

# LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

April 18, 2008

Mr. Allen Bell  
Santa Barbara County  
Planning and Development  
123 East Anapamu Street  
Santa Barbara, CA 93101

*By Hand-delivery and by  
Email: [abell@co.santa-barbara.ca.us](mailto:abell@co.santa-barbara.ca.us)*

RE: Comment to EIR Scoping Document, Paradiso del Mare Ocean and Inland Estates

Dear Mr. Bell,

This office represents the Gaviota Coast Conservancy (Conservancy or GCC) in this matter. As you know, the Conservancy is involved in many land use issues in the Gaviota area, and is deeply concerned about the impacts the Paradiso del Mare Ocean and Inland Estates Project (Makar Residential Project or the Project) may have on the character and natural resources of the Gaviota Coast. The environmental review document for this project must be complete and comprehensive in its review and analysis of baseline conditions, potential environmental impacts, alternatives and mitigation measures; these comments describe specific areas that must be addressed in the Environmental Impact Report (EIR).

The Project proposes two large residential estates on extremely constrained parcels possessing important biological resources. The developer has proposed to use berms to screen the houses, a practice that violates County policy and threatens the integrity of the Gaviota Coast's valued topographic qualities and visual resources. The site has no water, although one lot is currently within the Goleta Water District (GWD or the District) boundaries. The developer has asked GWD to annex the remaining 24 parcels, but the District failed to perform CEQA review before initiating the annexation, prompting a lawsuit from the Conservancy.

The property has also been traversed by generations of surfers, picnickers, ocean-watchers and beachgoers, and as a consequence significant public access rights have been acquired through implied dedication. The existence and precise locations of these public prescriptive easements on the property must be scrupulously investigated by the County and specifically addressed in the environmental review process.

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Due to the various site constraints, public easements and important resources present on the site, it is imperative that the County prepares a thorough and robust EIR. The specific areas described below are areas that merit inclusion in the EIR; thorough analysis of these areas is critical to the development of a robust EIR.

### 1. Baseline/Environmental Setting

The environment on the site, as it existed on the date of application, serves as the “baseline” from which the project’s impacts are measured. Land uses in effect at that time include extensive informal public recreational access to Naples and use of blufftop trails throughout the Project area. The County must actively seek to identify the nature and extent of public access rights on the Makar property, and the EIR must accurately characterize this important use as part of the Project’s environmental setting against which project impacts are identified. The California Coastal Commission’s public access program staff should be consulted and the information contained in the declarations of public use integrated into the environmental review process.

The EIR must be specific concerning the presence of oil and gas-related development on the site, and must describe efforts currently underway and projected to decommission the remaining infrastructure and remediate the site. The EIR must describe the facilities present on the site on the date of application, and characterize ‘existing uses’ of the parcels accordingly. The status of these facilities must be thoroughly described in the EIR.

### 2. Project Description

A stable and complete Project Description is essential for meaningful environmental review and public comment. The current Project Description suffers from flaws that must be addressed as part of the EIR. For example, the proposed Goleta Water District water lines are 10-12” in diameter, ample to serve the Naples lots as well, and GWD documents indicate this is the plan. The Applicant has previously proposed to use large volumes of reclaimed water on the site as part of the previous Dos Pueblos Golf Links Project, and reportedly intends to use reclaimed water as part of this project as well, yet this is not addressed in the Project Description. The EIR must address potential impacts from the use of Project water lines to serve probable residential development on the adjacent Naples lots in addition to the proposed Project. Further, the Project Description should include recreational facilities, not merely offers to dedicate, including a coastal trail along the coastal bluff, as opposed to the proposed railroad right of way and/or highway trail.

### 3. Policy Inconsistency

Although the zoning ordinance allows a single family home on agriculturally zoned lands, the County's action on the proposed Project must conform to the numerous General Plan, Coastal Land Use Plan (or Local Coastal Plan or LCP) and California Coastal Act policies that require protection of agricultural, biological, visual, recreational and cultural resources on the site and in the area.

A critical policy issue involves compliance with LCP and zoning ordinance standards requiring the structures be sited to avoid intruding into the skyline and generally not being visible from public viewing places. Another critical visual policy issue involves compliance with various policies in the LCP and General Plan which require that in rural areas, structures be compatible with and subordinate to natural landforms, and be designed to follow natural contours of the landscape. Rather than design the house to avoid visual impacts and policy inconsistencies, the applicant has designed and intends to use dirt berms to screen the Project. Berms themselves conflict with applicable policies, and thus may not be used to achieve policy compliance. Loss of ocean views is also an important potential impact generated by the use of berms. Large portions of the property are designated view corridors; obstruction of these broad views from Highway 101 to the ocean would generate conflicts with LCP policies protecting these unique visual resources. Further the potential impacts from a precedent allowing such berms could be further berming on the Gaviota Coast, causing further losses in views of the ocean and scenic lands and impacting highly scenic and visually prominent lands.

Many applicable policies require clustering of development. Portions of the property are designated view corridors, and thus are protected by LCP View Corridor Overlay policies which, among other things, require clustering to the maximum extent feasible. Furthermore, a host of impacts and policy inconsistencies can be reduced or averted via clustering. As suggested by Coastal Commission staff in relation to the neighboring Santa Barbara Ranch development (see Exhibits 1 and 2), clustering may be required to protect viewsheds and avoid impacts to other coastal resources including prime agricultural land. Further, clustering may be required to achieve consistency with LCP policies including policies which mandate the minimization of impacts to agriculture. The project is inconsistent with such policies and should not be processed as proposed.

### 4. Visual Impacts

Visual Impacts are an important Project impact area that must be exhaustively evaluated in the environmental review document. The Gaviota Coast is unparalleled in beauty, and offers broad vistas across open space and farmlands to the ocean and the mountains. Highway and rail travelers prize this unique visual resource, undeveloped coastline being a rare view for California travelers. Moreover, recreational users highly value the visual resources of the Gaviota Coast

and the Makar property specifically, being highly visible to recreational users from established public trails that extend across the property, trails in the Los Padres National Forest, from residences in the foothills, as well as from the beach and ocean.

Evidence showing public use of the Project site for access to the Pacific Ocean and for both use of the coastal bluff as well as pedestrian travel along the coastal bluff demonstrates that the trail corridor is subject to a public access easement gained through implied dedication. Areas subject to these prescriptive easements are public viewing places and the EIR must examine compliance with visual policies from all such points. Additionally, views from the Ocean – as viewed from passing boats and from the surf zone - must be evaluated in the EIR.

The Project and its berms will cause significant impacts by eclipsing public views of the ocean and Gaviota Coast. The applicant's visual simulations referenced in the scoping document and relied on by the County should be posted on the County website prior to scoping. Visual simulations should be prepared from all public viewing places, including key sites that reflect impacts to visual resources experienced by Amtrak passengers and others utilizing the railroad right of way corridor, and must be thoroughly analyzed in the EIR.

Story poles must depict each entire structure, not just a portion of some structure or some of the structures. To accurately represent structures, the roofline, not plates or eaves, must be used and berms (also structures) must also be represented with story-poles. The story-poles should remain in place during all critical portions of the EIR review period and during County and Coastal Commission consideration of the project. Moreover, the EIR should characterize night lighting, so that Project impacts on night skies and marine resources can be meaningfully analyzed.

## 5. Biological Issues

The EIR must study the myriad effects of habitation in a previously uninhabited area that has significant terrestrial biological resources and that is adjacent to sensitive marine biological resources. Domestic animals and more continuous human presence will change the habitat values even in undisturbed areas. The effect of formalization of public access on near shore marine resources, in particular the pinned rookery and haul-out areas and the Naples reef, a large (18 square mile) wetlands area designated as ESHA with substantial ecological significance. The grasshopper sparrow is a very important locally rare species whose use of this site must be examined and project impacts considered. Additionally, four season surveys should address the presence of the endangered Gaviota tarplant and other special status species.

The cumulative effects of regional losses of coastal marine terrace (on Gaviota Coast from Ellwood to Naples to Hollister Ranch to Bixby and in Goleta, including potential losses from development at More Mesa) and other grasslands habitat (San Marcos Foothills, other foothills

development) for grasslands-foraging birds and animals must be examined (WTK, grasshopper sparrow, others) in the EIR.

## 6. Geological Issues

The EIR must quantify the rates of bluff retreat and the effect the development may be on acceleration of bluff retreat, in conjunction with sea-level rise and global climate change induced increases in weather severity. Historical bluff retreat rates are not indicative of future conditions. The potential for hurricane landfall in the future, as ocean temperatures rise and summer storms penetrate further north on warmer waters, must be considered, and the substantial effect the introduction of such high-energy storms would have on bluff stability and geologic processes.

The suitability of soils to accept wastewater is a significant impact. Clay layers will tend to convey wastewater laterally to the ocean bluff, affecting bluff stability and retreat rates. Indirect discharge of wastewater to the Pacific Ocean and nearshore waters from subsurface and surface flows is a potential project consequence. The proximity of the project to the protected Naples reef area adds to these concerns. The Applicant's claim to large volumes of reclaimed water could lead to excessive amounts of landscaping, adding to the amount of water hitting the clay layer, increasing the potential for bluff erosion, pollution, and harm to the reef. The large reclaimed water entitlement proposed in the Water User Agreement (see Exhibit 3), enables far more water than can or should be applied to this sensitive area. Project alternatives that avoid these hazards, or Mitigation measures and/or project conditions that limit the amount of water that may be applied to the land, must be assessed in the EIR.

The location of the railroad under-crossing in an arroyo increases the probability of significant impacts to biological resources, erosion and loss of access in flood conditions.

## 7. Land Use Issues

The development envelopes and site infrastructure is too large given site sensitivity and location in the coastal zone. The EIR should consider a reduced project alternative with reductions in the amount of paving, the number and size of accessory structures and smaller house sizes. Clustering of development must be considered.

The extension of urban utilities to this site has significant policy conflicts and potential adverse environmental impacts that must be addressed by the EIR.

Development in this area is inconsistent with the General Plan's open space element and open space action plan, as these lands should be preserved undeveloped due to prime soils and other site constraints. The site is open space lands as defined by Government Code § 65560, due to the

visual resource overlay, the prescriptive and other recreational uses of Project lands and adjacent lands, including access to the beach, the historical and cultural values, and the larger open space values inherent in every parcel of undeveloped land on the Gaviota Coast. The County must adopt a coordinated plan for the conservation and preservation of open space lands (Gov. Code § 65561(d)) including an action program. Gov. Code § 65564. Any action, including County action on the proposed Project, must be consistent with the local open space plan (Gov. Code § 65566) and if not, no building permit may issue and no construction may proceed. Gov. Code § 65567.

#### 8. Recreational Issues

Recreational issues and project impacts are significant and the scope of the EIR should be expanded considerably in this area. There is a history of extensive public use of many parts of this parcel, and there is ample evidence of prescriptive easements across portions of the parcel.

The EIR should examine the consistency of the proposed horizontal trail easement alignment with the California Coastal Trail Guidelines and County Coastal Trail objectives, which require that the trail be located as close to the ocean as possible. The proposed alignment along the railroad tracks conflicts with this requirement. A vertical trail alignment which corresponds with the public easement across the property and/or achieves greater consistency with the objectives of the Coastal Trail should be developed and analyzed in the EIR.

The regional recreational infrastructure should be addressed, including the lateral coastal trail across properties from Bacara to Las Varas Ranch and a preferable vertical trail configuration with the Canada Tomate access point and/or Eagle Canyon replacing the Santa Barbara Ranch proposed monolithic structure and locating another vertical access at Dos Pueblos Creek. The environmental review document must examine the regional coastal access configuration alternatives and ensure the Project incorporates the trail alignments that best comply with applicable coastal policies and meet the needs of recreational users and address habitat concerns. If seasonal access closures are required to address habitat impacts, alternative access should be provided, at a minimum, during those periods.

The development projects proposed at Las Varas Ranch include the dedication of an easement for vertical public access to the beach; this, Santa Barbara Ranch, Dos Pueblos Ranch, McCaw, Makar and other proposed projects involving Coastal trail alignment and public easement dedication must be considered together in order to maximize recreational opportunities while minimizing adverse impacts and fulfilling the requirements of applicable policies.

The cumulative impacts of the close proximity of the Makar and Santa Barbara Ranch access points, each near sensitive marine resources and important pinned populations, are significant. The EIR should address the effect of formalizing public access, including the provision of

sanctioned parking, upon sensitive biological resources on site. Alternatives access strategies and management techniques must be considered in detail to identify the best and most appropriate trail configuration.

A recent traffic study revealed that public use related to recreation generates ten times the traffic of residential uses. The circulation analysis in the EIR must forecast the traffic effects of recreational users, including consideration of providing alternative transportation facilities for human powered travel (regional bicycle and pedestrian) and public transit, including the potential for locally based commuter rail service and any other public transportation system service potentially available during the life of the Project.

## 9. Water Service

Although the scoping document states that GWD has agreed to provide water service, this is not in fact the case. The District previously considered serving reclaimed water and a small amount of potable water to a previous project, the Dos Pueblos Golf Links Project; the potable water was to be used in order to supplement the capacity of the reclaimed water system during periods of peak demand. The District's ability to serve the Makar Residential Project under the contract between Makar and the District for a dramatically different project, the Dos Pueblos Golf Links Project, remains unclear, and the District has failed to comply with CEQA in initiating the annexation proceedings by failing to conduct environmental review assessing the impacts of providing water to a residential development.

The EIR must perform analysis of the impacts of water line easement in culturally sensitive lands and near the railroad right of way. Union Pacific railroad reportedly has concerns and may object to use of their railroad right of way for the water pipeline due to safety concerns. The precedential impact of an exercise of eminent domain for private developer water service across the McCaw parcel must be considered. Moreover, there are potential visual effects associated with the water line that must be assessed at the project level, as well as at the cumulative level considering other projects such as the pipeline abandonment/cleanup project. The Project Description lacks mention of reclaimed water service, but this is the principal source of water available to the project under the Dos Pueblos Golf Links Project water service agreement. The EIR must disclose how reclaimed water will be used in the Project, and consider its impacts.

## 10 Agricultural Issues

The subject parcels are zoned Agriculture II under the Zoning Ordinance and are classified as Prime Farmland and Farmland of Statewide Importance by virtue of their prime soils. Various policies protecting land suitable for agriculture are implicated by the residential development on the Makar property. The General Plan provides that rural lands with both prime and non-prime

soil shall be reserved for agricultural uses and that urbanization should be prohibited on lands highly suitable for expansion of cultivated agriculture. The Zoning Ordinance provides that a purpose of the Agriculture II zoning designation is to preserve prime and non-prime soils for long-term agricultural use. The LCP expressly forbids the conversion of rural lands with agricultural potential to non-agricultural uses unrelated to other priority uses under the Coastal Act such as recreation and access or protection of environmentally sensitive habitat. The proposed development appears to conflict with each of these policies protecting agricultural potential; these apparent policy conflicts must be addressed thoroughly in the EIR.

The permanent loss of prime soils from the construction of residential structures and other appurtenant facilities is a significant impact under CEQA, as is the conversion of prime farmland or farmland of statewide importance to non-agricultural use. These impacts must be thoroughly analyzed in the EIR. Alternatives including clustering that avoid this loss and, if alternatives are not feasible, mitigation measures that reduce the impact below significance must be developed in the EIR. Clustering development away from prime soils, done in such a way as to preserve future agricultural potential of the land, must be meaningfully considered as a means of avoiding both environmental impacts and policy conflicts.

## 11 Global Climate Change

Located in close proximity to the coastal bluff, and in an area reliant on an increasingly tenuous water supply, the various potential effects of global climate change must be analyzed in the EIR and must guide the development of alternatives and mitigation measures. The Project's effects upon climate change – from excessive use of natural resources due to the inefficient land use in rural areas – must be quantified. Increased rates of bluff erosion anticipated from increases in severe weather events and sea level rise threaten not only structures, but the Project's public facilities as well.

At some point in time, rising sea levels will make habitation of proposed structures unsafe. Sea walls are impermissible under the California Coastal Act. Lifting the structures will increase visual impacts. The EIR should consider this ultimate fate of the Project, and specify triggers for removal of all structures and abandonment of the parcel.

The coastal trail will similarly be affected before the structures are threatened. The EIR should consider the use of rolling easements to establish an ambulatory location of the coastal trail, which would ensure that public access is preserved in the event of bluff erosion.

Moreover reduced water supply and increased drought conditions must be anticipated in the EIR. Increased global as well as local pressures on agriculture in the face of drought and agricultural water curtailments should be addressed in the analysis of agricultural impacts. Special status plant and animal species are expected to face increased ecological pressures from global climate

change; such pressures should be anticipated and analyzed in the EIR to the extent they will threaten to cause further significant Project impacts.

## 12 Cultural and Historic Issues

The Project site is known to contain several sites containing prehistoric archeological resources. All areas of the site, including the two alternative routes for the proposed water line must be surveyed for additional cultural resources. To comply with policies requiring avoidance of such resources where feasible, the EIR must assure avoidance of these resources or must develop appropriate mitigation measures.

The EIR furthermore must undertake an investigation of non-archaeological cultural resources including sacred sites to Chumash descendants, and must ensure that space and access for cultural and spiritual activities is provided through site design and a conservation easement or other mechanism, as part of the Project. Moreover, the EIR should investigate whether the entire site or portions of it qualify as a cultural and/or historic landscape.

This site, and much of the Gaviota Coast, contains features reflective of a historic vernacular landscape. The Cultural Landscape Foundation defines this as “a landscape that evolved through use by the people whose activities or occupancy shaped that landscape. Through social or cultural attitudes of an individual, family or a community, the landscape reflects the physical, biological, and cultural character of those everyday lives. Function plays a significant role in vernacular landscapes. They can be a single property such as a farm or a collection of properties such as a district of historic farms along a river valley. Examples include rural villages, industrial complexes, and agricultural landscapes.” <http://www.tclf.org/whatis.htm#>. The site also has features reflecting an ethnographic landscape, defined as “[a] landscape containing a variety of natural and cultural resources that associated people define as heritage resources. Examples are contemporary settlements, religious sacred sites and massive geological structures. Small plant communities, animals, subsistence and ceremonial grounds are often components.” Id. Given the site’s history of uses and activities that shaped the landscape, from native peoples to oil development to agriculture to recreational uses, the environmental review document must examine the value of Project lands, and other surrounding lands, as historical landscapes and include a detailed historical assessment.

The historic bridge flagged for removal may be a historic resource. Its significance must be evaluated and a means of avoiding its destruction must be considered in the EIR. Further, its significance and/or the impacts associated with its destruction should be evaluated in the regional context; the Gaviota Coast is losing much of its historical resources as structures representing historic California are demolished one-by-one. The cumulative impacts of various projects that include the destruction of historic resources must be thoroughly evaluated in the EIR, lest the region be robbed piecemeal of its history without adequate public disclosure.

## 10. Cumulative Impacts

Makar owns and plans to develop 10 or more homes on 23 Naples lots. See Makar Settlement Agreement, Exhibit 4. Other lots on all sides have been proposed for development, including Santa Barbara Ranch, McCaw, and Las Varas Ranch to the west of Santa Barbara Ranch. There are over 100 other homes proposed on the Gaviota Coast. The City of Goleta is considering additional coastal development at the Bacara and on other lands owned by Bacara interests. CEQA requires evaluation of the cumulative effect of this project plus all other “reasonably foreseeable” projects. The EIR’s cumulative impact analysis must employ an expansive cumulative impact analysis and, given the simultaneous review of many of these projects, develop cumulative mitigation measures and alternatives that avoid and reduce these impacts. The cumulative effect of illegal grading at the neighboring parcel owned by McCaw must also be considered in the EIR.

The scoping document references a pending project to remove (and/or abandon in place) a disused oil pipeline; the Energy division website shows this project as being located primarily on the parcel to the east, but refers to facilities on the golf course site. It is unclear how or why the abandonment and remediation project ends at Eagle Canyon when there were oil development facilities and activities further west. The pipeline abandonment project on the subject and/or adjacent parcels should be made easily available to the public and responsible agencies in conjunction with the Makar Residential Project environmental review process. The cumulative effect of abandonment and/or removal of the oil pipeline with the Project must be addressed in the EIR.

## 11. Alternatives

The EIR should include a robust range of alternatives, including use of TDR to transfer this development off site, condemnation for use as public lands, and various cluster alternatives, including: 1) the 2 Makar lots; 2) the 12 Makar homes (including 10 Naples homes plus this project); and 3) clustering of all proposed and foreseeable residential development in the vicinity of the project (i.e., including all Naples lots, McCaw’s lot, Las Varas Ranch and others). Clustering the two Makar lots could avert the impacts associated with the extensive driveway network, currently part of the Project Description. Clustering these two homes, the ten other anticipated Naples homes and all proposed residential development in the project vicinity holds the promise of reducing project and cumulative impacts including visual, biological, agricultural, geologic, hazardous materials, and others, as well as affording a unique opportunity to consider and provide comprehensive recreational access on the Gaviota Coast best addressing human needs and managing impacts to sensitive habitat. As such, a comprehensive EIR must evaluate these alternatives.

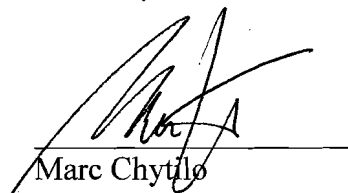
Both for this particular project, and looking forward into the future, the development of a reasonable alternative or alternatives that reconcile the conflicting pressures of development, and preservation in agriculture and/or open space on the Gaviota Coast is the key to a successful environmental review process. The dictates of the Open Space Element and the open space action plan must be integrated into the alternatives analysis and cumulative impacts assessment. Exploring many alternatives early on in the process helps ensure that workable alternatives are not overlooked, and that creative solutions to regional issues are considered.

## 12. EIR Public Review Period

A 90 day public review period for the Draft EIR is appropriate in light of the significance of the community's concern and interest, UCSB's academic schedule, other related projects undergoing environmental review and entitlement (including Naples, Las Varas, Bacara, Ballantyne and others), as well as the need for experts in assessing the numerous and complex impacts associated with this project, necessitate a longer public comment period.

Thank you for your consideration of these comments.

Sincerely,



Marc Chytilo

### Exhibits:

1. Letter, California Coastal Commission to Thomas Figg, re. Santa Barbara Ranch DEIR, dated September 27, 2006
2. Letter, California Coastal Commission to Thomas Figg, re. Santa Barbara Ranch RDEIR, dated January 23, 2008
3. Water User Agreement for Dos Pueblos Golf Links Project, dated November 17, 1998
4. Standstill and Settlement Agreement between Makar and the Coastal Commission, dated April 5, 2005