reduction largely stems from the fact that the width of the revised berm is narrower than the original berm. The Staff report states: “For that reason, **the revised berm has steeper, less natural appearing slopes than the original berm. Nonetheless, the berm would be a significant landscape feature. It would range in height from approximately 1 foot, 9 inches to 10 feet, 7 inches. [Sheets A1.2, A1.3 and A1.4, dated October 14, 2006] From end to end this curvilinear feature would be more than 600 feet in length (emphasis added)**”. In addition, the grading estimates for the berm appear to be incorrect, per P&D’s grading inspector (Tony Bohnett). The conceptual estimate of fill for the berm does not appear to include cut and fill for the benches that must be excavated to construct 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. The project’s proposed grading remains inconsistent with Hillside and Watershed Protection Policies 1 and 2, which require the minimization of cut and fill operations with the least amount of alteration of the natural terrain. These policies require that development shall be designed to fit the site topography and natural features and landforms. As the P&D Staff report prepared for the October 4, 2006 Planning Commission Hearing states: **“The berm would be visible from public viewing places and, in effect, would create an artificial skyline as seen from Highway 101, Farren Road and Calle Real”** and **“The revised plans and proposed berm do not affect 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 (emphasis added).”**

The P&D Staff report further states: “The visual resources provisions require the proposed residence to be sited so as not to intrude into the skyline as seen from public viewing places. Land Use Policy LU-GV-5 contains a similar requirement. **Contrary to these provisions, the applicant has proposed modifying the natural landforms rather than shifting the location of the residence so as not to intrude into the skyline. The proposed berm would be constructed immediately south of the residence. It would not screen the residence as seen from Farren Road north of the subject parcel.** Siting the residence north of the ridge would ensure that the structure would not intrude into the skyline as seen from Farren Road to the north and south (emphasis added).”

P&D Staff further commented in their staff report for the November 8, 2006 Planning Commission Hearing that “the revised project appears to comply with the Planning Commission’s request to site the residence at least 20 feet north of the previous location. The east half of the residence has been shifted approximately 20 feet to the north. The west has been shifted approximately 4 to 16 feet to the northeast. This difference reflects the fact that the residence has a curvilinear shape. The finish floor elevations of the residence remain the same, ranging from approximately 357 to 359 feet. **Thus, the relative height or “elevation” of the roofline of the residence has not changed. (emphasis added).**” This statement reflects the project’s continued inconsistency with policies.

The BAR also had several relevant comments:

### **SBAR Meeting September 9, 2005**

- Length of façade: Football 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. The façade and roofline do break skyline.
- Landscaping of site will be important, but the visibility of house must be addressed independently of landscaping. The architecture must stand on its own. Texture, rhythm and forms of land must be the organizing factor for landscaping.

The use of landscaping to screen the structure does not address the large scale and mass of the project. Existing policy requires that topography be used to hide structures (Structures shall be subordinate in appearance to natural landforms; shall be designed to follow the natural contours of the landscape). The applicant's landscape plan includes citrus trees south of the residence. Both the P&D and SBAR stated that relying solely on new landscaping would not satisfy the visual resources provisions in the Comprehensive Plan and Article III.

### **SBAR Meeting of November 18, 2005**

- BAR supports staff position. Project places many issues at stake. Visually the subject parcel is part of the Gaviota Coast, which is at a crossroads. Projects that affect Gaviota must be closely scrutinized. Ridgeline development guidelines apply to this site.
- Project breaks skyline and is not subordinate to land forms. House design does not meet policy. Landscape screening can't be relied on to screen structure.

Moreover, the P&D Staff Report prepared for the October 4, 2006 states: "The proposed residence would be sited on the ridge that is approximately 2,000 feet north of Highway 101 and Calle Real. The ridge is not screened by topography or vegetation. As a result, the ridge is the most prominent point on the subject parcel and the residence would be highly visible as seen in the foreground from public viewing places such as Highway 101, Farren Road and Calle Real."

The residence's large size, smooth exterior textures, light exterior colors and highly reflective glass and other materials would accentuate its visibility. As clearly noted by SBAR, the length of the residence increases its visual impact and apparent mass; the residence appears as a large, unbroken mass. The south elevation of the residence, facing Highway 101, would be predominantly glass accented with metal siding and fascia. Both of these materials are highly reflective. The metal roof would be grey, as opposed to native materials and dark earth-tone color that would blend with the natural environment and landforms. This combination of siting, scale, design and materials would result in a residence that would not be subordinate in appearance to natural landforms."

Another major issue that has not been properly addressed is the project's introduction of substantial light and glare, which would adversely affect night time views in the area. Although the applicant is required to submit a lighting plan to the Planning Commission that minimizes

night sky lighting, the P&D Staff report notes: “The applicant’s exterior lighting shields and directs light downward and, therefore, reduces the potential for night sky lighting...the **exterior lighting plan does not address interior lighting that could be visible from outside. It also does not show or include lighting for the proposed guesthouse, barn, driveway entry or driveway (emphasis added).**” Although Staff recommended a condition of approval that limits exterior lighting to the lights shown on the applicant’s exterior lighting plan, the concerns relative to CEQA remain unaddressed; nighttime views would be dramatically affected by this project. In addition, the proposed condition #14 language suggests that the applicant shall develop provisions for dimming lights after 10:00 p.m. This provision is unrealistic and unenforceable, particularly for interior lighting. The BAR also commented on this issue:

**Meeting of Sept 9 BAR comments:**

- Use of glass, reflectivity of materials, internal lighting would make house very visible, especially at night.

The project as approved would have many impacts to visual resources. Before the decision-makers can make the required findings of approval, these impacts should be disclosed in an environmental document.

**Land Use and Planning**

Would the project:

- Conflict 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 mitigating an environmental effect?

Discussion: As noted above, the project is inconsistent with a number of applicable policies and zoning ordinance standards. This is a significant impact.

Additionally, the project’s potential for enabling future use of berms to “mitigate” visual impacts while allowing a development that is clearly incompatible with many policies would be growth-inducing. The Staff memorandum prepared for the Planning Commission hearing on November 8, 2006 states: “**Staff continues to have concerns that the project does not comply with the applicable visual resources and hillside and watershed protection provisions in the Comprehensive Plan, Goleta Community Plan and Article III (emphasis added).**”

However, the findings of approval for the project (Attachment A of the same memorandum) are inconsistent with this statement.

**Biological Resources**

Would the project:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Discussion: The applicant has apparently cleared a large stand of coastal sage scrub on the subject property. Coastal sage scrub communities are described by the U.S. Department of the Interior as a threatened ecosystem in California.<sup>1</sup> This plant community is an important habitat for many species.

**Drainage:**

The addition of a berm has the potential to alter drainage patterns that are associated with the site. Drainage and erosion is already a problem on the site.

As Appellant has had limited opportunity to review the record in this matter, other CEQA impact areas are likely to be identified in subsequent submittals.

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<sup>1</sup> Reed F. Noss, E.T. LaRoe III, and J.M. Scott. 1995. *Endangered ecosystems of the United States: A preliminary assessment of loss and degradation*. Biological Report 28. US Department of the Interior. Washington, DC. <http://biology.usgs.gov/pubs/ecosys.htm>

**APPEAL TO THE BOARD OF SUPERVISORS  
COUNTY OF SANTA BARBARA**

Submit to: Clerk of the Board  
County Administration Building  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101

RE: Ballantyne Residential Project – Appeal of Planning Commission Approval to The Board of Supervisors

Case Number: 06APL-00000-00019  
Tract/ APN Number: 079-090-036  
Date of action taken by Planning Commission, November 8, 2006

I hereby appeal the approval of this project by the Planning Commission on November 8, 2006.

The basis for this appeal is detailed in the attached letter. The project does not conform to the applicable General Plan policies, the zoning ordinance and is a project subject to CEQA for which environmental review is required.

The approval, and all specific conditions are being appealed.

Name of Appellant:  
Gaviota Coast Conservancy  
Address: Post Office Box 1099  
Goleta, California 93116

Attorney for Applicant:  
Marc Chytilo  
LAW OFFICE OF MARC CHYTILO  
Post Office Box 92233  
Santa Barbara, California 93190  
(806) 682-0585

Appellant is: XXX Third Party

Fee \$ \_\_\_\_\_

Signature: \_\_\_\_\_

Date: November 20, 2006

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**FOR OFFICE USE ONLY**

Hearing set for: \_\_\_\_\_ Date Received: \_\_\_\_\_ By:

\_\_\_\_\_ File No. \_\_\_\_\_