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**HOLLISTER & BRACE**  
A PROFESSIONAL CORPORATION

JOHN S. POUCHER  
RICHARD C. MONK  
STEVEN EVANS KIRBY  
BRADFORD F. GINDER  
JOHN G. BUSBY  
SUSAN H. MCCOLLUM  
ROBERT L. BRACE  
MARCUS S. BIRD  
PETER L. CANDY  
MICHAEL R. DENVER

**ATTORNEYS at LAW**  
ESTABLISHED 1966

1125 SANTA BARBARA STREET  
SANTA BARBARA, CALIFORNIA 93101  
(805) 963-6711

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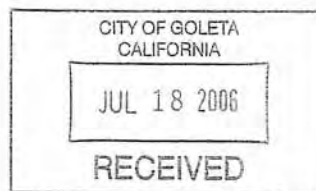
MAILING ADDRESS  
P.O. BOX 630  
SANTA BARBARA  
CALIFORNIA 93102

FAX: (805) 965-0329  
WWW.HBSB.COM

OF COUNSEL  
JOHN B. GALVIN

**Via Hand Delivery**

Planning and Environmental Services Department  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117



Attention: Anne Wells

**Re: Comments on Draft Environmental Impact Report for City of Goleta's Draft General Plan/Coastal Land Use Plan**

Dear Ms. Wells:

This office represents HT Santa Barbara, Inc., the owner of Bacara Resort & Spa ("Bacara") and the underlying real property. This letter sets forth our client's comments on the Draft EIR ("DEIR") prepared for the Goleta Draft General Plan/Coastal Land Use Plan.

**Purpose of the EIR, P. ES-1**

The DEIR states that it "... was prepared to evaluate the potential environmental impacts associated with approvals related to the City of Goleta GP/CLUP and to address appropriate and feasible mitigation measures or project alternatives that would reduce or eliminate these impacts." The DEIR, however, is fundamentally flawed and inadequate because it is based on a General Plan which fails to anticipate or analyze Bacara's Completion Stage Project. An EIR must identify related projects through the use of either a project list or a projection/prior environmental document approach. CEQA Guidelines § 15130(b)(1). An EIR that does not evaluate cumulative impacts under either of these approaches will be considered inadequate. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740-741.

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Under the project list approach, the cumulative impact discussion is based on “a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency.” CEQA Guidelines § 15130(b)(1)(A). In developing the list of related projects, the Lead Agency must, at a minimum, include existing projects, projects under construction, projects that are approved but unbuilt, and projects that are currently undergoing environmental review by the Lead Agency. However, a Lead Agency must not exclude from its list future projects of which it has knowledge even where no current plans have been submitted for review. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d, 376, 394-395.

B.8-2

Under the projection/prior environmental document approach, sometimes referred to as the “plan approach,” the cumulative impact analysis is based on a summary of projections contained in an adopted general plan, related planning document, or prior environmental document designed to evaluate regional or areawide conditions. In using this approach, the Lead Agency must be certain that the plan on which it relies adequately addresses cumulative impacts. The planning document used by the agency to prepare the cumulative impact analysis must be referred to in the analysis and made available to the public at a location specified by the agency. The DEIR claims that “cumulative impacts are evaluated by the plan approach within the City boundary, as described above under Method 2 . . . .” DEIR, p. 3-4. However, there is no “Method 2” discussed in § 3.0 or elsewhere in the DEIR.

B.8-3

The DEIR fails to identify Bacara’s Completion Stage Project which was submitted to the City in February, 2005. The City’s Planning Division determined that application to be incomplete in a letter of March 11, 2005. Bacara resubmitted additional information regarding its application for the Completion Stage Project on May 18, 2006. The City again determined the application to be incomplete by letter dated June 16, 2006. In view of the fact that the City has been in receipt of an active application for Bacara’s Completion Stage Project for nearly one and a half years, it is simply incomprehensible, unreasonable and illegal for the City not to include this Project in the EIR’s cumulative impact analysis. Failure to include Bacara’s Completion Stage Project in the Final EIR’s cumulative impact analysis will render the EIR inadequate.

B.8-4

**EIR Organization § 1.3.3, P. 1-3**

Under the heading “Environmental Setting, Impacts, and Mitigation,” the DEIR claims that:

“A cumulative impact analysis is also included that evaluates the environmental effects of combined recent, past, present, or reasonably foreseeable future projects in the area that have the potential to contribute

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to cumulative impacts. This section also discusses the project's contribution to the cumulative conditions and determines whether the project would result in cumulatively 'considerable' impacts." DEIR, p. 1-5.

The DEIR states that it "... was prepared to evaluate the potential environmental impacts associated with approvals related to the City of Goleta GP/CLUP and to address appropriate and feasible mitigation measures or project alternatives that would reduce or eliminate these impacts." The DEIR, however, is fundamentally flawed and inadequate because it is based on a General Plan which fails to anticipate or analyze Bacara's Completion Stage Project. An EIR must identify related projects through the use of either a project list or a projection/prior environmental document approach. CEQA Guidelines § 15130(b)(1). An EIR that does not evaluate cumulative impacts under either of these approaches will be considered inadequate. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740-741.

**B.8-5**

Under the project list approach, the cumulative impact discussion is based on "a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency." CEQA Guidelines § 15130(b)(1)(A). In developing the list of related projects, the Lead Agency must, at a minimum, include existing projects, projects under construction, projects that are approved but unbuilt, and projects that are currently undergoing environmental review by the Lead Agency. However, a Lead Agency must not exclude from its list future projects of which it has knowledge even where no current plans have been submitted for review. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d, 376, 394-395.

**B.8-6**

Under the projection/prior environmental document approach, sometimes referred to as the "plan approach," the cumulative impact analysis is based on a summary of projections contained in an adopted general plan, related planning document, or prior environmental document designed to evaluate regional or areawide conditions. In using this approach, the Lead Agency must be certain that the plan on which it relies adequately addresses cumulative impacts. The planning document used by the agency to prepare the cumulative impact analysis must be referred to in the analysis and made available to the public at a location specified by the agency. The DEIR claims that "cumulative impacts are evaluated by the plan approach within the City boundary, as described above under Method 2 . . . ." DEIR, p. 3-4. However, there is no "Method 2" discussed in § 3.0 or elsewhere in the DEIR.

**B.8-7**

The DEIR fails to identify Bacara's Completion Stage Project which was submitted to the City in February, 2005. The City's Planning Division determined that application to be incomplete in a letter of March 11, 2005. Bacara resubmitted additional information

**B.8-8**

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regarding its application for the Completion Stage Project on May 18, 2006. The City again determined the application to be incomplete by letter dated June 16, 2006. In view of the fact that the City has been in receipt of an active application for Bacara's Completion Stage Project for nearly one and a half years, it is simply incomprehensible and unreasonable for the City not to include this Project in the EIR's cumulative impact analysis. Failure to include Bacara's Completion Stage Project in the Final EIR's cumulative impact analysis will render the EIR inadequate.

B.8-8

**PROJECT DESCRIPTION, § 2.0, pp. 2-1-10**

The GP/CLUP's Land Use Plan Map (Figure 2-1) proposed the conversion of the South Kellogg area from General Industrial to Medium Density Residential. This proposed change in land use designation was part of the project description analyzed by the DEIR. After the release of the DEIR and on July 11, 2006 the City Council/Planning Agency voted to leave this area designated for General Industrial. Thus, the project described in the DEIR is now inconsistent with the GP/CLUP. An accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR. The project must be described accurately to allow reviewers and decision makers to balance the projects benefits against its environmental impacts, to consider mitigation measures, and to assess the advantages of the no-project and other alternatives. An EIR is inadequate and insufficient when, as here, its project description is unstable and shifting. Therefore, the project description must be modified to reflect the changes to the project description made by the City Council on July 11, 2006, and the EIR must be re-circulated for adequate public review.

B.8-9

**AESTHETICS AND VISUAL RESOURCES, § 3.1, pp. 3.1-1-20**

**Visual and Historic Resources Element, § 3.1.3.2, PP. 3.1-7-8**

The Visual and Historic Resources Element section of the DEIR is inadequate in that a Table entitled GP/CLUP "Policies Relevant to Preservation and Mitigation of Impacts to Aesthetic Resources" is missing and must be provided in the Final EIR. Further, the referenced list of "Visual and Historic and Resource Element Policies" is incomplete because it does not reference all the appropriate policies that would ensure that future development is consistent with the referenced principles and goals. (Policies VH 5 and VH6.)

B.8-10

**Figure 6-1, Scenic and Visual Resources**

It is our understanding that Figure 6-1 has been modified so as to designate the area extending from the 50-space public parking lot to the snack bar and back on Bacara's Resort & Spa property as a "scenic corridor". A map has yet to be provided to the public

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as part of the EIR which depicts this designation. This designation was added notwithstanding the fact that there has been no site specific analysis performed in support thereof. In fact, if such site specific analysis were performed it would show that the existing topography makes views from the snack bar north to the public parking lot and view south from the parking lot to the snack bar and ocean impossible. Furthermore, views north from the snack bar and the parking lot to the mountains are impeded by the windrows along the northern property line. It is noteworthy that the subject "scenic corridor" designation was placed on this portion of Bacara's property, the area identified for the Completion Stage Project, following submission of its application for its Completion Stage Project.

B.8-11

It is our legal opinion that the proposed redesignation of this portion of the property is arbitrary, capricious, unreasonable, egregious discriminatory and oppressive. This new scenic corridor designation, if adopted, will constitute an unwarranted interference with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development costs has been made. It is our further legal opinion that these proposed changes in land use designations, if adopted, will constitute a regulatory "taking" of our client's property without just compensation.

#### Impact Assessment Methodology

The DEIR's Visual Resources Section fails to include an impact assessment methodology similar to Section 3.6.3.4 of the DEIR's Geology Section. An impact assessment methodology section needs to be included in the Final EIR in order to render it complete and adequate.

B.8-12

#### AGRICULTURE AND FARMLAND, § 3.2.1.1, PP. 3.2-1-2

Section 3.2.2.1 states that: "Grazing Land is land with existing vegetation that makes it suitable for the raising of livestock." DEIR, p. 3.2-1. Notwithstanding this definition, the only land within the City of Goleta identified with the "Important Farmlands Types" overlay and considered suitable for "Grazing Land" is Bacara Resort & Spa's property. This property is zoned Visitor Serving Commercial and has a well known history which, over at least the last 100 years, has not included any type of grazing. It is noteworthy that the unsubstantiated ESHA designations applied by Figure 3.4-3 encompass the very area identified as suitable for grazing. Both designations have been applied subsequent to the submittal of a development application for Bacara's Completion Stage Project. The DEIR fails to state the criteria underlying the "Important Farmlands Types" and "Grazing Land" overlay and the purpose for such designation. As discussed above, the entire Bacara property bears a land use designation of Visitor Serving Commercial and is zoned CV. Common sense would dictate that a Visitor Serving Commercial/CV use with a resort hotel located thereon would not be a suitable site for grazing land.

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Impact Assessment Methodology

The DEIR's Agricultural and Farmland Section fails to include an impact assessment methodology similar to Section 3.6.3.4 of the DEIR's Geology Section. An impact assessment methodology section needs to be included in the Final EIR in order to render it complete and adequate.

**B.8-14**

AIR QUALITY, § 3.4, pp. 3.3-1-22

Impact Assessment Methodology

The DEIR's Air Quality Section fails to include an impact assessment methodology similar to Section 3.6.3.4 of the DEIR's Geology Section. An impact assessment methodology section needs to be included in the Final EIR in order to render it complete and adequate.

**B.8-15**

**3.3.3.3 Project Impacts**

Impact 3.3-2

The General Plan/EIR documents need to develop General Plan Policies/Mitigation Measures in an attempt to address the significant impacts associated with the Increase in Vehicle Miles Traveled. It is inadequate to not propose policies and mitigation for a Significant/Class I Impact.

**B.8-16**

Impact 3.3-3

The General Plan/EIR documents need to develop General Plan Policies/Mitigation Measures in an attempt to address the impacts associated with the Construction Emission. It is inadequate to not propose any form of mitigation.

**B.8-17**

Impact 3.3-4

The GP/CLUP Policy and Mitigation Section is incomplete and inadequate. The DEIR fails to reference all policies (mitigation measures) found in the General Plan that result in the Class III finding.

**B.8-18**

Impact 3.3-5

The General Plan/EIR documents need to develop General Plan Policies/Mitigation Measures in an attempt to address the significant impacts associated with ROG and NOx. It is inadequate to not propose policies and mitigation for a Significant/Class I Impact.

**B.8-19**

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Impact 3.3-6

The General Plan/EIR documents need to develop General Plan Policies/Mitigation Measures in an attempt to address the significant impacts associated with PM 10. It is inadequate to not propose policies and mitigation for a Significant/Class I Impact.

B.8-20

**BIOLOGICAL RESOURCES, § 3.4, PP. 3.4-1-33**

**General Comment:** The DEIR's and GP/CP's designation of areas as ESHA is overly broad and devoid of any scientific evidence in support thereof. Coastal Act § 30107.5 defines ESHAs as follows:

“‘Environmentally sensitive area’ means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

B.8-21

The City's General Plan identifies all naturally occurring habitats as “Environmentally Sensitive Habitats” without consideration of any scientific facts or analysis to determine habitat sensitivity, significance or functionality. Identifying any naturally occurring habitat as “Environmental Sensitive” and requiring its preservation and protection is tantamount to a city-wide building moratorium and is arbitrary, capricious, unreasonable and oppressive.

The June 28, 2006 revisions to the “Terrestrial and Marine Biological Resources” Section of the Conservation Element have included “beach” within the GP/CLUP's definition of ESHA. This does not satisfy the ESHA criteria set forth in Policy CE 1.1 nor Coastal Act § 30107.5's definition of ESHA. Nor was the designation considered in the DEIR.

B.8-22

**Habitats, § 3.4.1.2, P. 3.4-2**

**Figure 3.4-1**

It is very difficult to compare Figure 3.4-1 to the Habitat Maps included in the GP/CLUP. At the June 13, 2006 City Council/Planning Agency hearing on the GP/CLUP, Kenneth Curtis, Director of the City's Planning & Environmental Services Department, reported that the variance between the subject Maps was based upon additional analysis conducted by the DEIR consultant. However, no documented evidence of such analysis has been provided to the public. The variance between Figure 3.4-1 and the Habitat Maps included in the GP/CLUP constitutes a potential inadequacy in the General Plan which needs to be adequately explained or harmonized in the Final EIR.

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**Figure 3.4-2**

The habitat areas identified on Figure 3.4-2 are at variance with the Habitat Map (Figure 4.2) included in the GP/CLUP. These maps need to be revised so that the habitat nomenclature in the GP/CLUP and the EIR are in harmony. Moreover, Figure 3.4-2 is intended to demonstrate areas that constitute ESHA. However, Table 3.4-1, footnote 1, states that "Scrub habitats depicted on Figures 3.4-1 and 3.4-2 include all ESHA scrub types and approximately 46.3 acres of coyote bush scrub/Coyote bush scrub is not an ESHA unless occupied by a special status species." Figure 3.4-2 is misleading because it contains non-ESHA and must therefore be substantially revised so as to remove all non-ESHA areas therefrom following the thorough ESHA analysis required by Policy CE 1.1.

B.8-24

**Special-Status Habitats, § 3.4.1.4, P. 3.4-9**

Section 3.4.1.4 identifies special-status habitats and species located in the City which are alleged to be ESHA. As discussed above, a thorough analysis of each area considered to be ESHA must be prepared and presented in the final EIR as required by Policy CE 1.1. Failure to do so will render the EIR inadequate under CEQA and inconsistent with the GP/CLUP.

B.8-25

**Project Impacts, § 3.4.3.3, PP. 3.4-23-24**

This Section of the DEIR states that the "Analysis considers whether the type of activity (e.g., construction of trails) has the potential to affect biological resources and, based on the maps and descriptions in the GP/CLUP, would occur in areas with sensitive biological resources." DEIR, pp. 3.4-23-24.

As discussed in our client's previous comment letters and as restated above, the GP/CLUP maps are inaccurate because they: (i) identify habitat areas that are greater in size and distribution than presented in site specific environmental analyses; and (ii) assume that all habitats are ESHA, without having performed a "thorough biological evaluation" as required by Policy CE 1.1.

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This inaccurate assumption is repeated in the DEIR: "All ESHAs identified in the GP/CLUP are treated as special-status habitats . . ." DEIR, p. 3.4-24. In view of the fact that the DEIR has not prepared a quantitative nor qualitative analysis to determine if the habitats identified in the GP/CLUP do, in fact, meet the criteria of ESHA as outlined in Policy CE 1.1 and Coastal Act § 30107.5, the impact analysis contained in the DEIR is inherently flawed and inadequate. As stated above, and as required by Policy CE 1.1, a "thorough biological evaluation" must be prepared and presented in the Final EIR to support the findings of ESHA identified on Table 3.4-1 and Figure 3.4-3 and elsewhere in the DEIR.

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#### Figure 3.4-3

Section 3.4.3.3 of the DEIR states that the DEIR's impact analysis was based on "the maps and descriptions in the GP/CLUP . . . ." However, Figure 3.4-3, entitled "Environmentally Sensitive Habitat Areas," is inconsistent with GP/CLUP Figure 4.2 which bears the same title. It is obvious from a comparison of these maps that the EIR has expanded the alleged ESHA areas identified in the GP/CLUP without the "thorough biological analysis" required by Policy CE 1.1. For example, all non-developed or paved areas at Bacara Resort & Spa are identified in the DEIR as ESHA. This supports our thesis that all habitats are considered ESHA, regardless whether they meet the criteria outlined in Policy CE 1.1 and/or Coastal Act § 30107.5. The City's determinations regarding ESHA are being made without any scientific evidence in support thereof. Moreover, these ESHA designations were arbitrarily applied to Bacara Resort & Spa's property following the submission of its application in February, 2005 for its Completion Stage Project as part of the City's common scheme and plan to develop site specific policies designed to restrict our client's ability to implement its Completion Stage Project, a planned use for which a substantial investment in development cost has been incurred.

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#### Impact Assessment Methodology

The DEIR's Biological Resources Section fails to include an impact assessment methodology similar to Section 3.6.3.4 of the DEIR's Geology Section. An impact assessment methodology section needs to be included in the Final EIR in order to render it complete and adequate.

B.8-28

The DEIR alleges that the following GP/CLUP policies, as mitigation measures, reduce significant adverse impacts on Biological Resources: CE 1, 2, 3, 4, 5, 6, 7, 8, 9, 10; OS 1, 2, 3, 4, 5, 6, 7; and LU 1, 6, 9 DEIR, pp. 3.4-23-33. Accordingly, we restate hereinbelow our client's comments on the Conservation Element (CE), Open Space Element (OS) and Land Use Element (LU), which comments demonstrate that the subject policies are overly broad, devoid of any supporting scientific basis, or otherwise illegal and therefore are not proper mitigation measures:

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#### **Mitigation Measure – Policy CE 1.2 Designation of Environmentally Sensitive Habitat.**

Figure 4-1 and 4-2 identify Environmentally Sensitive Habitat Areas on Bacara's property that are either greater in size than areas identified in site specific environmental analysis or are identified in places where they do not exist. In addition, the above list

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makes a blanket statement that all of the biological areas listed are ESHAs. Coastal Act § 30107.5 defines ESHAs as follows:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

Policy CE 1.2’s designation of ESHAs is overly broad and devoid of any scientific basis to support the biological significance, ecological functionality or integrity of the identified habitats. It is our legal opinion that this policy and Figures 4-1 and 4-2, as applied to Bacara’s property, are arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This policy and Figures 4-1 and 4-2, if adopted, would constitute an unwarranted interference with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development cost has been made. This is a representative example of the City’s common scheme and plan to develop site specific policies designed to restrict our client’s ability to implement its Completion Stage Project. It is our further legal opinion that this policy and said Figures, if adopted, would constitute a regulatory “taking” of our client’s property without just compensation.

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**Mitigation Measure – Policy CE 1.6 Protection of ESHAs.**

Coastal Act § 30107.5 defines ESHA as follows:

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed by human activities and developments.”

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As stated in the comment regarding Policy 1.2 above, the City has elected to make a blanket statement that all of the areas listed in said policy are ESHAs regardless of any scientific basis to support the biological significance, ecological functionality or integrity of the habitat. It is our legal opinion that this policy and Figures 4-1 and 4-2, as applied to Bacara’s property, are arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This policy and Figures 4-1 and 4-2, if adopted, would constitute an unwarranted interference with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development cost has been made. It is our further legal opinion that this policy and said Figures, if adopted, would constitute a regulatory “taking” of our client’s property without just compensation.

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**Mitigation Measure – Policy CE 1.9 Standards Applicable to Development Projects.**

Policy CE 1.9 is unduly onerous, burdensome and inflexible. For example, the policy restricts grading and construction activities so as to minimize disruption of wildlife during critical time periods such as nesting or breeding seasons, but fails to identify the species to be protected. As a result, construction and grading activity would need to occur during a probable 5-6 month window, needlessly extending construction schedules which may, as a result, become more impacting. Further, the policy seeks to prohibit grading, earth moving and vegetation clearance adjacent to an ESHA during the rainy season. Construction adjacent to ESHAs should be allowed at any time if the incorporation of appropriate mitigation measures would make such activities non-impacting on the ESHA. The policy is unduly inflexible in this regard.

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**Mitigation Measure – Policy CE 2.2 Stream Protection Areas.**

There is no scientific basis to support the necessity of a setback of 100' from the lateral extent of riparian vegetation. This setback is twice that of the current County policy which is 50' for properties within the urban rural boundary and 100' for those outside the urban rural boundary. It is our legal opinion that this policy, as applied to Bacara's property, is arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This policy, if adopted, would constitute an unwarranted interference with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development cost has been made. This is another representative example of the City's common scheme and plan to develop site specific policies designed to restrict our client's ability to implement its Completion Stage Project. It is our further legal opinion that this policy, if adopted, would constitute a regulatory "taking" of our client's property without just compensation.

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**Mitigation Measure – Policy CE 4.2 Designation of Monarch Butterfly ESHAs.**

The area identified on Figure 4-1 as the Monarch Butterfly Roosting Habitat on Bacara's property exceeds that identified in site specific environmental analysis prepared in connection with the approval of the hotel development. It is our legal opinion that this policy and Figure 4-1, as applied to Bacara's property, are arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This policy and Figure 4-1, if adopted, would constitute an unwarranted interference with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development cost has been made. This is another representative example of the City's common scheme and plan to develop site specific policies designed to restrict our client's ability to implement its Completion Stage Project. It is our further legal opinion that this

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policy and said Figure, if adopted, would constitute a regulatory “taking” of our client’s property without just compensation.

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**Mitigation Measure – Policy OS 1.2 Adoption of a Coastal Access Plan Map.**

It appears that Figure 3-1 shows on the Bacara Resort & Spa property an additional vertical access and beach access point proposed directly east of the existing vertical accessway, with the southern terminus identified as “Proposed Drop-Off Only.” Usage of the existing Emergency Access Road in such a manner would be inconsistent with the Fire Department’s emergency access standards. Further, the “Proposed Drop-Off Only” would constitute a violation of Condition of Approval No. 25 which provides as follows: “The project sponsor shall submit a fire protection plan for approval by the County Fire Department which includes, but is not limited to: emergency access roadway . . .” The emergency access roadway is not part of the public access areas of the Project. The emergency access roadway is never open to the general public. It is only for use by the Fire Department, Sheriff and other emergency service providers in the event of an emergency. Moreover, the “Proposed Drop-Off Only” would be the sole responsibility of the City to assume any and all enforcement standards and liability associated with such an endeavor, including indemnifying, defending, and holding our client harmless from any action brought because of the violation of Condition of Approval No. 25 discussed above.

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It is our understanding that on June 28, 2006 the City modified Policy OS 2.5.a, regarding the dedication of vertical accessways, to change “public pathway” to “public accessway” expressly in order to accommodate the above-referenced “Proposed Drop-Off Only” point. Notably, it was only after the submittal of client’s Completion Stage application that the City modified Figure 3-1 and Policy OS 2.5.a to identify and accommodate a “Proposed Drop-Off Only” point in the area on Bacara’s property that is specifically limited to emergency response vehicles in both the existing situation and in our client’s submitted application.

B.8-36

**Mitigation Measure – Policy OS 1.10 Management of Public Lateral Access Areas.**

We object to the last sentence of Policy OS 1.10.d. which reads as follows: “Unless specific hours are described within a permit, the access shall be deemed to be 24 hours per day and 7 days per week.” If a permit is silent on the issue of hours of public use, it should be interpreted to mean that public access shall be consistent with other similar public uses in Santa Barbara County. Our investigation of this issue has revealed the following regarding the hours of public use of beach parking lots:

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Santa Barbara County Beaches

Jalama Beach	8 a.m. to sunset
Goleta Beach County Park	8 a.m. to sunset
Arroyo Burro Beach	8 a.m. to sunset
Lookout Park	8 a.m. to sunset
Rincon County Park	8 a.m. to sunset

City of Santa Barbara Beaches

Cabrillo Beach lots (except for Harbor) (includes East Beach and Leadbetter Beach)	No parking between 2 a.m. and 6 a.m.
Harbor	24 hour parking
Shoreline Park	Parking lot closes at 10 p.m.

City of Carpinteria Beaches

Beach Parking at end of Linden, Elm, Holly & Ash Avenues	Lots close between 10 p.m. and 6 a.m.
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State of California Beaches

Carpinteria State Beach	7 a.m. to sunset
El Capitan State Beach	7 a.m. to sunset
Refugio State Beach	8 a.m. to sunset
Gaviota State Beach	7 a.m. to sunset
Carpinteria State Beach - Rincon Pt.	6 a.m. to 9 p.m.

**B.8-37**

Clearly, Bacara is far removed from the busier and more accessible Santa Barbara Harbor and Cabrillo Beach, and is directly comparable to the numerous other beaches noted above.

Further, the California Coastal Commission considered lot closure hours in the case of the parking lot proposed as part of the City-owned Sperling Preserve. (Appl. Nos. 4-04-84 and 4-04-85). In that case, the City proposed lot closure hours of between 10 p.m. and 4 a.m. The Commission rejected a Staff recommendation for 24-hour unrestricted access to the lot.

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Moreover, the 24-hour operation is inconsistent with other Coastal Commission hotel approvals; e.g., the Ritz Carlton Hotel in Half Moon Bay where the Coastal Commission required a public parking area on hotel premises with a minimum of 25 spaces. Special Condition No. 2 provided:

“Such parking area shall be open during daylight hours commencing at sunrise and at least until one hour after sunset through the year.”

It would be inappropriate to require 24-hour unrestricted access to the 50-space public parking lot at Bacara in view of these other Coastal Commission decisions limiting the hours of operation of public parking lots for hotels and other development, the limits on parking lot hours at numerous other more accessible beach parking lots in Santa Barbara County, the hours of actual beach use at Bacara, the need to provide security and life safety at Bacara, and the need to protect Native American archaeological sites on the property from the possibility of vandalism.

B.8-37

There is no rational reason why Bacara should be treated in a grossly different manner than other public beach parking lots throughout the County, the City-owned Sperling Preserve parking lot and other parking lots associated with approved hotel projects throughout the state.

**Mitigation Measure – Policy OS 2.3 Preservation of Existing Vertical Accessways.**

This Policy states that existing vertical public access facilities within the Bacara Resort property shall be protected and preserved. It is important to note that there are no existing public vertical coastal access *facilities* (emphasis added) at Bacara. All facilities at Bacara are under the ownership of the resort. However, consistent with our client’s Completion Stage application submitted February 2005, it is Bacara’s proposal to construct a public beach building which would consist of showers, lockers, snack bar, a first aid station, public picnic grounds and a public parking lot consisting of more than 60 parking spaces..

B.8-38

**Mitigation Measure – Policy OS 2.4 Mitigation of Impacts to Vertical Coastal Access.**

As specified in Bacara’s Completion Stage application submitted to the City in February 2005, the existing public parking lot at Bacara is proposed to be relocated to the Venoco site when operations at that site have been terminated. Subsequent to the City’s receipt of our client’s application, Figure 3-1 was modified to include the proposed location for the relocated lot.

B.8-39

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**Mitigation Measure – Policy OS 2.6 Prescriptive Vertical Access Rights.**

As identified in our client’s Completion Stage application submitted in February 2005, it is our client’s intention that the existing coastal access route be relocated pursuant to the plans submitted.

**B.8-40**

**Mitigation Measure – Policy OS 2.8 Management of Vertical Accessways.**

We object to the last sentence of Policy OS 2.8.b. which reads as follows: “Unless specific hours are described within a permit, the access shall be deemed to be 24 hours per day and 7 days per week.” If a permit is silent on the issue of hours of public use, it should be interpreted to mean that public access shall be consistent with other similar public uses in Santa Barbara County. Our investigation of this issue has revealed the following regarding the hours of public use of beach parking lots:

Santa Barbara County Beaches

Jalama Beach	8 a.m. to sunset
Goleta Beach County Park	8 a.m. to sunset
Arroyo Burro Beach	8 a.m. to sunset
Lookout Park	8 a.m. to sunset
Rincon County Park	8 a.m. to sunset

**B.8-41**

City of Santa Barbara Beaches

Cabrillo Beach lots (except for Harbor) (includes East Beach and Leadbetter Beach)	No parking between 2 a.m. and 6 a.m.
Harbor	24 hour parking
Shoreline Park	Parking lot closes at 10 p.m.

City of Carpinteria Beaches

Beach Parking at end of Linden, Elm, Holly & Ash Avenues	Lots close between 10 p.m. and 6 a.m.
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State of California Beaches

Carpinteria State Beach	7 a.m. to sunset
El Capitan State Beach	7 a.m. to sunset
Refugio State Beach	8 a.m. to sunset
Gaviota State Beach	7 a.m. to sunset
Carpinteria State Beach - Rincon Pt.	6 a.m. to 9 p.m.

Clearly, Bacara is far removed from the busier and more accessible Santa Barbara Harbor and Cabrillo Beach, and is directly comparable to the numerous other beaches noted above.

Further, the California Coastal Commission considered lot closure hours in the case of the parking lot proposed as part of the City-owned Sperling Preserve. (Appl. Nos. 4-04-84 and 4-04-85). In that case, the City proposed lot closure hours of between 10 p.m. and 4 a.m. The Commission rejected a Staff recommendation for 24-hour unrestricted access to the lot.

Moreover, the 24-hour operation is inconsistent with other Coastal Commission hotel approvals. For example, the Ritz Carlton Hotel in Half Moon Bay where the Coastal Commission required a public parking area on hotel premises with a minimum of 25 spaces. Special Condition No. 2 provided:

**B.8-41**

“Such parking area shall be open during daylight hours commencing at sunrise and at least until one hour after sunset through the year.”

It would be inappropriate to require 24-hour unrestricted access to the 50-space public parking lot at Bacara in view of these other Coastal Commission decisions limiting the hours of operation of public parking lots for hotels and other development, the limits on parking lot hours at numerous other more accessible beach parking lots in Santa Barbara County, the hours of actual beach use at Bacara, the need to provide security and life safety at Bacara, and the need to protect Native American archaeological sites on the property from the possibility of vandalism.

There is no rational reason why Bacara should be treated in a grossly different manner than other public beach parking lots throughout the County, the City-owned Sperling Preserve parking lot and other parking lots associated with approved hotel projects throughout the state.

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**Mitigation Measure – Policy OS 3.1 Coastal Access Highway Routes.**

Regarding OS 3.1.b, access to Bacara Resort & Spa is provided by the western terminus (and a private segment) of Hollister Avenue.

**B.8-42**

**Mitigation Measure – Policy OS 3.2 Coastal Access Parking.**

As stated above, it appears that Figure 3-1 has identified on the Bacara Resort & Spa property an additional vertical access and beach access point proposed directly east of the existing vertical accessway, with the southern terminus identified as “Proposed Drop Off Only.” Usage of the existing Emergency Access Road in such a manner would be inconsistent with the Fire Department’s emergency access standards. Further, the “Proposed Drop-Off Only” would constitute a violation of Condition of Approval No. 25 which provides as follows: “The project sponsor shall submit a fire protection plan for approval by the County Fire Department which includes, but is not limited to: emergency access roadway . . .” The emergency access roadway is not part of the public access areas of the Project. The emergency access roadway is never open to the general public. It is only for use by the Fire Department, Sheriff and other emergency service providers in the event of an emergency. Moreover, the “Proposed Drop-Off Only” would be the sole responsibility of the City to assume any and all enforcement standards and liability associated with such an endeavor.

**B.8-43**

OS 3.2 was modified on June 28, 2006 so as to require public “vehicular access to the shoreline with a drop-off point” shown on Figure 3.1. The City alleges in its staff report that this change was made in response to comments received from the County of Santa Barbara in its comment letter of June 6, 2006 on the GP/CLUP. In fact, the subject County letter contains no comment even remotely connected to this issue.

**Mitigation Measure – Policy OS 4.2 Adoption of Trail Plan Map (GP/CP).**

As stated in our letter of April 20, 2006 regarding the Land Use Element, the Map inappropriately and arbitrarily proposes to change the designation of the southern portion of Bacara’s property as “Open Space/Passive Recreation.” The entire Bacara property (APN 79-200-12 & 13) bears a land use designation of Visitor Serving Commercial and is zoned CV. Proper notification to change the land use designation from the existing Visitor Service Commercial to Open Space/Passive Recreation has not occurred. The proposed change in land use designation has the potential to interfere with existing hotel operations to the extent that hotel related structures are located within the proposed Open Space/Passive Recreation area because such structures will be rendered nonconforming uses and structures. This is unacceptable to the owner and in violation of the prior land use approvals for the project site. Moreover, bifurcating a single parcel by applying two conflicting land use designations is contrary to good planning practices. It is our legal

**B.8-44**

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opinion that the proposed Map and its change in land use designation, as applied to Bacara's property, is arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This Map and its proposed change in land use designation, if adopted, will constitute an unwarranted interference with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development costs has been made. This is yet another representative example of the City's common scheme and plan to develop site specific policies designed to restrict our client's ability to implement its Completion Stage Project. It is our further legal opinion that this Map and its proposed change in land use designation, if adopted, will constitute a regulatory "taking" of our client's property without just compensation. It is our understanding that this Map has been changed as a result of a hearing held by the City on July 11, 2006; however a revised Map has not been provided to the public in conjunction with the DEIR.

B.8-44

As discussed in our May 8, 2006 letter, this error was exacerbated in the Transportation Element. Figure 7-5 shows the south portion of Bacara's parcel, public parking lot, beach access path, snack bar area and possibly the maintenance building, maintenance building parking and resort tennis courts as "Parks, Open Space Areas and Private Recreational Areas." The entire Bacara property (APN 79-200-12 & 13) bears a land use designation of Visitor Serving Commercial and is zoned CV. Proper notification to change the land use designation from the existing Visitor Serving Commercial to "Parks, Open Space Areas and Private Recreational Areas" has not occurred. The proposed change in land use designation interferes with existing hotel operations to the extent that hotel related structures are located within the proposed "Parks, Open Space Areas and Private Recreational Areas" because such structures will be rendered nonconforming uses and structures. This is unacceptable to the owner. Moreover, bifurcating a single parcel by applying two conflicting land use designations is contrary to good planning practices.

B.8-45

By identifying the above-stated area as "Regional Open Space," the Open Space Element expands upon the mapping errors in the Land Use and Transportation Elements as discussed in our previous letters regarding those Elements. Additionally, Figure 3-2 identifies a band of Regional Open Space north of the Coastal Trail.

B.8-46

**Mitigation Measure – Policy OS 4.4 Juan Bautista de Anza National Historic Trail (GP/CP).**

The Bacara access road is more commonly known as the western terminus of Hollister Avenue.

B.8-47

**Mitigation Measure – Policy OS 7.2 Adoption of Open Space Plan Map.**

Figure 3.5 expands upon the errors identified above regarding the discussion of Policy OS 4.3 by identifying the south portion of Bacara's parcel (Figure 2-1 and 3-1), public

B.8-48

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parking lot, beach access path, snack bar area and possibly the maintenance building, maintenance building parking and resort tennis courts as “Parks, Open Space Areas and Private Recreational.” In addition, Figure 3.5 shows a substantial increase in a portion of the southern part of the parcel, and identified Environmentally Sensitive Habitat Areas in areas not substantiated by environmental documents. This is yet another representative example of the City’s common scheme and plan to develop site specific policies designed to restrict our client’s ability to implement its Completion Stage Project, which is a planned use for which a substantial investment in development cost has been incurred.

B.8-48

**Mitigation Measure – Policy OS 7.3 Open Space for Preservation of Natural Resources.**

This policy states that the City may require dedication of open space easements as a condition of approval of development on sites which have open space resources as shown in Figure 3.5. This map identifies areas of Bacara Resort & Spa as open space when such areas are, in fact, occupied by hotel buildings or involved in hotel operations.

B.8-49

**Mitigation Measure – Policy OS 7.8 Provision of Open Space in New Development.**

This policy inappropriately requires open space areas in addition to public park and open space land required to be dedicated pursuant to the Quimby Act or other state or local statutes. We seriously question the legality of this policy.

B.8-50

**Mitigation Measure – Policy LU 1.6 New Development and Protection of Environmental Resources.**

This policy requires “adherence to high environmental standards set forth in the draft Conservation Element and the City’s Zoning Code.” However, the Conservation Element does not provide any science-backed facts to support the standards applicable to development projects set forth in CE 1.9. Further, the City’s Zoning Code has not yet been created. Thus, it is impossible to determine the efficacy or appropriateness of this policy at this time.

B.8-51

**Mitigation Measure – Policy LU 1.11 General.**

The January 14, 2004 Draft of the City’s General Plan did not include any development constraints regarding time-shares, fractional ownerships, or similar ownership forms for hotels and other transient lodging uses. It was only subsequent to Bacara’s February, 2005 submittal to the City of its application for the Completion Stage of Bacara, which includes a proposed resort condo, that the City sought to specifically prohibit “time-shares, fractional ownerships, and similar ownership forms for hotels and other transient lodging uses,” which are primarily sources of and used for financing. It is our legal

B.8-52

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opinion that proposed Policy 1.11.a of the City's Draft General Plan/Coastal Land Use Plan, as applied to Bacara's property, is arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. Policy 1.11.a, if adopted will constitute an unwarranted interference with a planned use for which a substantial investment in development costs has been made and will cause a substantial diminution in value to both the existing Resort and Bacara's Completion Stage Project. It is our further legal opinion that this Policy, if adopted will constitute a regulatory "taking" of our client's property without just compensation.

B.8-52

**Mitigation Measure – Policy LU 3.6 Visitor Commercial (C-V).**

The January 14, 2004 Draft of the City's General Plan did not include any site specific development constraints regarding Bacara. It was only subsequent to Bacara's February 11, 2005 submittal to the City of its application for the Completion Stage of Bacara, which includes a proposed resort condo,<sup>1</sup> that the City sought to specifically prohibit "time-shares, fractional ownerships and similar ownership forms for hotels and other transient lodging uses," which are primarily sources of and used for financing. It is our legal opinion that this proposed policy of the City's Draft General Plan/Coastal Land Use Plan, as applied to Bacara's property, is arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This policy, if adopted, will constitute an unwarranted interference with a fully-mitigated project site and with Bacara's Completion Stage Project, a planned use for which a substantial investment in development cost has been made. It is our further legal opinion that this policy, if adopted, will constitute a regulatory "taking" of our client's property without just compensation.

B.8-53

**Mitigation Measure – Policy LU 9.1 Site #1 – Coastal Resort Parcels (Visitor Commercial).**

Requirements a-h of LU 9.1 are internally inconsistent. Further, policy LU 9.1.b's restrictions on the number of transient lodging units or rooms is unreasonably restrictive. The January 14, 2004 Draft of the City's General Plan did not include any site specific development constraints regarding Bacara. It was only subsequent to Bacara's February 11, 2005 submittal to the City of its application for the Completion Stage of Bacara,<sup>2</sup> which includes a proposed resort condo, that the City sought to specifically prohibit "time-shares, fractional ownerships and similar ownership forms for hotels and other transient lodging uses," which are primarily sources of and used for financing. It is our legal opinion that this proposed policy of the City's Draft General Plan/Coastal Land Use

B.8-54

<sup>1</sup> Bacara's Completion Stage will dramatically increase the City's transient occupancy tax and assessment base.

<sup>2</sup> Bacara's Completion Stage does not constitute "New development" because all of the environmental analysis, mitigation and conditioning for this Stage occurred in the context of the development of the Initial Stage of Bacara Resort & Spa.

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Plan, as applied to Bacara's property, is arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This policy, if adopted, will constitute an unwarranted interference with a planned use for which a substantial investment in development cost has been made. It is our further legal opinion that this policy, if adopted, will constitute a regulatory "taking" of our client's property without just compensation. Further, there is an absence of environmental and scientifically supported facts to support the referenced limitations and restrictions of the proposed Conservation Element.

B.8-54

**Comment on Land Use Plan Map; Figure 2-1.**

This Map inappropriately and arbitrarily proposes to change the designation of the southern portion of Bacara's property as "Open Space/Passive Recreation." The entire Bacara property (APN 79-200-12 & 13) bears a land use designation of Visitor Serving Commercial and is zoned CV. Proper notification to change the land use designation from the existing Visitor Service Commercial to Open Space/Passive Recreation has not occurred. The proposed change in land use designation has the potential to interfere with existing hotel operations to the extent that hotel related structures are located within the proposed Open Space/Passive Recreation area because such structures will be rendered nonconforming uses and structures. This is unacceptable to the owner and in violation of the prior land use approvals for the project site. Moreover, bifurcating a single parcel by applying two conflicting land use designations is contrary to good planning practices. It is our legal opinion that the proposed Map and its change in land use designation, as applied to Bacara's property, is arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This Map and its proposed change in land use designation, if adopted, will constitute an unwarranted interference with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development costs has been made. It is our further legal opinion that this Map and its proposed change in land use designation, if adopted, will constitute a regulatory "taking" of our client's property without just compensation. It is our understanding that this Map has been changed as a result of a hearing held by the City on July 11, 2006; however, a revised Map has not been provided to the public in conjunction with the DEIR.

B.8-55

**Pacific Shoreline Sites; Figure 2-2**

See comment to Figure 2-1 above.

B.8-56

**HAZARDS AND HAZARDOUS MATERIALS, § 3.7, pp. 3.7-1-24**

Impact Assessment Methodology

The DEIR's Hazards and Hazardous Materials Section fails to include an impact assessment methodology similar to Section 3.6.3.4 of the DEIR's Geology Section. An

B.8-57

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impact assessment methodology section needs to be included in the Final EIR in order to render it complete and adequate.

B.8-57

**LAND USE AND RECREATION, § 3.10, pp. 3.10-1-24**

**Figure 3.10-3 – Existing and Planned Parks**

It is our legal opinion that this Map is arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. Figure 3.10-3 shows Regional Open Space areas on Bacara's property including, without limitation, its parking lot, access path, snack bar, etc. This Map, if adopted, would constitute an unwarranted interference with current hotel operations and with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development costs has been made. It is our further legal opinion that this Map, if adopted, would constitute a regulatory "taking" of our client's property without just compensation.

B.8-58

Further, as proposed in Bacara's Completion Stage Project application submitted to the City in February, 2005, the public parking lot will be relocated. Thus, it is inappropriate to designate the parking lot as "open space." Moreover, the City in its letter of June 16, 2006 determining Bacara's Completion Stage Project incomplete, stated that "public open space shall not include areas which are unusable for recreational purposes, i.e., private or public streets, private parking lots, driveways, private patios and yards, other developed or hard surfaced areas...." Bacara's parking lot is private property subject to public use through an "Offer to Dedicate". The private nature of the parking lot is substantiated by Table 3.10-2's reference to Map 36 "Haskell's Beach Access (private)."

**Table 3.10-2, P. 3.10-9**

Table 3.10-2's Map Identification Nos. 35 and 36 are identified as "Haskell's Beach" and "Haskell's Beach Access (private)." This Table must be modified to clarify that Haskell's Beach is also private and the public parking lot is limited to 50 spaces. As with the beach access, public access on this privately owned beach is allowed through an easement, but fee title to the land is held by HT Santa Barbara, Inc., the owner of Bacara Resort & Spa and the underlying real property. Further, while Table 3.10-2 is intended to correspond "with park identification numbers" of Figure 3.10-3", the area identified on Figure 3.10-3 is greater than that described on Table 3.10-2. Please see above comments regarding this issue.

B.8-59

**Impact Assessment Methodology**

The DEIR's Land Use and Recreation Section fails to include an impact assessment methodology similar to Section 3.6.3.4 of the DEIR's Geology Section. An impact

B.8-60

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assessment methodology section needs to be included in the Final EIR in order to render it complete and adequate.

B.8-60

**Discussion of Relevant GP/CLUP Policies, § 3.10.3.2, PP. 3.10-12-15**

The Land Use and Recreation Section cites certain GP/CLUP policies from the Open Space Element, Housing Element, Safety Element, Visual and Historic Resources Element, Transportation Element, and the Public Facilities Element which purportedly “are relevant to land use and planning and recreation,” and are intended as mitigation measures. However, Section 3.10.3.2 fails to identify and discuss all of the appropriate policies from the aforesaid elements.

B.8-61

**Project Impacts, § 3.10.3.3, PP. 3.10-15-23**

**Class I Impacts, P. 3.10-15**

This Section states that the “policies identified in the elements of the City’s GP/CLUP are designed and intended to ensure consistency between City regulations, standards, and ordinances and all State and Federal policies and regulations for the avoidance and/or mitigation of potential adverse environmental effects resulting from implementation of the GP/CLUP.” Notwithstanding the foregoing, the Land Use and Recreation Element fails to achieve such consistency because of the following:

B.8-62

- Internal inconsistencies with the Housing Element, Transportation Element, Safety Element, and Conservation Element. The City has been notified of such inconsistencies on numerous occasions by many members of the public throughout the proceedings pursuant to the GP/CLUP and DEIR.
- The Housing Element has not been determined to be consistent with the regulatory requirements of the State of California.
- The DEIR considered the conversion of the South Kellogg area from General Industrial to Medium Density Residential. As of July 11, 2006, the City Council changed the EIR project description whereby it is no longer considering this area as residential. The Final EIR needs to reflect this change.

B.8-63

B.8-64

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#### **Class II Impacts, PP. 3-10-15-16**

##### Short-Term

Impact 3.10-1. Conflict with Applicable Land Use Policies and/or Regulations Due To Buildout (Construction) of GP/CLUP Land Uses, Transportation Improvements, and Public Facilities

B.8-65

Construction-related, activities associated with buildout of the adopted GP/CLUP land uses will not be able to occur based on the numerous internal inconsistencies that exist in the GP/CLUP. This constitutes a Class I Significant Impact which requires a major revision to the GP/CLUP to remedy such internal inconsistencies. Upon completion of such revisions, the DEIR needs to be substantially revised and re-circulated.

#### **Figure 3.10-4 – Proposed Land Use Map**

As with Figure 2-1's GP/CLUP Land Use Plan Map, this Map inappropriately and arbitrarily proposes to change the designation of the southern portion of Bacara's property as "Open Space/Passive Recreation." The entire Bacara property (APN 79-200-12 f& 13) bears a land use designation of Visitor Serving Commercial and is zoned CV. Proper notification to change the land use designation from the existing Visitor Serving Commercial to Open Space/Passive Recreation has not occurred. The proposed change in land use designation has the potential to interfere with existing hotel operations to the extent that hotel related structures are located within the proposed Open Space/Passive Recreation area because such structures will be rendered nonconforming uses and structures. This is unacceptable to the owner and in violation of the prior land use approvals for the project site. Moreover, bifurcating a single parcel by applying two conflicting land use designations is contrary to good planning practices. It is our legal opinion that the proposed Map and its change in land use designation, as applied to Bacara's property, is arbitrary, capricious, unreasonable, egregious, discriminatory and oppressive. This Map and its proposed change in land use designation, if adopted, will constitute an unwarranted interference with a fully-mitigated and completed project site and with a planned use for which a substantial investment in development costs has been made. This is yet another representative example of the City's common scheme and plan to develop site specific policies designed to restrict our client's ability to implement its Completion Stage Project. It is our further legal opinion that this Map and its proposed change in land use designation, if adopted, will cause a substantial diminution in value to the existing Resort and Bacara's Completion Stage Project and will further constitute a regulatory "taking" of our client's property without just compensation. It is our understanding that this Map has been changed as a result of a hearing held by the City on

B.8-66

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July 11, 2006; however a revised Map has not been provided to the public in conjunction with the DEIR.

B.8-66

Impact 3.10-4, P. 3-10-18 Physical Division of an Established Community Due to Buildout of GP/CLUP Land Uses

Section 3.10-4 states that buildout “of the GP/CLUP has the potential to physically divide established communities due to the introduction of incompatible or otherwise obstructive land uses.” This analysis is incomplete and inadequate because there is no disclosure of the potential impacts. Moreover, there is no showing that the impacts associated with changes in density or design would be reduced to a less-than-significant level as claimed.

B.8-67

**PUBLIC SERVICES AND UTILITIES, § 3.12, pp. 3.12-1-18**

**Existing Conditions, § 3.12.1, P. 3.12-1**

Section 3.12-2 states that the “locations of various public facilities described in this section are shown in Figure 3.12-1”. However, the GP/CLUP’s Public Facilities Element, Figure 8-1, identifies only one geographic area for the future fire station in Western Goleta. The proposed area for such station includes the southeast portion of the Residences at Sandpiper property, a site under long term lease by Bacara for its employee parking lot, and the entrance to the Comstock Homes project. Similarly, Figure 3.12-1 identifies the same area for the “Future Fire Station”. Thus, the City fails to provide a reasonable range of alternative sites for locating a fire station in Western Goleta by identifying only one specific location.

B.8-68

Impact Assessment Methodology

The DEIR’s Public Services and Utilities Section fails to include an impact assessment methodology similar to Section 3.6.3.4 of the DEIR’s Geology Section. An impact assessment methodology section needs to be included in the Final EIR in order to render it complete and adequate.

B.8-69

**Discussion of Relevant GP/CLUP Policies, § 3.12.3.2, PP. 3.12-9-15**

**Land Use Element, P. 3.12-10**

This Section lists various policies from the GP/CLUP’s Land Use Element which purportedly are the “guiding principles and goals” to provide “the foundation for the Land Use Plan as they pertain to Public Services.” However, not all of the applicable Land Use Element policies are identified.

B.8-70

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**Safety Element, P. 3.12-10**

This Section lists various policies from the GP/CLUP's Safety Element which purportedly are the "guiding principles and goals" to provide "the foundation for the Land Use Plan as they pertain to Public Services." However, not all of the applicable Safety Element policies are identified.

B.8-71

**Impact 3.12-2 Increased Demand for Fire Protection**

Section 3.12-2 states that the City "has identified multiple policies and objectives in the GP/CLUP intended to address fire protection service and to accommodate projected growth. Among these is the addition of a new fire station (Station 10) to be located in Western Goleta." Further, this Section states that the City "will provide a site consisting of approximately two acres of land for the new fire station." Figure 3.12-1 identifies Bacara's employee parking lot, the entrance to the Comstock Homes project and the southeast corner of the Residences at Sandpiper property as the "Future Fire Station". As discussed above, the City has failed to provide a reasonable range of alternative sites for locating the fire station in Western Goleta by identifying only one specific area. Further, the DEIR provides no analysis or discussion whether the City could reasonably acquire, control or otherwise have access to the proposed "Future Fire Station" sites and whether said sites are committed to other long-term uses by the owners or lessees thereof. In addition, County Fire Captain Martin Johnson has testified before the City Council that a fire station north of US 101 would best meet the needs of the underserved portion of Western Goleta.

B.8-72

**ALTERNATIVES, § 5.0, PP. 5-1-22**

**1. The "No Project" Alternative Fails to Comply with CEQA Requirements**

By mistakenly claiming that the "no project" alternative is illegal, the DEIR incorrectly analyzes the alternative by not defining it as buildout under current plans and regulations, as required by CEQA. The DEIR thus denies the public any opportunity to compare the impacts of the proposed General Plan to the existing Santa Barbara County General Plan (which includes the Goleta Community Plan). To resolve these deficiencies, and to protect its citizens from irresponsible development, the City should temporarily adopt the County's General Plan.

B.8-73

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A. CEQA Defines the “No Project” Alternative as Buildout under Current Plans and Regulations

CEQA requires a description of a range of reasonable alternatives to the proposed project, including the “no project alternative.” CEQA Guidelines § 15126.6. The purpose of the “no project” alternative is to “allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.” *Id. at* §15126.6(e)(1). An adequate “no project alternative” discussion in the environmental document needs to do two things: a) discuss the existing conditions at the time the NOP is published; and b) discuss what would reasonably be expected to occur in the foreseeable future if the project were not approved, based upon current plans and consistent with available infrastructure and community services. *Id. at* § 15126.6(e)(1) & (2).

In cases where the EIR is for a general plan amendment, the “no project” is buildout under the current county plans and regulations. See *Environmental Planning & Info. Council v. County of El Dorado* (1982) 131 CA3d 350 (concluding that the “no project” alternative for a general plan amendment is defined as buildout under the current general plan, not as existing conditions (i.e., existing conditions are instead the baseline against which the no project and all other alternatives must be analyzed)). The regulations also state that “[w]hen the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the “no project” alternative will be the continuation of the existing plan, policy or operation into the future.” Guidelines §15126.6(e)(3)(A).

B.8-74

We understand that the City’s likely response is that because it is adopting a *new* general plan, not amending an existing one, that the usual CEQA requirements that pertain to the “no project” alternative are inapplicable in this case. The City appears to be using the fact that it did not adopt the Santa Barbara County General Plan upon incorporation as a license to dismiss the “no project” alternative as “illegal under State law,” or, if not illegal, then one that would lead to “no control over development and degradation of the environment” due to lack of guiding policies from an adopted General Plan. In so doing, the City has created a “no project” alternative that is either patently infeasible (i.e., illegal) or practically infeasible (allowing only 356 housing units over the next 24 years, which cannot be considered a serious General Plan option). The DEIR also provides no legal justification for its novel approach to the “no project” alternative. For the reasons provided below, the City’s approach is inconsistent with CEQA, inconsistent with typical incorporation procedure, and easily resolved.

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B. The City's Conclusion that the "No Project" Alternative is "Illegal" is Neither Justified in the Record nor Supported by the Law

First, the City's unexplained decision to not adopt Santa Barbara County's General Plan when it incorporated is the central problem. We are unaware of any newly incorporated city that has made the same decision. For example, the recently incorporated cities of Rancho Cordova (2003), Elk Grove (2000), Rancho Santa Margarita (2000), and Oakley (1999), all adopted the underlying County General Plans and zoning ordinances when they incorporated. They did so for a very good reason: to ensure they had the regulatory tools to responsibly control development until they adopted their own General Plan and zoning ordinances. This raises the question of why the City would knowingly expose its citizens to, as it admits in the DEIR, "uncontrolled development" by choosing not to temporarily adopt the County's General Plan. The City then compounds this irresponsible decision by using it as an excuse to gut the full and fair analysis of the "no project" alternative, thereby denying its citizens and others the opportunity to properly evaluate the relative impacts of the City's proposed plan. But issues of good government aside, the City's decision to not adopt the County General Plan does prevent the City from complying with CEQA's alternatives analysis requirements.

B.8-75

To be clear, we find no merit in the City's unsupported conclusion in Section 5.3.1 that the "no project" alternative is "illegal under State law." The City seems to base this conclusion on the assumption that no future development could be allowed legally under the "no project" alternative because, as a newly incorporated city without a General Plan, the City *must* adopt a new General Plan, otherwise it cannot continue to legally approve future development under its interim zoning regulations alone. And since State law requires all cities to have a General Plan, the penalty of not having one would be, in essence, a moratorium on growth. Thus, the argument continues, the "no project" alternative cannot allow future development beyond projects already approved but not constructed — hence the 356 total units allowed. (Or maybe the City thinks the alternative is illegal because the 356 housing units would not be enough to meet the City's State-mandated housing requirement.) But again, without any explanation in the DEIR, the public is left to speculate about these fundamental questions. We can find no legal support for the City's position, much less any legal authority even addressing this particular matter. It seems the City has positioned itself in a place no other City has ventured to go and has done so for no apparent good reason.

The City's approach also mistakenly assumes that denial of its proposed General Plan would mean the City could take no additional action to extend the current interim status of its zoning ordinance or to adopt, as discussed above, the current General Plan of Santa Barbara County in order to remedy the alleged problem. We are unaware of any legal or practical hurdles preventing the City from seeking this remedy. With little expenditure of time or money, the City could adopt the County's General Plan and gain

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whatever time it needs to complete a compliant DEIR. To proceed in the DEIR as if these options do not exist is erroneous and arguably in bad faith and can lead to extended and expensive litigation.

Furthermore, if the “no project” is truly illegal, then according to CEQA, the alternative is not “feasible” due to legal impossibility and should not be analyzed at all. See *Save San Francisco Bay Ass’n v. San Francisco Bay Conserv. & Dev. Comm’n.* (1992) 10 CA4th 908 (holding that an EIR need not examine alternatives that are contrary to law). §15126.6(e)(1). However, if it is not illegal, then the lack of clarity regarding the scale of the potential growth is no small matter because this number drives the entire impact analysis of the “no project” alternative. For the reasons stated above, we strongly believe that the “no project” alternative is legal (or can easily be made legal by adoption of the County General Plan) and that CEQA requires analysis of a clearly defined “no project” buildout under current zoning and General Plan.

In absence of a justification for its actions, the City’s so-called “illegality” problem seems to be mostly of its own making. The City has chosen to be in a regulatory “no man’s land” when it does not have to be. However, a review of case law uncovered no case that provided special treatment for newly incorporated cities regarding the treatment of “no project” alternatives. The CEQA Guidelines also make no special provisions regarding this matter. The practical result is that the DEIR never compares the most basic environmental relationship of all: that of the current County General Plan to the City’s proposed General Plan. See §15126.6(e)(3)(A) (stating that the projected impacts of the proposed amended plan are normally compared to the impacts that would occur under buildout of the existing plan). Whether avoiding this comparison was the City’s intent or not, the DEIR denies the public any opportunity to know if the proposed plan is better than the existing plan. This is a fundamental deficiency in the DEIR and it cannot be squared with CEQA’s purpose of allowing “meaningful evaluation” of the alternatives by the public. See §15126.6(d).

B.8-75

In summary, the law states that when an amendment to an existing general plan is proposed, as should be the case here, the “no project” alternative will be the buildout under the existing plan, not existing physical conditions or anything else. The “no project” buildout must then be compared to the actual existing conditions (i.e., baseline). Finally, after this baseline comparison is complete, the EIR must then compare the impacts of buildout under the “no project” alternative to the impacts of buildout under the proposed plan, as well as to the buildout of all the other alternatives, in order to determine which one is environmentally superior.

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C. The DEIR's Analysis of the "No Project" Alternative is Internally Inconsistent

Despite the fact that the DEIR claims the "no project" is illegal, it analyzes the alternative as if it were a legally valid alternative. Thus, for the purpose of providing comments, the following comments set aside any broader legal questions and assume that the alternative is legal. These comments focus instead on the adequacy of the "no project" alternative as presented on its own terms.

In this context, is clear from our review that the DEIR's "no project" definition is, on its face, internally inconsistent such that it violates CEQA requirements.

**B.8-76**

Interestingly, the DEIR seems to initially define the "no project" correctly as buildout under the current regulations. For example, Section 5.3.1 of the DEIR begins by defining the "no project" as "existing conditions plus the projects that had received planning approvals but were not completed prior to preparation of the Draft GP/CLUP." The DEIR also defines the "no project" as including implementation of "existing zoning and other City regulations and ordinances continued into the future without a GP/CLUP." Thus, at the outset, the DEIR acknowledges that future development as allowed by current zoning "continued into the future" is part of the "no project" alternative.

However, the only instance where this definition is applied (and only to a partial degree) is in Section 5.4.1, Aesthetic and Visual Resources. Here the DEIR finds a Class I impact to visual resources due to the 1,028 housing units that could be "accommodated" by the "no project" alternative. The 1,028 housing units is presented as a buildout number, but the estimate is derived from the Housing Element (HE 6.2) which provides that this is the number of "units in projects already developed or approved since the beginning of the RHNA [Regional Housing Needs Allocation] period." The DEIR fails to explain why this RHNA number has any relevance to the "no project" alternative. The 1,028 units represents neither full buildout (because it neglects development of units to be built after 2009, when the current RHNA period ends), nor existing conditions (because it includes almost 700 units that were already built between 2001 and 2005). This leaves the reader totally confused as to what scale of development is actually being analyzed under the "no project" alternative in this Section.

**B.8-77**

Adding to the confusion and internal inconsistency of the DEIR, the 1,028 housing unit number contradicts Table 5-1, Project and Alternative Land Use Scenarios, which describes the "no project" as including only 356 additional housing units and 268,000 sq. ft of commercial/industrial space. The Table states that this amount of development is the "net change in comparison to existing conditions." The logical conclusion then is that there will be 356 new houses built in the future under the "no project" alternative. This conclusion, however, contradicts yet another "no project" description found in the Population and Housing Section which states that the 356 units is

**B.8-78**

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derived from residential projects “that have been completed between January 2001 and September 2005” or “have been approved but not yet completed as of October 2005.” This description raises more questions than it answers. Of what relevance is the January 2001 date? Why should projects completed before Goleta incorporated be included in the “no project” alternative? More fundamentally, this description gives the reader no idea how many of the 356 houses already exist (along with their impacts) and how many do not. Occupying a middle ground in this confusion, the Air Quality Section (§ 5.4.3.1) begins with the unqualified statement that “no new development would be permitted under this alternative [no project],” but ends by analyzing the impacts from “anticipated growth under the No Project alternative.” The Section never defines what level of “anticipated growth” is analyzed. Other DEIR sections characterize the “no project” alternative in variations of these themes.

B.8-78

More fundamentally, the DEIR is internally inconsistent when it concludes, as mentioned above, that the “no project” alternative is either “illegal” or would allow “uncontrolled growth.” These two options are mutually exclusive because the former would allow no future growth while the latter anticipates considerable future growth. The DEIR, consequently, must decide which of these very different “no project” scenarios it wants to analyze. The DEIR ignores this reality and leaves the ambiguity unresolved for its entire analysis.

B.8-79

The DEIR provides the reader with no clear and consistent identification of the amount of development analyzed under the “no project” alternative.

D. The Solution is for the City to Adopt the Santa Barbara County General Plan. Alternatively, the City Could Provide the Required Buildout Analysis of the County’s General Plan by Including this Development Scenario as an Independent Alternative.

The simple solution for the City is to follow the lead of the City of Elk Grove (many other examples exist), which incorporated in 2000 from Sacramento County. The 2003 DEIR for Elk Grove’s draft General Plan states explicitly that CEQA requires the “no project” alternative to be the buildout under the current General Plan. And since Elk Grove adopted the Sacramento County General Plan immediately upon incorporation, it used the county’s then-current regulations and policies to estimate the buildout for the “no project” alternative. This same process — that of adopting the General Plan and ordinances of the underlying county until it can adopt its own — is the practice of all, or nearly all, newly incorporated cities. Whatever negative consequences the City fears would happen by temporarily adopting the current County General Plan cannot legitimately be worse for the citizens of Goleta than having no General Plan at all. This is especially true given that the County General Plan includes the Goleta Community Plan, which provides specific policies and standards to guide development in the City’s general

B.8-80

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area. How could having no General Plan be more protective than an existing community plan?

Adopting the Santa Barbara County General Plan would also solve the second problem the DEIR identifies about the “no project” alternative — that it could lead to “no control over development and degradation of the environment” due to lack of guiding policies from an adopted General Plan. (This statement seems inconsistent with the DEIR conclusion that the “no project” has “by far” the least environmental impacts of all the alternatives.) Regardless, the adoption of the existing County General Plan would solve the problem of not having one. We are unaware of any legal or practical obstacles to this course of action.

B.8-80

Another possibility is for the DEIR to include, as an independent alternative, the buildout scenario under the current County General Plan. Doing so would only be necessary if the City continues to not temporarily adopt the current County General Plan, thus leaving the current DEIR definition of the “no project” alternative unchanged. Adding this alternative would at least ensure the public the opportunity to compare the impacts of the proposed action to the current County Plan, even if it not through the “no project” alternative analysis as it should be.

2. **DEIR Analysis of “Alternatives Considered but Rejected” is Incomplete and Fundamentally Flawed**

The DEIR provides inadequate justification for rejecting the four “Planning Alternatives.” In addition, the alternatives seem to have been designed to be infeasible, violating CEQA requirements.

The DEIR provides four “Planning Alternatives” that were considered early in the CEQA review process but rejected as not feasible. Each alternative was designed to target the protection of a particular major interest, such as the environment, economy, or housing. The DEIR provides little more than conclusory statements that the alternatives do not meet basic project objectives. The DEIR instead refers readers to the City’s website for more detail on each alternative. While CEQA allows agencies to provide additional information concerning rejected alternatives in the administrative record (see §15126.6(c)), we were unable to locate the referenced material on the City’s website. Without that information, evaluating the DEIR’s conclusions regarding the inability of any of these alternatives to meet most of the project objectives is difficult. If this information is, in fact, not available, it should be made available on a timely basis so that the public knows what standards were used to eliminate these alternatives from consideration.

B.8-81

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Another concern is the fact that each alternative is rejected for the same reason; the maximization of the primary goal leads to unacceptably negative impacts to other important goals. This formulaic rejection of each alternative gives the appearance that these were fatally-flawed alternatives from the beginning, designed more to promote general discussion than to be workable alternatives. Was a good faith attempt made to reconcile these competing goals to create a feasible "compromise" alternative(s)? Are the proposed action or Alternatives 1 or 2 intended to represent such an attempt? If so, the DEIR makes no mention of it, and there is little other evidence in the DEIR to suggest that they do. These questions lead to the comments immediately below.

B.8-82

### 3. The DEIR Lacks a Reasonable Range of Alternatives

Alternatives 1 and 2 are so similar in purpose, design, and impact, that they are analytically indistinguishable. The result is that the DEIR provides the public with only two real choices: the proposed action or a lesser development scenario under Alternative 1 or 2 (keeping in mind that the "no project" alternative is either illegal or not feasible). Providing only one viable alternative to the proposed action does not qualify as a reasonable range of alternatives under CEQA.

CEQA requires that an EIR examine a "reasonable range of potentially feasible alternatives that will foster informed decision making and public participation." *See* §15126.6(a). In addition, "[a] reasonable range of alternatives would typically include *different levels of density* (emphasis added)." State of California, Governor's Office of Planning and Research, General Plan Guidelines 2003, 137. While the courts have acknowledged that there is no formula for defining what constitutes a reasonable range, alternatives that are almost identical do not meet the intent of this standard. In this case, the DEIR concludes that for a vast majority of the environmental impact categories the impacts from Alternative 2 would be the same, or substantially the same, as the impacts from Alternative 1 (see DEIR sections on Air Quality, Biological Resources, Cultural Resources, Geology, Soils and Mineral Resources, Hazards and Hazardous Materials, Land Use and Recreation, Noise Impacts, Public Services and Utilities, Transportation and Circulation, and Water Resources). In many sections, the entire analysis for Alternative 2 is nothing more than a sentence or two stating the impacts are the same, or basically the same, as Alternative 1. The DEIR itself admits in Section 5.3.3 that the land uses under Alternative 2 are "similar to" and only "somewhat different than" those of Alternative 1.

B.8-83

The close similarity is not surprising given that both alternatives are designed to promote the same narrow goal of "reduce[ing] traffic impacts to Storke Road and Hollister Avenue." Each tries to accomplish this goal by proposing less development than the proposed action, but there is little difference in scale or location of development *between* the two alternatives (the buildout for Alternative 2 has only 760 fewer houses and

B.8-84

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104,000 sq. ft. less of commercial/industrial space than Alternative 1 — all in a city with 11,615 existing houses and 12,119,000 sq. ft. of existing commercial/industrial space). What is surprising is that neither alternative is remotely successful at addressing the one issue they were designed to address: The DEIR concludes that “no significant [traffic] improvements in City intersections” are expected to result from implementation of either alternative. Why then were these alternatives chosen? What is the meaningful difference between the two alternatives? How can the public make an informed choice between the two alternatives if the alternatives are basically identical in purpose, design, and impact? Perhaps the small range of difference can be explained by the fact that the City appears to be mostly built out, leaving little land left to develop under either alternative. But even if true, CEQA demands more than simply providing two versions of essentially the same alternative.

B.8-84

For example, the DEIR should analyze an alternative that includes *more* development than the proposed project. While this alternative may not be an absolute CEQA requirement, the failure to include a greater density alternative results in the public having only two development choices: the proposed action and the smaller development scenario represented by Alternatives 1 and 2. We already know that the fourth alternative — the “no project” alternative — is not a viable option because the DEIR calls it illegal, or, alternatively, attributes so little development to it (e.g., 356 houses over the next 24 years) that it is not a feasible general plan option.

B.8-85

A solution to many of the above problems would be to amend the “no project” alternative to include a reasonable buildout under the current Santa Barbara County General Plan and regulations. Doing so would not only make this alternative comply with CEQA, but could serve (presumably) as a higher development scenario and thereby improve the range of alternatives in the DEIR.

B.8-86

#### 4. Neither Alternative 1 nor 2 Reduces Significant Environmental Impacts as Required by CEQA

By the DEIR’s own terms, Alternatives 1 and 2 do not meaningfully reduce significant environmental impacts for nearly all environmental resources.

An EIR is required to analyze alternatives that would “avoid or substantially lessen” a project’s environmental impacts. §15126.6(a). The DEIR, however, provides little, if any, evidence that Alternative 1 or 2 avoids or substantially lessens any environmental impacts. As best can be determined, both alternatives create the same class of impacts as the proposed action (i.e., for every Class I (II, III, or IV) impact identified in the proposed action, Alternatives 1 and 2 have the same Class I (II, III, or IV) impact). The only difference is that the DEIR often includes qualifications that the impacts from Alternative 1 or 2 are still “less than” or “slightly less than” those of the proposed plan, even though

B.8-87

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both impacts are considered, for example, Class II impacts. These differences are rarely, if ever, quantified or elaborated on so the assumption must be that the differences are too small to accurately measure.

B.8-87

At minimum, the DEIR should provide a matrix clearly comparing the relative impacts of all four development options. While a matrix is not a CEQA requirement, it is recommended and it would be particularly helpful in this case because it would immediately reveal the near uniformity of impact from each development option (except for the “no project”). The Toro Canyon Community Plan and 1993 Goleta Community Plan each provide a clear matrix to show the relative impacts that each alternative would have on existing conditions.

B.8-88

Furthermore, as mentioned above, the DEIR also concludes that neither of the alternatives would produce significant improvements in traffic conditions for intersections in the Storke Road and Hollister Avenue corridors. This is true even though doing so was the defining purpose behind each alternative. Consequently, these alternatives fail to meet CEQA requirements for choosing alternatives that are likely to substantially lessen significant impacts. *See* §15126.6(a).

B.8-89

5. **The DEIR Does not Include a Map of Current Zoning for Properties in the City of Goleta**

By failing to include a map of current zoning, the DEIR violates the CEQA requirement that land use impacts be measured against existing conditions.

CEQA requires that the impacts of each alternative be compared to both existing conditions (often called the baseline), and to each other. *See Environmental Planning & Info. Council*, 131 CA3d 350 (finding EIR for general plan amendment inadequate because it primarily compared the impacts of buildout under the proposed amendment to impacts of buildout under the current general plan, rather than to existing conditions as required by CEQA). Thus, because the DEIR fails to include a map of current zoning, there is no way for a reader to determine the extent of land use change contemplated by the alternatives and proposed action.

B.8-90

Figures 5-1 & 5-2, Land Use Plans for Alternatives 1 & 2 respectively, are intended to show the land use changes proposed by Alternatives 1 and 2. These changes, however, are not overlaid on a current zoning map, but on the zoning map as proposed to be modified under the proposed project. This assertion cannot be verified for certain, at least not by relying on the DEIR, because the DEIR, oddly enough, contains no map of existing zoning. This is a major omission and one that should be rectified. The closest map is Figure 3.10-1, but this only shows “Existing Land Uses,” not actual zoning. We know Figures 5-1 and 5-2 do not show existing zoning because they both designate, for

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example, a strip of land on Bacara's property as "Open Space / Passive Recreation," even though the entire property is actually zoned CV.<sup>3</sup> The point for present purposes is to show yet another example where the alternatives analysis is flawed because, here it is not showing changes from existing conditions.

B.8-90

#### 6. Alternatives Conclusion

The DEIR's alternatives analysis suffers from a lack of internal consistency, specificity, and general compliance with basic CEQA requirements, such as correctly analyzing the "no project" alternative and providing a reasonable range of alternatives. We believe that CEQA requires the "no project" alternative to be buildout under an existing General Plan. The City cannot avoid this requirement simply by not adopting an interim General Plan. Until these deficiencies are corrected and the public given adequate time to review the changes, the DEIR is incomplete and inadequate.

B.8-91

#### CONCLUSION

We have specifically commented on what we perceive as deficiencies contained in the proposed GP/CLUP and the DEIR. It is apparent to us that these documents attempt to systematically target the lawful Completion Stage of Bacara Resort & Spa. The GP/CLUP, if adopted without substantial modifications, would constitute an unwarranted and intentional interference with a fully mitigated project site and with a planned use for which a very substantial investment in development cost has been made. Many facilities and improvements were included in the existing Bacara Resort & Spa project in anticipation of the Completion Stage Project, e.g., 800 seat Ballroom, Technology Center with an 88 seat auditorium, 211 seat screening room, 42,000 square foot spa and three full service restaurants. It is our opinion that the GP/CLUP, if adopted in their present form, would constitute a targeted, intentional "taking" of our client's property without just compensation and would result in a substantial diminution in value to both the existing Resort and Bacara's Completion Stage Project.

B.8-92

Further, the DEIR in its present form is woefully inadequate under CEQA's standards. The deficiencies are of a substantive nature and cannot be changed without additional public input and recirculation.

The adoption of the proposed GP/CLUP and DEIR, in their present form, would constitute a prejudicial abuse of discretion largely motivated by a political decision to block any previous planned expansion of the Resort. As the Supreme Court of the State

<sup>3</sup> It is our understanding that the GP/CLUP Maps have been changed as a result of a hearing held by the City on July 11, 2006; however Figures 5-1 and 5-2 have not been similarly revised and provided to the public in conjunction with the DEIR.

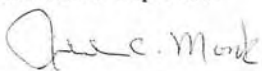
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of California previously held in a landmark decision which enabled the Resort to go forward: “. . . we caution that rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, at p. 576.

B.8-92

Respectfully submitted,

HOLLISTER & BRACE  
A Professional Corporation

By   
Richard C. Monk

RCM/sp  
cc: B.J. Hoppe

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**Response to Comment B.8-1**

Refer to response to comment B.8-2.

**Response to Comment No. B.8-2**

The commentator has requested that all future projects be included in the EIR analysis. The EIR addresses the impacts of all potential future development within the City boundary that is allowed by the GP/CLUP. Only projects located outside of the City limits (i.e., City of Santa Barbara, Santa Barbara County, USCB) are included in Table 3-1.

**Response to Comment No. B.8-3**

The commentator is correct in noting that there is no explanation for “Method 2” in Section 3.03 or Section 3.03.1 of the EIR. Section 3.03.1 has been revised to clarify the methodology used to evaluate cumulative impacts. The cumulative impact analysis comprises: (1) the citywide impact analysis from full buildout of the proposed GP/CLUP; and (2) past, present, and reasonably foreseeable projects located outside of the City limits within City of Santa Barbara Municipal Airport, Santa Barbara County from Highway 154 to the eastern City boundary, and from Gaviota to the western City boundary and UCSB. These projects are identified in Table 3-1.

**Response to Comment No. B.8-4**

See response to comments B.8-2 and B.8-3.

**Response to Comment No. B.8-5**

See response to comment B.8-2.

**Response to Comment No. B.8-6**

See response to comment B.8-3.

**Response to Comment No. B.8-7**

See response to comment B.8-3.

**Response to Comment No. B.8-8**

See response to comment B.8-2.

**Response to Comment No. B.8-9**

See response to comment B.4-11.

**Response to Comment No. B.8-10**

The commentator requests that a table be added to the FEIR identifying policies relevant to aesthetic resources, and that Policies VH 5 and VH 6 be added to the referenced list of “Visual and Historic Resource Element Policies” listed in Section 3.1.3.2 in the FEIR.

The City does not believe that addition of a policy summary table, as suggested by the commentator, is warranted. However, the text in FEIR Section 3.1.3.2 has been modified to include Policies VH 5 and VH 6.

#### **Response to Comment No. B.8-11**

The commentator notes that GP/CLUP Figure 6-1 was modified so as to designate a “Scenic Corridor” on a portion of the Bacara property, and that such designation, if adopted, will constitute a regulatory “taking” of property.

In response, the commentator is directed to GP/CLUP Figure 6-1 and FEIR Figure 3.1-1. A “scenic view” symbol is located at the beach adjacent to the Bacara property. A scenic corridor does not occur at this location as the commentator suggests. Regarding the commentator’s assertion that the scenic view symbol constitutes a “taking,” refer to GP/CLUP Policy VH 1.2, “Scenic Resources Map.” Views identified from mapped locations will be protected by minimizing any impairment that could result from new development. Policy VH 1.3 describes compatible development practices. The commentator’s assertion regarding a “taking” is both unsubstantiated and irrelevant in the context of a programmatic-level planning EIR.

#### **Response to Comment No. B.8-12**

The commentator requests that a visual resources impact methodology section be included in the FEIR, similar to that included in Section 3.6.3.4 of the DEIR.

The impact assessment methodology used to analyze potential environmental impacts in Sections 3.1 through 3.13, and Chapter 4.0, is included in Section 3.02.3, Project Impacts and Mitigation. In addition, each impact section contains a discussion of significance criteria or thresholds of significance that were used to evaluate GP/CLUP policies. Lead agencies are free to develop or use any impact methodology regarding assessment of the environmental effects of a proposed project. The methodology presented for Geology, Soils, and Mineral Resources in DEIR Section 3.6.3.4 is unique to that environmental discipline. The methodology used to evaluate Visual Resources is defined by comparing the potential visual effects of the GP/CLUP to the visual resources significance criteria presented in Section 3.1.3.1.

#### **Response to Comment No. B.8-13**

The commentator alleges that the conflicting designations of agriculture and visitor-serving commercial have been applied to the Bacara Resort & Spa. The commentator may be misinterpreting Figure 3.2-2 and its relevance to the land use for the Bacara Resort & Spa property. Figure 3.2-2 merely shows the existing farmland designation as mapped by the State Department of Conservation Farmland Mapping and Monitoring Program. Neither this figure nor the State’s designation change the zoning or the land use of the site. The City does not intend to change the visitor-serving commercial designation of the site to agriculture.

#### **Response to Comment No. B.8-14**

The commentator requests that the Agriculture section of the EIR include an impact assessment methodology section. An impact assessment methodology has been added to the FEIR as Section 3.2.3.3.

**Response to Comment No. B.8-15**

The commentator has requested an impact assessment methodology section for the Air Quality section. Comment noted. The discussion of the approach and methods has been included in the Final EIR.

**Response to Comment No. B.8-16**

See responses to comments A.2-4 and A.2-5.

**Response to Comment No. B.8-17**

See response to comment B.6-8.

**Response to Comment No. B.8-18**

The commentator has requested that the EIR include all GP/CLUP policies that will mitigate Impact 3.3-4. The clarifications to the information in Impact 3.3-4 are noted. The proposed GP/CLUP contains goals, policies, and actions that address preventing potential impacts on air quality. The air quality related goals and policies are discussed in Section 3.3.3.2. The FEIR reflects additional information applicable to the operation stationary sources discussion. Please note that the additional information does not result in any change in the analysis or impact conclusions contained in the EIR.

**Response to Comment No. B.8-19**

See response to comment B.6-7.

**Response to Comment No. B.8-20**

See response to comment B.6-8.

**Response to Comment No. B.8-21**

The commentator states the opinion that the designation of ESHA is overly broad and devoid of scientific basis. The GP/CLUP definition of ESHA is based upon the Coastal Commission definition of ESHA. ESHA mapping was based on a review of existing environmental documents, resource agency databases, and through an independent mapping effort by a City-retained consultant (Jones & Stokes). The mapping methods are based on accepted professional standards for the identification of habitat types based on characteristics visible in aerial imagery. As provided for in CEQA, the biological studies were performed on a level commensurate with this program analysis; site-specific analysis may assist in further refining the boundaries of the ESHA designation. The City directs the commentator to Policies CE 1.3 and 1.5. These policies allow revisions to the map of ESHAs based on site-specific biological studies.

**Response to Comment No. B.8-22**

The commentator alleges that the addition of beach and shoreline resources to the list of ESHAs in the city is inaccurate. EIR Section 3.4.1.2 describes habitat types in the City, including southern foredunes, southern dune scrub, and sand (which all have beach components). Table



3.4-1 and the corresponding text identify southern foredunes and southern dune scrub as ESHA; a portion of sand areas also is identified as ESHA (the area included in the critical habitat designated for western snowy plover). The addition of “marine resources” and “beach and shoreline resources” to the list of ESHA types to Table 4-2 and the text in the GP/CLUP does not change the baseline information for the analysis of biological impacts and does not substantially change the amount or type of ESHAs identified in the EIR.

#### **Response to Comment No. B.8-23**

The commentator has requested clarification regarding discrepancies between figures in the EIR and the GP/CLUP. As indicated in the introduction to EIR Section 3.4 and on Figure 3.4-2, the map in the DEIR showing ESHA habitat types in the City was produced by merging three datasets: the 2004 aerial imagery interpretation conducted by Jones & Stokes in April through May 2006, the 2004 habitat mapping for the area covered by the Ellwood-Devereux Coast Open Space and Habitat Management Plan, and the map of designated ESHAs in the Conservation Element of the GP/CLUP. In EIR Figure 3.4-2, areas are identified as ESHAs if they meet the ESHA definition in Policy CE 1-2, are identified in Policy CE 1-3 as a designated ESHA, or are listed as an ESHA on Table 4-2 in the GP/CLUP.

In response to comments on both the EIR and GP/CLUP, the City has revised the DEIR and GP/CLUP maps showing ESHAs and special status species. The revised maps are now consistent with one another. See response to comment B.1-3 for details regarding revisions.

In addition, the EIR text preceding Section 3.4.1 has been revised to add more detail about the methods used in the aerial imagery mapping. The methods are based on accepted professional standards for the identification of habitat types based on characteristics visible in aerial imagery.

#### **Response to Comment No. B.8-24**

See response to comment B.8-23.

#### **Response to Comment No. B.8-25**

The commentator has requested site-specific analysis of ESHAs. As stated in EIR Section 3.4.3.3, the EIR considers potential impacts to biological resources in terms of habitat impacts, species impacts, impacts to wildlife linkages, impacts to existing preserves and approved conservation programs, and cumulative and residual impacts. Impacts and mitigation are considered on a program level, which is the appropriate approach under CEQA for analysis of a regulatory plan or program. For purposes of analyzing biological impacts, all ESHAs identified in Figure 3.4-2 were treated as *sensitive* habitats as that term is used in Appendix G of CEQA Guidelines and cited in EIR Section 3.4.3.1 under “CEQA Thresholds.” This approach is consistent with CEQA Guidelines policies because it applies a broad definition of sensitive resources and thereby encompasses potential effects to a broad array of biological resources. The approach also is consistent with Policy CE 1.1 because the ESHAs depicted in Figure 3.4-2 and on the revised figure are based on professional biological evaluations. It should be noted that Policy CE 1.1 does not include the wording “thorough biological evaluation” as implied in comment B.8-25 and B.8-26. Policy CE 1.1 establishes the definition of ESHA as “any areas that through professional biological evaluation are determined to meet the following criteria.” It also should be noted that Policies CE 1.3 and CE 1.5 provide for and anticipate revisions to the GP/CLUP map of ESHAs based on site-specific biological studies. The analysis in the EIR and

the changes made to Section 3.4 in response to comments are consistent with the Conservation Element policies as well as CEQA Guidelines.

**Response to Comment No. B.8-26**

See response to comment B.8-23.

**Response to Comment No. B.8-27**

See response to comment B.8-23.

**Response to Comment No. B.8-28**

The commentator has requested the inclusion of an impact assessment methodology section for the Biological Resources section. In the EIR, the text preceding “Class I Impacts” in section 3.4.3.3 described the methods and assumptions used in the analysis of biological impacts. The format and approach is consistent with other sections of the EIR that do not assign a separate subheading to the description of methods.

**Response to Comment No. B.8-29**

The commentator states the opinion that biology-related policies in the Conservation, Open Space, and Land Use Elements are overly broad, devoid of supporting scientific basis, or otherwise illegal and therefore are not proper mitigation measures. Specific details regarding deficiencies were not identified in this particular comment. City staff notes that the GP/CLUP is intended to *guide*, not define, long-range planning in Goleta. While the plan establishes the City’s policy, zoning code will set forth detailed standards and regulations for development activities in a manner consistent with the policies of the plan. As stated in the State CEQA Guidelines, “the degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” As the CEQA Guidelines further explain, an EIR on the adoption of a local general plan will necessarily be less detailed than an EIR on a construction project because the effects of the general plan implementation cannot be predicted with greater accuracy (Section 15146). The GP/CLUP policies provide adequate guidance for the protection and management of natural resources, consistent with the requirements of a General Plan. The EIR uses the protective policies, where applicable, that reduce impacts in a manner consistent with a programmatic document. The EIR anticipates that later actions will require detailed CEQA analysis that will necessarily have detailed discussion of specific mitigation measures where appropriate.

**Response to Comment No. B.8-30**

The commentator states disagreement with the location of the ESHA designation on the Bacara property and states the opinion that the Policy CE 1.2 designation of ESHA is overly broad and devoid of scientific basis. The GP/CLUP definition of ESHA is based upon the Coastal Commission definition of ESHA. ESHA mapping was based on a review of existing environmental documents, resource agency databases, and through an independent mapping effort by a City-retained consultant (Jones & Stokes). The mapping methods are based on accepted professional standards for the identification of habitat types based on characteristics visible in aerial imagery. As provided for in CEQA, the biological studies were performed on a level commensurate with this program analysis; site-specific analysis may assist in further refining the boundaries of the ESHA designation. Regarding the commentator’s assertion that

the ESHA map will limit future possible development on the Bacara property, the City directs the commentator to Policies CE 1.3 and 1.5. These policies allow revisions to the map of ESHAs based on site-specific biological studies.

#### **Response to Comment No. B.8-31**

The commentator reiterates the opinion that the Policy CE 1.2 designation of ESHA is overly broad and devoid of scientific basis, and suggests that Policy CE 1.2, and GP/CLUP Figures 4-1 and 4-2, if adopted, would constitute a regulatory “taking” of Bacara’s property. See response to comment B.8-30.

#### **Response to Comment No. B.8-32**

The commentator states the opinion that Policy CE 1.9 is unduly onerous, burdensome, and inflexible. As stated in response to comment B.8-29, the GP/CLUP policies provide adequate guidance for the protection and management of natural resources, consistent with the requirements of a General Plan. The DEIR uses the protective policies, where applicable, that reduce impacts in a manner consistent with a programmatic document. The EIR anticipates that later actions will require detailed CEQA analysis that will necessarily have detailed discussion of specific mitigation measures where appropriate. Such analyses and mitigation would be anticipated to include more-detailed information regarding species identification and ESHA boundaries applicable to a given project site.

#### **Response to Comment No. B.8-33**

The commentator states opposition to the 100-foot setback from the lateral extent of riparian vegetation. This opposition is noted. The 100-foot buffer is consistent with the Coastal Commission setback and City staff believe that that a consistent buffer in both the inland and coastal areas is a reasonable approach to resource management.

#### **Response to Comment No. B.8-34**

The commentator alleges that the area identified on GP/CLUP Figure 4-1 as the Monarch Butterfly Roosting Habitat on Bacara’s property exceeds that identified in site-specific environmental analyses prepared in connection with approval of the hotel development, and suggests that Policy CE 2.2 and Figure 4-1, if adopted, would constitute a regulatory “taking” of Bacara’s property. See response to comment B.8-30.

#### **Response to Comment No. B.8-35**

The commentator observes that GP/CLUP Figure 3-1 shows on the Bacara Resort & Spa property an additional access point proposed directly east of the existing vertical accessway, with the southern terminus identified as “Proposed Drop-Off Only.” The commentator alleges that usage of the existing Emergency Access Road in such a manner would be inconsistent with the Fire Department’s emergency access standards, and would also violate Condition of Approval No. 25 for the Bacara property.

The comment is on the GP/CLUP and does not pertain to the DEIR.

**Response to Comment No. B.8-36**

The commentator understands that it was only after the submittal of an application by Bacara that the City modified GP/CLUP Figure 3-1 and Policy PS 2.5a to identify and accommodate the subject "Proposed Drop-Off Only" point.

See response to comment B.8-35.

**Response to Comment No. B.8-37**

The commentator objects to the last sentence of GP/CLUP Policy OS 1.10.d related to the permitted hours of public use. The commentator presents a summary of the hours of public use of beach parking lots, and suggests that the City's proposed 24-hour operation is inconsistent with other Coastal Commission hotel approvals.

See response to comment B.8-35.

**Response to Comment No. B.8-38**

The commentator observes that GP/CLUP Policy OS 2.3 states that existing vertical public access facilities within the Bacara Resort property shall be protected and preserved, and notes that there are no existing vertical public access *facilities* at Bacara.

See response to comment B.8-35. Contrary to the commentator's opinion, both the County of Santa Barbara and the California Coastal Commission required recordation of offers to dedicate (OTDs) for vertical coastal access, including a parking lot and a pathway to the beach.

**Response to Comment No. B.8-39**

The commentator understands that it was only after the submittal by Bacara of a project application that the City modified GP/CLUP Figure 3-1 to include the proposed relocation of the parking lot to the Venoco site. See response to comment B.8-35.

**Response to Comment No. B.8-40**

The commentator requests that the existing coastal access route be relocated pursuant to Bacara's pending project application submitted in February 2005.

See response to comment B.8-35.

**Response to Comment No. B.8-41**

The commentator objects to the last sentence of GP/CLUP Policy 2.8.b related to the permitted hours of public use. The commentator presents a summary of the hours of public use of beach parking lots, and suggests that the City's proposed 24-hour operation is inconsistent with other Coastal Commission hotel approvals.

Comment noted. See response to comment B.8-35.

**Response to Comment No. B.8-42**

The commentator notes that – regarding GP/CLUP Policy OS.3.1.b – access to Bacara is provided by the western terminus (and a private segment) of Hollister Avenue.

Comment noted. See response to comment B.8-35.

**Response to Comment No. B.8-43**

The commentator observes that GP/CLUP Figure 3-1 shows on the Bacara Resort & Spa property an additional access point proposed directly east of the existing vertical accessway, with the southern terminus identified as “Proposed Drop-Off Only.” The commentator alleges that usage of the existing Emergency Access Road in such a manner would be inconsistent with the Fire Department’s emergency access standards, and would also violate Condition of Approval No. 25 for the Bacara property. Finally, the commentator raises concerns related to the City’s modification of OS 3.2 on June 28, 2006.

This comment is identical to comment B.8-35; see response to that comment.

**Response to Comment No. B.8-44**

The commentator observes that GP/CLUP Policy OS 4.2, Adoption of Trail Plan Map, proposes to change the designation of the southern portion of Bacara’s property to “Open Space/Passive Recreation.” The commentator alleges that proper notification to change the land use designation from its existing “Visitor Serving Commercial” has not occurred. The commentator considers this change unacceptable and suggests that Policy OS 4.2, if adopted, would constitute a regulatory “taking” of Bacara’s property.

This comment is on the GP/CLUP and does not pertain to the EIR. The final land use plan map of the GP/CLUP was revised to designate the entire site as Visitor-Serving Commercial.

**Response to Comment No. B.8-45**

The commentator observes that GP/CLUP Figure 7-5 shows a portion of the Bacara property as “Parks, Open Space Areas and Private Recreational Areas,” and alleges that that proper notification to change the land use designation from its existing “Visitor Serving Commercial” has not occurred. The commentator considers this change unacceptable.

**Response to Comment No. B.8-46**

The commentator alleges that identification of selected areas of Bacara’s property as “Regional Open Space” in the Open Space Element (see response to comment B.8.44) is erroneous. The commentator further observes that GP/CLUP Figure 3.2 identifies a band of regional open space north of the coastal trail.

**Response to Comment No. B.8-47**

The commentator states the opinion that the Bacara access road referenced in GP/CLUP Policy OS 4.4 as the “Juan Bautista de Anza National Historic Trail” is more commonly known as the western terminus of Hollister Avenue.

This is a comment on the GP/CLUP and does not pertain to the EIR.

**Response to Comment No. B.8-48**

The commentator alleges that identification of selected areas of Bacara's property as "Parks, Open Space Areas and Private Recreational Areas" in GP/CLUP Figure 3-5 is erroneous. The commentator further alleges that Figure 3-5 shows ESHAs in areas not substantiated by environmental documents. See responses to comments B.8-30 and B.8-47.

**Response to Comment No. B.8-49**

The commentator alleges that GP/CLUP Figure 3-5 identifies areas of Bacara as open space, when such areas are occupied by hotel buildings or involved in hotel operations.

This is a comment on the GP/CLUP and does not pertain to the EIR. The comment is erroneous in that open space definitions do not apply to the location occupied by structures.

**Response to Comment No. B.8-50**

The commentator questions the legality of GP/CLUP Policy OS 7.8, which requires open space areas in addition to public park and open space land required to be dedicated pursuant to the Quimby Act or other state or local statutes.

This is a comment on the GP/CLUP and does not pertain to the EIR.

**Response to Comment No. B.8-51**

The commentator states the opinion that it is impossible to determine the efficacy or appropriateness of GP/CLUP Policy LU 1.6, because: 1) the Conservation Element does not provide sufficient facts to support the standards applicable to development policies set forth in GP/CLUP Policy CE 1.9; and 2) the City's zoning code as not yet been created.

See response to comment B.8-50.

**Response to Comment No. B.8-52**

The commentator understands that it was only after the submittal by Bacara of a project application that the City proposed GP/CLUP Policy 1.11.a to specifically prohibit "time shares, fractional ownerships, and similar ownership forms for hotels and other transient lodging uses." The commentator alleges that Policy 1.11.a, if adopted, would constitute a regulatory "taking" of Bacara's property. See response to comment B.8-50.

**Response to Comment No. B.8-53**

The commentator understands that it was only after the submittal by Bacara of a project application that the City proposed GP/CLUP Policy 3.6 to specifically prohibit "time shares, fractional ownerships, and similar ownership forms for hotels and other transient lodging uses." The commentator suggests that Policy 3.6, if adopted, would constitute a regulatory "taking" of Bacara's property.

See response to comment B.8-50.

**Response to Comment No. B.8-54**

The commentator alleges that requirements a-h of GP/CLUP Policy 9.1 are internally inconsistent, and that Policy 9.1b's restrictions on the number of transient lodging units or rooms is unreasonably restrictive. The commentator suggests that Policy 9.1b, if adopted, would constitute a regulatory "taking" of Bacara's property.

See response to comment B.8-50.

**Response to Comment B.8-55**

The commentator requests the Bacara properties (APN 079-200-012 & 079-200-013) to not be bifurcated with the two land use designations "Visitor Serving Commercial" and "Open Space – Passive Recreation." The EIR has been revised to reflect the City's approved revisions to the GP/CLUP and GP/CLUP Land Use Map which so as to designate the entirety of the Bacara site as "Visitor-Serving Commercial" to correspond to the existing zoning of the property.

**Response to Comment B.8-56**

See response to comment B.8-55.

**Response to Comment No. B.8-57**

The commentator has requested that an Impact Assessment Methodology section be added to the FEIR. This change is incorporated as a subheading under Section 3.7.3.3 in the FEIR.

**Response to Comment No. B.8-58**

The commentator is concerned that Figure 3.10-3 identifies a designation "Regional Open Space" on the Bacara's existing "parking lot, access path, snack bar, etcetera." The commentator does acknowledge that the parking lot is subject to public use through an "Offer to Dedicate."

The commentator also mentions that such a designation would conflict with a proposed project that has been deemed incomplete by the City. Existing conditions allow public access from the parking lot to Haskell's Beach via an accessway subject to an "Offer to Dedicate" (OTD) This public accessway is consistent with the "Regional Open Space" designation on the Park and Recreation Plan Map. Due to the scale of Figure 3.10-3, and the lack of structures on the map, it is understandable how one may believe the "snack bar" is included within the "Regional Open Space" land use designation, but this is not the case. The GP/CLUP Land Use Plan designates the entirety of the Bacara site as "Visitor-Serving Commercial." The Open Space Element's Park and Recreation Plan Map designates the portions of the site subject to OTDs as Regional Open Space.

**Response to Comment No. B.8-59**

The commentator asks for Table 3.10-2 to be modified so that Haskell's Beach is identified as private. The commentator is incorrect in stating that Haskell's Beach is a private beach. Existing conditions allow public access from the parking lot, subject to an "Offer to Dedicate," to Haskell's Beach. See response to comment B.8-58.

**Response to Comment No. B.8-60**

The commentator has requested that the EIR include an impact assessment methodology section for the Land Use and Recreation section. According to CEQA, “An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible” (CEQA Guidelines Section 15151). Because the document is written for decision-makers and public review, “highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR” (CEQA Guidelines Section 15147). The impact assessment methodology used to analyze potential environmental impacts in Sections 3.1 through 3.13, and Chapter 4 is included in Section 3.02.3, Project Impacts and Mitigation. In addition, although not explicitly identified under a separate heading as was done in Section 3.6.3.4, each impact section contains a discussion of the methodology used to determine significance criteria or thresholds of significance that were used to in the evaluation evaluate of the GP/CLUP policies. In addition, detail regarding the impact analysis for several resource sections can be found in relevant appendices to the EIR. Lead agencies are free to develop or utilize any impact methodology regarding assessment of the environmental effects of a proposed project. Neither CEQA nor the CEQA Guidelines contain any specific requirement for how or at what level of detail impacts must be evaluated.

**Response to Comment No. B.8-61**

The commentator has requested that the EIR identify all appropriate policies related to this impact. The EIR identifies applicable GP/CLUP policies/ mitigation measures for all impacts, where feasible mitigation measures exist. Potential environmental effects that cannot be avoided, even after mitigation, are discussed within each impact section and are also presented in DEIR Section 6.2. The commentator has not identified any alleged missing GP/CLUP policies that could reduce potential environmental impacts associated with implementation of the GP/CLUP.

**Response to Comment No. B.8-62**

The commentator states the opinion that there are inconsistencies between the GP/CLUP elements. The GP/CLUP addresses the distribution of land uses, identifies needed transportation and other public facilities, addresses housing needs, and provides protection for environmental resources in an integrated and consistent manner. The analysis on the record supports the conclusion that there are no inconsistencies among the various policies and elements. Because this comment raises the inconsistency issue but does not cite any specific examples, the commentator is referred to the responses to other comments regarding alleged specific inconsistencies within the General Plan.

**Response to Comment No. B.8-63**

Refer to response to comment B.8-62.

**Response to Comment No. B.8-64**

See response to comment B.7-3 and B.7-4.



**Response to Comment No. B.8-65**

See response to comments B.8-62 and B.8-63.

**Response to Comment No. B.8-66**

See response to comment B.8-55.

**Response to Comment No. B.8-67**

The commentator has requested that the analysis of Impact 3.10-4 be revised to substantiate the impact conclusion. This change has been made in the FEIR.

**Response to Comment B.8-68**

The commentator objects to the proposed location of a Future Fire Station as proposed in GP/CLUP policy PF 3.2. The mapped location on EIR Figure 3.12-1 and GP/CLUP Figure 8-1 is a symbol used to identify the general location for the station. The new fire station will be located in Western Goleta, per the policy. In any event, the comment is on the GP/CLUP, not the EIR.

**Response to Comment B.8-69**

Refer to response to comment B.8-60.

**Response to Comment B.8-70**

The commentator is correct in noting that not all applicable Land Use Element policies are identified on page 3.10-10, Section 3.12.3.2, Discussion of Relevant GP/CLUP Policies. Missing or revised Land Use Element policies have been added to the section.

**Response to Comment B.8-71**

The commentator is correct in noting that not all applicable Safety Element policies are identified on page 3.10-10, Section 3.12.3.2, Discussion of Relevant GP/CLUP Policies. Missing or revised Safety Element policies have been added to the section.

**Response to Comment B.8-72**

Refer to response to comment B.8-68.

**Response to Comment No. B.8-73**

See response to comment B.6-19.

**Response to Comment No. B.8-74**

See responses to comments B.6-20 and 21.

**Response to Comment No. B.8-75**

See responses to comments B.6-22 through 24.

**Response to Comment No. B.8-76**

See response to comment B.6-25.

**Response to Comment No. B.8-77**

See response to comment B.6-26.

**Response to Comment No. B.8-78**

See response to comment B.6-27.

**Response to Comment No. B.8-79**

See response to comment B.6-28.

**Response to Comment No. B.8-80**

See response to comment B.6-35.

**Response to Comment No. B.8-81**

See response to comment B.6-29.

**Response to Comment No. B.8-82**

See response to comment B.6-30.

**Response to Comment No. B.8-83**

See responses to comments B.6-31 and 32.

**Response to Comment No. B.8-84**

See response to comment B.6-33.

**Response to Comment No. B.8-85**

See response to comment B.6-34.

**Response to Comment No. B.8-86**

See response to comment B.6-35.

**Response to Comment No. B.8-87**

See response to comment B.6-36.

**Response to Comment No. B.8-88**

See response to comment B.6-37.

**Response to Comment No. B.8-89**

See response to comment B.6-38.

**Response to Comment No. B.8-90**

See responses to comments B.6-39 and 40.

**Response to Comment No. B.8-91**

See response to comment B.6-43.

**Response to Comment No. B.8-92**

The commentator provides a conclusory statement summarizing their allegations of deficiencies in the proposed GP/CLUP and DEIR, and reiterates their opinion that the GP/CLUP, if adopted in its present form, would constitute a “taking” of Bacara’s property. See responses to comments B.8-1 through 91.