Richard C. Monk
Steven Evans Kirby
Bradford F. Ginder
Paul A. Roberts
John G. Busby
Susan H. McCollum
Robert L. Brace
Marcus S. Bird
Peter L. Candy
Michael P. Denver
Kevin R. Nimmons
Sarah J. Berkus

Of Counsel
John S. Poucher
John B. Galvin

Hollister & Brace

a professional corporation
Since 1966
ATTORNEYS AT LAW

SANTA BARBARA OFFICE
1126 Santa Barbara St.
P.O. Box 630
Santa Barbara, CA 93102

TEL (805) 963-6711
FAX (805) 965-0329

SANTA YNEZ VALLEY OFFICE
2933 San Marcos Ave.
Suite 201
P.O. Box 206
Los Olivos, CA 93441

TEL (805) 688-6711
FAX (805) 688-3587

www.hbsb.com

May 29, 2014

VIA HAND DELIVERY & E-MAIL

Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Agenda Item No. 6
June 3, 2014 Board Hearing
Woolley Appeal
355 Ortega Ridge Road

Dear Honorable Board Members:

This office represents Robert and Karina Woolley who have appealed the Planning Commission's decision regarding the above matter.

As will appear more fully below, it is our legal opinion that P&D Staff and the County Planning Commission miscalculated the Maximum Floor Area ("MFA") for Appellants' proposed Project as being 4,912 square feet when, in fact, the correct MFA is 6,856 square feet. Words would have to be added to the unambiguous language of the County's Board of Architectural Review Guidelines for Summerland and the LUDC in order to support P&D Staff's and the Planning Commission's conclusion in violation of standard principles of statutory construction.

The primary consideration in the construction of a statute, ordinance or regulation is the determination of the intent of its adopting legislative body. (*Moyer v. Workmen's Compensation Appeals Board* (1973) 10 Cal.3d 222,230.) In determining the Legislative intent a court looks first to the language used by the Legislature, giving the words their ordinary and usual meanings. (*Tracy v. Municipal Court* (1978) 27 Cal.3d 760, 764.) As California courts have observed: "in construing a statute, the court 'cannot create exceptions, contravene plain meaning, insert what is omitted, omit what is inserted, or rewrite the statute.'" (*In re: Amanda D.* (1997) 55 Cal.App.4th

813, 821 [*quoting San Francisco Unified School Dist. v. San Francisco Classroom Teachers' Assoc.* (1990) 222 Cal.App.3d 146, 149].) Words should not be added to an unambiguous statute. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 155.)

> "Our analysis starts from the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent . . . . In determining intent, we look first to the words themselves . . . . When the language is clear and unambiguous, there is no need for construction . . . . When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*People v. Woodhead* 1987) 43 Cal.3d 1002, 1007-1008.)

The language of County's Board of Architectural Review Guidelines for Summerland ("Summerland Guidelines") in defining and treating "Floor Area Ratio ('FAR'), "Understories" and "Basements" is clear and unambiguous. For example, FAR is defined under the Summerland Guidelines (p. 15) as "the Floor Area Net of the structure divided by the Lot Area Net." Similarly, "Understories" is defined as "the position of the structure between the exposed finished floor and the finished grade (as defined by the latest edition of the Uniform Building Code.)" (Summerland Guidelines, p. 18) And, "Basements" are defined as "any usable or unused under floor space where the finished floor directly above is not more than four ft. above grade (as defined by the latest addition (sic) of the Uniform Building Code.)" (Summerland Guidelines, p.19.) The same provisions of the Summerland Guidelines are included in the County's Land Use and Development Code ("LUDC") as part of its Attachment 1.

Because the above provisions of the Summerland Guidelines and LUDC are clear and unambiguous, there is no need to resort to extrinsic aids such as the May 12, 1992 "Draft FAR Worksheet" to interpret their meaning nor the method of calculating FAR and MFA. Rather, the reviewer looks to the language used in the Summerland Guidelines and the LUDC giving the words their ordinary and usual meanings. *Tracy v. Municipal Court, supra,* at p. 764. As will appear more fully below, P&D Staff's and the Planning Commission's method of calculating FAR and MFA in the instant case conflicts with the plain language of the Summerland Guidelines and LUDC and is ultra vires. *Land Waste Management v. Contra Costa County Board of Supervisors* (1996) 222 Cal.App.3d 950, 959. An erroneous interpretation of County law rendered by P&D Staff and the Planning Commission is not binding on the Board of Supervisors. *Terminal Plaza Corp. v. City & County of San Francisco* (1986) 186 Cal.App.3d 814, 926, ("[T]he ultimate interpretation of the resolution is a question of law. We are [not] bound . . . by the construction given the resolution by the City.").

The Summerland Guidelines (p. 19) provide that understories exceeding four feet in height shall reduce the maximum FAR otherwise allowed by 10% to 33%. The proposed Project's finished floor is less than 6 inches above grade. Thus, the FAR reduction of excessive understories is not applicable in this case. However, in the instant case P&D Staff erroneously made an understory adjustment in violation of the Summerland Guidelines.

The Appellants' agents, Messrs. Woody and Garcia, have, in our opinion, correctly calculated the Project's MFA as being 6,856 square feet as demonstrated below. Appellant's lot size is 43,560 square feet. Pursuant to the Summerland Guidelines (p. 16, fn. 2).), the maximum square footage for lots over 12,000 square feet is established as a base of 2500 square feet plus five percent of the lot area net with a maximum allowable square footage of 8000 s.f. However, the Summerland Guidelines (p. 19) also provides that "a proposed residential structure that does not qualify for a basement credit may add 5% to the FAR provided that no part of the lowest finished floor over the entire building footprint is more than 18 inches above grade."

Staff contends that because the Summerland Guidelines "do not have a listed FAR" for lots in excess of 12,000 square feet, the County must calculate maximum floor area for these lots "using the formula . . . in the FAR Worksheet . . . ." and therefore does not have to add the aforesaid 5% adjustment to the FAR. (P&D 5/7/14 Staff Report, p. 5.) Staff is wrong. The Summerland Guidelines expressly provide that for such lots, the "maximum allowable square footage . . . shall be established as a base of 2500 sf plus 5% of the lot area net with a maximum allowable size of 8000 sf." (Guidelines, p. 16, fn. 2.) Thus, "5% of the lot area net" is tantamount to the numerical "FARs" listed in column 2 and "8,000 sf" is tantamount to the "Max. Allowable" square footage listed in column 3 on page 16 of the Summerland Guidelines. Hence, County must allow Appellants a base of 2500 square feet plus 5% of the lot area net with a maximum allowable size of 8000 square feet.

Here, it is undisputed that the Appellant's structure does not contain a basement and does not qualify for a basement credit. (P&D 5/7/14 Staff Report, pp. 4-5.) And, it is also undisputed that Appellants' building footprint is less than 8 inches above grade. Thus, under the Summerland Guidelines, the Appellants are entitled to add 5% to the FAR because no part of the lowest finished floor over the entire building footprint is more than 18 inches above grade. It is important to note that the Summerland Guidelines clearly state that the 5% is added to the "FAR," not to the floor area. It is also important to note that the Summerland Guidelines do not require that a structure have an understory or a basement to qualify for this 5% FAR adjustment. Thus, as shown in the below calculation, the Maximum Allowed Floor Area is 6,856 square feet:

Calculation:

Formula:

2,500 SF + 5% of the Net Lot Area

Calculation:

(FAR=.05) x (Net Lot Area = 43,560 SF) = 2,178 SF + Base 2,500 SF = 4,678 SF

A proposed residential structure that does not qualify for a basement credit may ***add 5% to the FAR****, provided that no part of the lowest finished floor over the entire building footprint is more than 18" above grade.* (Guidelines, p. 19.)

(FAR adjustment=.05) x (Lot Area 43,560 SF) = 2,178 SF + 4,678 SF = 6,856 SF Total

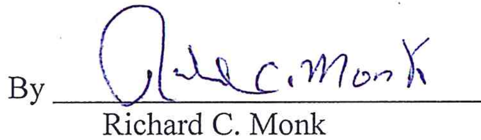
The above calculation gives the Appellants their entitlement to the additional "5% of the lot area net" accorded by p. 16, fn. 2 of the Summerland Guidelines, together with the additional "5% to the FAR" accorded by p. 19 of the Guidelines.

P&D Staff and the Planning Commission erroneously added the 5% to the floor area rather than the FAR, as required by the Summerland Guidelines. There is no language in the Summerland Guidelines nor the LUDC that supports P&D's and the Planning Commission's thesis that the 5% is to be added to the floor area. Words would have to be added to the Summerland Guidelines and the LUDC's unambiguous language in order to reach that conclusion in violation of standard principles of statutory construction. Thus, P&D Staff's and the Planning Commission's conclusion and findings contravene the plain language and meaning of the Guidelines and deny Appellants their full entitlement.

Based upon the foregoing, the Appeal should be granted and the Appellants should receive their full entitlement to 6,856 Maximum Floor Area.

Respectfully submitted,

HOLLISTER & BRACE

By 
Richard C. Monk

RCM/crr