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From: Ana Citrin <Ana@lomcsb.com>
Sent: Friday, April 5, 2019 11:58 AM
To: sbcob
Subject: Letter for Board on Hoops
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Dear Clerk, please distribute the attached letter to the Supervisors for Tuesday's hearing. Thank you!

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LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

April 5, 2019

Santa Barbara County Board of Supervisors
105 E. Anapamu Street
Santa Barbara, California 93101

By email to sbcob@co.santa-barbara.ca.us

RE: Hoop Structure Ordinance Amendment

Chair Lavagnino and Supervisors,

This office has been engaged with the Hoop Structures Ordinance amendment process from the start, representing the Committees for Land, Air, Water and Species (CLAWS) as well as the Gaviota Coast Conservancy (GCC) urging the County to follow the normal ordinance amendment process, conduct environmental review, and mitigate any significant environmental impacts of the amendment to the maximum extent feasible. An environmental impact report (EIR) was prepared and concluded that the Hoops Ordinance would have a number of significant adverse environmental impacts, and identified a series of mitigation measures capable of reducing some of those impacts to insignificance and reducing others, although not to insignificance.

The Planning Commission, responding to concerns raised by the Grower-Shipper Association and Agricultural Advisory Committee (AAC), weakened or eliminated many of the mitigation measures the EIR concluded were necessary to reduce the Project's significant impacts. Community groups, wine and tourism industry representatives, and concerned neighbors pushed back against the evisceration of the EIR's mitigation measures, recognizing that the virtual lack of controls would severely impact community character, the environment, and the local economy. The Planning Commission attempted to strike a compromise by re-integrating some of the mitigation measures and establishing a maximum slope criterion to qualify for an exemption. At the 3/12/19 hearing, the Board further weakened (with the exception of creek buffers) environmental protections analyzed in the EIR.

The law is clear that an agency *shall not* decide to approve or carry out a project with significant environmental effects unless the agency has "Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091". (CEQA Guidelines § 15092.) Here, there are specific feasible means of reducing the Project's significant impacts that the Board has not incorporated, precluding the Board's approval of the Project. The revised findings do not include substantial evidence supporting the infeasibility of mitigation measures and other means of reducing the Project's significant adverse environmental impacts, and moreover the findings lack specific references to evidence supporting the infeasibility as the law requires (*see Topanga Ass'n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506; Cal. Code Civ. Pro. § 1094.5).

In our 3/8/19 letter, we urged the Board to strengthen visual protections by reducing the slope requirement from 20% to 10%, which would substantially reduce the Project's Class I visual impact. Instead, the Board weakened visual protections by recommending a 30% slope requirement. While the slope requirement has been described as a feature of the Project Description (see below discussion), it is also an effective means of substantially mitigating the Project's Class I visual impact. The revised findings

do not contain substantial evidence of the infeasibility of limiting the hoop exemption to 20% or 10% slopes, and indeed the Planning Commission determined that limiting the exemption to slopes of 20% or less is a feasible means of reducing the Project's visual impact.

In addition to reducing visual protections by increasing the slope requirement, the Board also modified the Project Description in several significant ways including by downgrading the permit requirements from LUP to Zoning Clearance and from Development Plan to LUP. The CEQA revision document summarily states that this change is procedural in nature and thus would have no significant environmental impacts, without including any actual analysis. CEQA prohibits agencies from using a shifting or unstable Project Description because it results in a moving target for the environmental analysis and hinders the public's ability comment. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) That is exactly what has occurred here. The Board has lowered the permit thresholds in a manner that will materially reduce the County's discretion and constrain its ability to condition hoop structure development to avoid or reduce environmental impacts including aesthetic impacts. Allowing non-exempt hoop structures to be approved with a Zoning Clearance, entailing no public notice, no hearing process and no opportunity to appeal also hinders the ability of the public including impacted nearby Landowners, neighbors and other affected industries to participate in the County's process and identify concerns regarding a given proposal's environmental impacts. These 11th hour changes to the Project Description preclude meaningful public comment and undermine the adequacy of the environmental analysis. We strongly urge the Board to **retain the Project Description as recommended by the Planning Commission.**

In our 3/8/19 letter we also urged the Board to clarify that the hoop structure exemption cannot be used for cannabis. While at your hearing Staff explained that cannabis requires a permit for cultivation, and strongly implied that the exemption would not be used by cannabis operations. However, as the ordinance is currently drafted, a cannabis operator could secure a Land Use Permit for outdoor cultivation of cannabis without hoops, and later add exempt hoops without any additional County process. The Board articulated numerous reasons differentiating cannabis from traditional crops that form a rational basis for expressly disallowing the use of the exemption for cannabis cultivation, and we strongly encourage the Board to direct Staff to revise the Hoop Structure ordinance accordingly. Alternatively, we encourage the Board to direct Staff to incorporate language into proposed changes to the Cannabis Ordinance to **make clear that any use of hoop structures for cannabis cultivation or processing will, in all cases, require County approval.**

Respectfully Submitted,

LAW OFFICE OF MARC CHYTILO, APC



Ana Citrin
Marc Chytilo
For CLAWS and GCC