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June 30, 2010

BY HAND DELIVERY

Honorable Janet Wolf and Members of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Your Meeting of July 6, 2010
Proposed Changes to Land Use and Development Code

Dear Chair Wolf and Honorable Supervisors:

This letter is submitted on behalf of owners of property in the Coastal Zone, including the Hollister Ranch Owners' Association which is comprised of the owners of all parcels within Hollister Ranch, the Ranches at Point Conception, and other owners of agricultural property along the Gaviota Coast and in the Coastal Zone.

This group of property owners strongly objects to the substantive code changes proposed by the Coastal Commission staff. These owners believe the modifications constitute a change in zoning that requires environmental review, and are also concerned regarding the lack of public notice, lack of information, and lack of public participation which are contrary to the public policy provisions of the Coastal Act.

We offer the following specific comments for your consideration:

Lack of Public Participation

The LUDC reformatting project has been in the works for nearly eight years. The Board's original direction to staff was simple: create a user-friendly zoning code that integrates all zoning ordinances into a single, well-organized and accessible format. The Board also directed staff that the code reformatting should not include any substantive changes to land use policy.

Your staff followed those instructions. During the four years consumed in preparing the LUDC, County staff held numerous well publicized hearings, workshops and other public information sessions to review the details of the new code. The public – including property owners and others who would have to comply with the new code – were given a full and fair opportunity to review the proposed code language and satisfy themselves that the code would not cause any substantial burden on their property.

After the proposed LUDC was submitted to the Coastal Commission, the entire picture changed. The Coastal Commission staff took the LUDC submission as an opportunity to demand substantive changes to County land use policy. The changes were released to the public for the first time on March 30, 2010, in a document that is 265 pages long (plus voluminous attachments).

To its credit, the County asked that the Coastal Commission defer consideration of these changes until the County and the public could digest them. The Commission postponed its hearing from April 14 to August 11.

Since March 30, 2010, County staff has produced a 25-page report for the Planning Commission. Staff has made a presentation to the Agricultural Advisory Commission, the Planning Commission and the Montecito Planning Commission. It has also met with the Gaviota Planning Advisory Committee.

To our knowledge, since March 30, 2010:

No notice has been mailed to owners or lessees of property affected by the zoning code changes.

No community workshops have been held or other substantial outreach efforts undertaken.

No detailed information has been published in the newspaper.

Not surprisingly, very few people seem to know about the proposed zoning code amendments. This process does the County little credit, and is likely to lead to a long series of disputes with surprised and angry property owners as they discover the impact of the LUDC changes in the years ahead. It is the County that will end up dealing with those angry constituents and defending the litigation that inevitably results from this type of process. In short, the County will be left holding the bag, both politically and legally.

It bears noting that the history of these zoning code amendments contravenes the public participation policy of the Coastal Act:

The legislature further finds and declares that **the public has a right to fully participate in decisions affecting coastal planning**, conservation, and development; that achievement of sound coastal conservation and development is dependent upon **public understanding and support**; and that the continuing planning and implementation of programs for coastal conservation and development should include **the widest opportunity for public participation**. [Public Resources Code § 30006, emphasis added.]

We note the irony in the fact that the Coastal Commission staff expressed concerns about the County's commitment to public participation in its January 9, 2009 letter finding the County's LUDC submission to be "incomplete." That letter comments on the process used by the County prior to submitting the LUDC to the Coastal Commission, and includes the following:

"1.2 *Public Noticing and Public Participation (Section 13552(a), 13515).*

Section 13515 requires that local governments have procedures in place to provide the public and affected agencies with maximum opportunity to participate in the amendment process, with certain minimum standards required for providing such opportunities specified further through that Section 13515. Section 13552(a) requires LCP amendment submittals to include a summary of the measures taken to provide those opportunities. The following information regarding public noticing and public participation is necessary for staff to complete its review of the proposed amendment submittal:

"1.2.1 The copy of the hearing notice(s) provided for STB-MAJ-1-08-A, -B, and -D LCP Amendment components does not indicate the date of publication or the newspaper or other media where such notice was published, as required by subdivision (d) of Section 13515. In the case of STB-MAJ-1-08-C, no evidence of notification was found in the submittal. Please provide evidence of publication of these notices for all hearings regarding the LCP amendment, indicating where/when the notice was published.

"1.2.2 Please provide a list of interested parties (and contact information) for each of the four LCP Amendment components identified above (STB-MAJ-1-08-A through -D), including any members of the public, organizations, or agencies appearing at any hearing or contacted for comment on the LCP amendment, as required by Section 13552(a). Please provide electronic copies in addition to the hard copies so that we may provide further notice of Commission hearings to the interested parties. Additionally, please provide any applicable hearing slips."

We respectfully suggest that the same public participation standards applied by the Coastal Commission staff to the County's submission should be applied in equal measure to the Coastal Commission's proposed modifications.

Santa Barbara County has a long history of encouraging public participation in land use policy making and decisions on individual projects. It is a cornerstone of the County's philosophy that emphasizes the need for broad public support for land use policies. A process that shortchanges public participation dishonors that tradition, and will encourage disrespect for the policies that emerge from such a flawed process.

The remedy is simple:

Inform the Coastal Commission that Santa Barbara County cannot and will not be stampeded into fundamental policy changes without full and fair public participation.

Appoint a staff and citizens working group as you did during the Zoning Ordinance Reformatting Project (ZORP) to examine the changes and inform the affected property owners of the impacts they will experience.

Allow the people affected by the changes to have a meaningful role in deciding whether or not they will become County policy.

Provide for environmental review to the extent that the public participation process results in support for modifications to the LUDC that constitute a change in allowed land uses.

Failure to Comply with CEQA

Under state law, this amendment to the County's zoning ordinance is a "project" for CEQA purposes:

"Project" means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

- (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, **enactment and amendment of zoning ordinances**, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Section 65100-65700. [Emphasis added.]

Since the LUDC constitutes an "amendment" to the County zoning ordinance, it plainly qualifies as a "project" under CEQA.

There are a number of ways in which the proposed amendments to the LUDC could have an impact on the environment, including:

New Use Restrictions. The proposed modifications to the LUDC will eliminate a long list of uses as "allowable" uses under the code. As a result, existing uses will become non-conforming, and subject to the County's strict limits on expanding non-conforming uses. The LUDC clearly states that it seeks to eliminate such uses:

"It is the intent of this Development Code, with limited specified exceptions, to:

- a. Discourage the long-term continuance of these nonconformities, providing for their eventual elimination, but to permit them to exist under the limited conditions outlined in this Chapter." [Sec. 35.101.010,B,1.]

The environmental impact of eliminating certain uses from certain zones should be examined and, pursuant to CEQA, such an environmental review is required as to any "enactment and amendment of zoning ordinances."

Agricultural Intensification. The proposed modifications to the LUDC would, for the first time, require a coastal permit for the intensification of agricultural uses (e.g., conversion of grazing land to orchards, expansion of grazing operations into areas that historically have not been grazed). To the extent that this new requirement serves as a disincentive for farmers and ranchers to expand their operations, the net result may be to increase the importation of food to the South Coast. The environmental impacts of this shift of agricultural production should be studied. In addition, it would be clearly inconsistent with the Coastal Commission staff's stated goals of supporting long-term agricultural viability.

There are dozens of other ways in which the proposed amendments to the LUDC may have environmental impacts. Compliance with CEQA requires that these impacts be disclosed and examined.

The Expansion of Coastal Commission Review

The proposed modifications to the Countywide LUDC would significantly expand the jurisdiction of the Coastal Commission over land use decisions in Santa Barbara County. The modifications require permits or permits with hearings for a wide range of uses for which such procedures are not currently required. As a result, the modifications vastly expand the appeals jurisdiction of the Coastal Commission, and thus many more projects will be appealable to the Commission.

The modifications that – for the first time – require permits or permits with hearings for a long list of land uses is based on a tenuous legal justification. The Coastal Commission staff asserts that the Coastal Act requires that the County's zoning ordinance identify a single "Principal Permitted Use" within each zone, and that all other uses be allowed only with a CDP issued after a hearing, and subject to appeal to the Coastal Commission. The effect of this one change is to vastly expand the "appeals jurisdiction" of the Coastal Commission to include all uses in the Coastal Zone that are not classified as "Principal Permitted Uses."

The most surprising aspect of the Coastal Commission's argument is that it is a **brand new** interpretation of a statute that has not changed in 34 years. During that time, the County's Article II zoning ordinance and numerous community plans were adopted. The current zoning ordinance and each of those community plans was approved by the County and certified by the Coastal Commission. The most recent was the Toro Canyon Plan, which was certified by the Coastal Commission in 2006.

During this entire period of interaction between the County and the Coastal Commission, the Coastal Act provision dealing with use regulation has not materially changed. It appears that the only change has been in the opinion of Coastal Commission staff, and the willingness of the Coastal Commission to aggressively pursue its own opinions and preferences.

The County Board of Supervisors has been the supreme authority with respect to zoning and general plan policymaking for many decades, and the people who elect the Board of Supervisors have good reason to expect the Board to vigorously defend that authority. If the County simply accepts the Coastal Commission's changes, it will be acceding to a loss of County sovereignty with respect to land use policymaking.

It bears noting that the County has strenuously resisted other efforts by the state to impose its preferred policies on the County. For example, the County has vigorously objected to the State's "fair share affordable housing" program which imposes on the County a duty to plan and zone for a certain number of affordable housing units. Those objections are partly grounded in the County's philosophy that local land use policies should reflect local needs and preferences. The Coastal Commission's proposed changes to the County zoning code do not respect those local needs and preferences.

We ask that the Board not relinquish its land use power to the Coastal Commission.

Conclusion

We respectfully ask that the Board of Supervisors send a letter to the Coastal Commission that declines to accept the proposed modifications to the LUDC and proposes that the County establish a staff and citizens committee to examine the proposed changes, explain them to the community, and then report its findings to the Board of Supervisors.

Thank you for considering these views.

Sincerely,

A handwritten signature in cursive script that reads "Jim Aitkenhead". The signature is written in black ink and is positioned above the printed name.

Jim Aitkenhead, President