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COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

January 28, 2011

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BY HAND

Chair Joni Gray and Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101

RE: Land Use Development Code (LUDC), Agenda of Feb. 1, 2011, Item No. 1 (Departmental)

Dear Chair Gray and Board of Supervisors:

This letter is submitted on behalf of a number of property owners along the South Coast whose property is located in the Coastal Zone.

The purpose of this letter is to bring to your attention some new information pertaining to an issue that arose at your January 18 meeting. As you will recall, the Board spent time discussing the claim advanced by EDC that, under the County's existing Coastal Zoning Ordinance (aka Article II), every use on every parcel in every zone is appealable to the Coastal Commission. The EDC position is built on a two-step argument: (i) under the Coastal Act, a CDP for any use that is not a "principal permitted use" may be appealed, and (ii) the existing Coastal Zoning Ordinance does not specify any "principal permitted uses" in any zones. On January 18, the Board was informed that the much-disputed phrase "principal permitted use" was actually added to the Coastal Zoning Ordinance by a January 2008 amendment. The Board was advised by County Counsel that – given this 2008 amendment and given the absence of any definition of "principal permitted use" in the Coastal Zoning Ordinance – the position advanced by EDC is accurate.

We strongly disagree with this assessment and are convinced it will result in litigation. Our research demonstrates that the phrase "principal permitted use" has been part of the County's Local Coastal Program since 1982, and is defined in the Land Use Plan as including a long list of uses. At the same time, the County adopted the Coastal Zoning Ordinance to implement the Land Use Plan, and included the same list of uses in each of the zoning districts. In the zoning ordinance, the County used the term "permitted uses" instead of "principal permitted uses." But, that difference in terminology was clearly not intended to represent a difference in policy, since the County and the Coastal Commission have both interpreted those terms as having the same meaning for the past 29 years.

This letter explains in some detail the basis for our conclusion.

1. There is No Evidence to Support a Conclusion that the Board of Supervisors Intended to Relinquish 100% of Its Authority to Issue Final Non-Appealable CDPs to the Coastal Commission When It Adopted the 2008 Amendments to the Coastal Zoning Ordinance.

Following the last Board meeting, we obtained and analyzed the legislative background of the 2008 amendment to Article II. We learned that the County proposed a number of relatively innocuous

amendments to the Coastal Zoning Ordinance in early 2007. After the amendments were adopted by the County and submitted to the Coastal Commission for certification, the Commission responded with a few proposed "Modifications," including addition of the phrase "principal permitted use" to the provision governing appeals to the Coastal Commission. The County accepted that Modification in January 2008.

There is nothing in this legislative material that reflects an intent to implement a wholesale and dramatic change in the County's appeal procedures. (A detailed discussion of that legislative material is in the attached memorandum.) There is nothing that reflects an intent by the Board of Supervisors to relinquish its authority to issue final non-appealable coastal permits in the vast majority of cases.

Indeed, as your Deputy Director of Planning and Development stated to you on January 18, the staff report to the Commission describes these Modifications as mere "clarifications" of the existing appeal policies (see Coastal Commission staff report, pages 48-49). It is linguistically impossible to use the word "clarification" to describe the kind of fundamental transfer of authority that County Counsel claims actually occurred in 2008.

Four of the current Supervisors were on the Board in 2008. If the 2008 Board of Supervisors had been told that it was being asked to abdicate 100% of its power to issue final CDPs, we believe the Board would have simply said "**No**." Loud and clear.

2. The Plain Language of the County's Local Coastal Program and the Consistent Administrative Interpretation of Its Policies Proves Beyond Doubt That There Are a Number of "Principal Permitted Uses" in Each Zone District, and CDPs for Those Uses Are Not Subject to Appeal (Except in the "Appeals Jurisdiction Area").

The issues before you revolve around the Coastal Zoning Ordinance (aka "Article II"). That ordinance is part of a larger unified statutory scheme required by the Coastal Act, and called the Local Coastal Program. Like every other coastal jurisdiction, Santa Barbara is required to adopt and implement an LCP, which consists of a set of land use policies in the Coastal Zone. The foundation of an LCP is the Land Use Plan, which functions as the "general plan" for the Coastal Zone. The County's Land Use Plan was adopted in 1981 and certified in 1982 by the Coastal Commission as being consistent with the Coastal Act. At the same time, the County drafted a Coastal Zoning Ordinance intended to implement the LUP. That Ordinance was adopted by the Board and the Coastal Commission certified that it "conformed with" the Land Use Plan.

Our research has uncovered a fact that has been entirely ignored – the phrase "principal permitted use" has appeared in the County's Local Coastal Program since 1982. The Land Use Plan includes a clear definition of "principal permitted use." It refers to every use allowed in every zone without a conditional use permit.

A simple example illustrates this point. The 1982 Land Use Plan includes the following description of the "principal permitted uses" allowed in the Agriculture II Zone (LUP, page 221):

> This designation applies to agricultural uses which include, but are not limited to, field crops. orchards, vineyards, truck crops, apiculture, aviculture, cattle, horse and animal raising, and pasture and forage crops. Only structures related to these activities, single family residences (one unit per specified minimum parcel size), and guest houses (one per parcel, no kitchen) are permitted under this designation. Additional dwellings (structures or trailers) for workers engaged full-time in agriculture on the farm or ranch on which the dwelling is located may be allowed subject to a conditional use permit. Greenhouses and low intensity recreationally

oriented facilities such as hiking trails, stables, and campgrounds may be permitted subject to a conditional use permit if they conform to all other policies specified in the land use plan.

For ease of comparison, here is the list of "Permitted Uses" in the AG-II -- Agriculture II Zone as it appears in the Coastal Zoning Ordinance (Article II, page 44-45):

Sec. 35-69.3 *Permitted Uses*

1. All types of agriculture and farming, including commercial raising of animals, subject to the limitations hereinafter provided in this Section 35-69.

2. Sale of agricultural products pursuant to the provisions of Section 35-131 (Agricultural Sales). *(Amended by Ord. 3445, 12/7/04)*

3. Commercial boarding of animals.

4. Private and/or commercial kennels. *(Amended by Ord. 4067, 8/18/92)*

5. One single family dwelling unit per legal lot. Such dwelling may be a mobile home certified under the National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 *et seq.*) on a permanent foundation system, pursuant to Health & Safety Code Section 18551, subject to the provisions of Section 35-141 (General Regulations).

6. One guest house or artist studio per legal lot subject to the provisions of Section 35-120 (General Regulations) and accessory to the primary residential use located on the same lot. *(Amended by Ord. 3835, 3/20/90) and by Ord. 4557, 12/7/04)*

7. Greenhouses, hothouses, or other plant protection structures, and related development, i.e., packing shed, parking driveways, etc.; however, for any development of 20,000 square feet or more and all additions which when added to existing development total 20,000 square feet or more, a development plan shall be submitted, processed and approved as provided in Section 35-174 (Development Plans). *(Amended by Ord. 3838, 3/20/90)*

[There are five more "permitted uses," including on-shore oil development, quarrying, home occupations, special care homes, and accessory uses.]

Comparing the Land Use Plan's list of "principal permitted uses" to the Coastal Zoning Ordinance's list of "permitted uses" proves the point: the lists are virtually identical. Those two phrases have been used interchangeably in the adopted county policies since 1982.

This explanation of the interaction between the Land Use Plan and the Coastal Zoning Ordinance is not imaginary. In fact, County staff has followed this interpretation for the past 29 years. Each of the "permitted uses" in the Zoning Ordinance has been treated as a "principal permitted use" for appeal purposes. If you doubt the accuracy of this statement, we invite you to ask your planning staff to confirm it.

The Coastal Commission has apparently agreed with the County's administrative interpretation of the LCP. To take one example: Under the Coastal Act, the County is required to submit a "Notice of Final Action" for every appealable CDP. Since 1982, the County has not submitted a Notice of Final Action for any CDP issued for a "permitted use," except for property in the Appeals Jurisdiction. Significantly, at no time since the 1982 certification of the County's Local Coastal Program has the Coastal

Commission objected to this consistent practice. Neither has the Coastal Commission attempted to appeal approval of a Coastal Development Permit for a permitted use on land outside the Appeals Jurisdiction Area. The Coastal Commission's course of conduct indicates that its concurrence with the County's interpretation of its own LCP.

Thus, the record does not support the assertion made to your Board that there are no "principal permitted uses" identified in the Coastal Zoning Ordinance. Indeed, the plain language of the Land Use Plan and Coastal Zoning Ordinance prove the contrary. And, 29 years of County and Coastal Commission interpretation confirm this conclusion.

3. The Coastal Act Requires that the Coastal Zoning Ordinance Be Consistent with the Adopted Land Use Plan. Rewriting History by "Re-Interpreting" the 2008 Zoning Ordinance Amendment Would Violate This Requirement. So Would Enacting an Amendment That Dramatically Narrows the Category of Principal Permitted Uses.

As noted above, the Coastal Act requires that the Coastal Zoning Ordinance be found to "conform with" the Land Use Plan. Thus, the Coastal Act prohibits the County from adopting a Coastal Zoning Ordinance provision that is inconsistent with the adopted LUP.

The LUDC Modifications proposed in 2010 by the Coastal Commission cannot be found to be consistent with the 1982 LUP policy. The proposed Modifications would narrow the list of "principal permitted uses" to <u>just one use</u>. Every other use would be subject to appeal. The LUP has a long list of "principal permitted uses." The LUP and the Commission's Modifications <u>cannot</u> peacefully co-exist.

If the County were to amend the Coastal Zoning Ordinance as proposed by the Coastal Commission, we have no doubt that this "conformity" requirement would be violated and litigation would result.

By the same token, if the County were to now "re-interpret" the 2008 zoning ordinance amendment so that the phrase "principal permitted use" was deemed to refer to no uses in any zone, that new interpretation would violate the "conformity" requirement and would be challenged in court.

We have prepared a memo describing our analysis and conclusions in some detail. It is attached for your information. It has previously been provided to County Counsel.

Our Request: Based on the foregoing, we urge the Board of Supervisors to adopt a motion as follows:

1. Direct staff to prepare letter to the Coastal Commission that <u>rejects</u> the LUDC with the Modifications approved by the Coastal Commission.

2. Include in the letter an invitation to the Coastal Commission to work with County staff and the community with respect to the policy issues addressed by the Modifications, with the understanding that the Commission first provides to the County the following information in writing:

    a. An explanation of the "problem" each proposed Modification is intended to solve.

    b. An explanation of the legal basis in the Coastal Act for each proposed Modification.

3. Direct staff to prepare a report and recommendation on the creation of a Coastal Zone Planning Area Committee (CZ-PAC) with broad representation from affected segments of the community.

Among other duties, the CZ-PAC would participate in discussions between the County and the Commission.

Reasons:

The County needs to send a strong and clear message to the Coastal Commission stating that the Commission's Modifications are not acceptable and would expose the County to legal action. While the County's previous communications have been understandably diplomatic, they have not plainly expressed the County's strong disagreement with those Modifications.

The County has asked repeatedly for the Commission to explain the legal basis in the Coastal Act for each of the proposed Modifications, and has asked for an explanation of the "problem" each of the 36 proposed Modifications are meant to solve. The Commission has not responded to either request. Any future effort to resolve these issues would be fruitless without these answers.

The County has historically developed new land use policies from the bottom up. It has engaged the community and thoroughly vetted new zoning policies – and the code language intended to carry them out – before the formal hearings begin at the Planning Commission and Board of Supervisors levels. That process has been successful and is broadly supported by the community.

That process was used in developing the LUDC before it was voted on by the Board of Supervisors three years ago, but was not followed with respect to the Modifications proposed by the Coastal Commission.

The County must insist that its community-based process be respected and followed for those Modifications. The community expects nothing less.

Finally, the discussions between the County and the Coastal Commission should not take place in a "black box." Those negotiations must be transparent and inclusive, or else it will make it much more unlikely that the community will support the result. An appointed CZ-PAC would be an excellent vehicle to ensure community participation, transparency and ultimately community understanding and acceptance of any resulting amendments to the LUDC

Conclusion:

The County needs to reassert control over the process and timing of amending its own zoning code. The process is just as important as the product. The foregoing recommendations will help to reassert that control.

Thank you for considering these suggestions.

Sincerely,

Steven A. Amerikaner

cc Glenn Russell, Director, Planning & Development Department
Dianne Black, Deputy Director, Planning & Development Department
Dennis Marshall, County Counsel

Enclosure

SB 570770 v7:011504.0004

MEMORANDUM

To: **File**

From: **Steven A. Amerikaner**

Date: **January 26, 2011**

Issue: **Under the current County coastal zoning code (Article II), is each "permitted use" also considered to be a "principal permitted use" for appeal purposes?**

Answer: **Yes.**

Summary of Conclusions:

Coastal Act Consistency Requirement: The 1982 LUP uses the term "principal permitted use" and has a long list of "principal permitted uses" for each zone district. Art. II added the term "principal permitted use" in 2008, but did not define it. Art. II also uses the term "permitted use" and lists a number of such uses in each zone district. Since Art. II and the LUP are two parts of a unified Local Coastal Program, and Art. II is legally required under the Coastal Act to be consistent with the LUP, the term "principal permitted use" must have the same meaning in both enactments.

General Plan and Zoning Consistency Requirement: The LUP is part of the County's General Plan, which is the "constitution" for land use policy. Under state law, the general plan and the zoning code must be consistent. The County lacks legal authority to adopt a zoning ordinance that is inconsistent with the general plan, and thus the 2008 amendment to Art. II cannot be interpreted to have created such an inconsistency.

Legislative Intent: There is no evidence to support a conclusion that the Board of Supervisors intended to relinquish all of its coastal permitting authority to the Coastal Commission when it adopted the 2008 amendment to Art. II.

Longstanding and Consistent Administrative Interpretation: Since the LUP was enacted in 1982, County staff have administered Art. II as if the "principal permitted uses" stated in Appendix B of the LUP are not appealable. That administrative practice did not change in January 2008 when the term "principal permitted use" was first inserted into Art. II, which reflects County staff's belief that the change did not result in a substantive change to the appeal provisions.

Detailed Analysis:

1. **Definitions**. The term "permitted use" is defined in Art. II:

> "Uses that are listed within specific zone districts as permitted uses that may be allowed subject to obtaining the necessary approvals and permits as identified in the zone district and this Article." [Sec. 35-58]

The term "permitted use" appears in the text of each section setting forth regulations for particular zone districts. For example:

> AG-I – Agriculture I. Sec. 35-68. Lists eleven "permitted uses." Lists eight other uses that are allowed with a major or minor CUP.
>
> AG-II – Agriculture II. Sec. 35-69. Lists twelve "permitted uses." Lists eleven other uses that are allowed with a major or minor CUP.
>
> RR – Rural Residential. Sec. 35-70. Lists eleven "permitted uses." Lists seven other uses that are allowed with a major or minor CUP.
>
> R-1/E-1 – Single Family Residential. Sec. 35-71. Lists ten "permitted uses." Lists six other uses that are allowed with a major or minor CUP.
>
> C-1 – Limited Commercial. Sec. 35-77A. Lists twelve "permitted uses." Lists 6 other uses that are allowed with a major or minor CUP.

The term "principal permitted use" appears in Art. II, but is **not** defined. It appears in two places:

> "35-58. Definitions.
>
> APPEALABLE DEVELOPMENTS: *(amended by Ord. 4595, 3/5/08)*
>
> (3) Any development approved by the County that is not designated as the principal permitted use under the zoning ordinance or zoning district map. This includes, but is not limited to, developments approved by the County that require a Conditional Use Permit." (Emphasis supplied.)

> "35.182.6.3. In accordance with Public Resources Code Section 30603(a), an action taken by the County of Santa Barbara on a Coastal Development Permit application for any of the following may be appealed to the Coastal Commission:
>
> > d. Any development approved by the County that is not designated as the principal permitted use under the zoning ordinance or zoning district map. This includes, but is not limited to, developments approved by the County that require a Conditional Use Permit." (Emphasis supplied.)

2. **History**. The term "permitted use" has been part of Art. II for decades. The term "principal permitted use" was added to Art. II in January, 2008. The phrase "principal permitted use" was first suggested by the Coastal Commission staff in a proposed Modification to a set of Article II amendments proposed by the County in 2007. The Coastal Commission staff report (dated 11/13/07) explained this phrase as a "clarification" of the existing appeal language:

> "Section 35.181.5, Appeals to the Coastal Commission, of the proposed amendment is intended to implement Coastal Act Section 30603 with regard to designating the types of development that are appealable to the Coastal Commission as well as the potential grounds for appeal. Additionally, Section 35-58 of the LCP defines "appealable development" to the Coastal Commission. However, neither of these sections are adequate to describe the types of appealable development with regard to permitted uses. Section 30603 specifically states that an action by a coastal county that is not designated as the principal permitted use under the zoning ordinance is an appealable development whereas the existing text limits appealable development to only those projects where the County issues a Conditional Use Permit. There may be other types of development such as lot line adjustments or tract maps that would not be a principal permitted use but that would not require a Conditional Use Permit from the County. Therefore, this language is updated in Section 35-181.5 [*sic – correct reference is to 35-182.6*] and 35-58, pursuant to Suggested Modifications 22 and 23, to reflect the correct definition of appealable development under Section 30603 of the Coastal Act. **Other clarifications** to the certified text were also necessary to ensure that the types of development that can be appealed to the Commission were not limited or restricted. For instance, Suggested Modification 22 deletes language that refers to development as appealable only if it is indicated on the official County appeals zone maps. These are not appropriate references because the maps are a tool, and may not fully identify all of the circumstances of appealability. Suggested Modification 22 also adds clarifying reference to Section 13012 of the Commission's language regarding the definition of "major public works" and "major energy facilities." (Emphasis added.)

The Board of Supervisors accepted this Modification on January 15, 2008. The staff report for that action does not offer any additional explanation of the Board's intent.

3. **Importance of Article II in Larger LCP**. An LCP is a collection of local land use and planning enactments, including the General Plan, implementing zoning ordinances, and relevant specific plans.

- "Local coastal program" is defined in the Coastal Act as (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal areas, other implementing actions, which when taken together, meet the requirements of, and implement the provisions and policies, of this division at the local level. (Public Resources Code (PRC) § 30108.6.)

- "Land use plan" means the relevant portions of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and

intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions. (PRC § 30108.5.)

- "Local coastal element" is the portion of a general plan applicable to the coastal zone which may be prepared by local government pursuant to this division, or any additional elements of the local government's general plan prepared pursuant to Section 65303 of the Government Code, as the local government deems appropriate. (PRC § 30108.55.)

An LCP must be adopted by the local agency and certified by the Coastal Commission (PRC §§ 30510-30513.)

Article II is an implementing zoning ordinance for Santa Barbara County's Local Coastal Program. The Santa Barbara LCP also includes the Land Use Plan, adopted by the Board of Supervisors in 1981 and certified by the Coastal Commission in 1982.

The Land Use Plan uses the phrase "principal permitted use" in three places (emphasis added):

Section 1.3 (page 16)

> "After certification of the LCP'S, the State Coastal Commission continues to exercise permit jurisdiction over certain kinds of development (i.e., development in the State Tidelands), and continues to hear appeals and review amendments to certified LCP's. Only certain kinds of developments can be appealed after a local government's LCP has been certified; these include:...
>
> > 4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with §30500)."

Section 2.4 (page 20:

> "The key to the [land use plan] maps is the land use classification system which has been jointly developed by the LCP and Comprehensive Plan staffs. The land use classifications specify the principal permitted uses within the coastal zone. Included in the land use classification system are the four "overly" designations. Each of the land use classifications is defined in Appendix B of the land use plan. . . . ."

Appendix B, "Land Use Definitions." (page 221)

> "The following definitions describe the principal permitted uses for each land use designation (see also Table 3-1 in Section 3.6, Policy 5-10 in Section 3.5 and Policy 8-8 in Section 3.8)."

Appendix B lists each land use designation (e.g., Agriculture I, Agriculture II, Rural Residential, Planned Development. General Commercial, Highway Commercial, etc.) and specifies the uses allowed within that designation. The uses listed in Appendix B are generally the same uses as those listed under "permitted uses" in Art. II. Thus, the LUP, when adopted by the County in 1981 and when certified by the CCC in 1982, defined "principal permitted uses" to be the same as "permitted uses" listed in Appendix B.

The Coastal Act requires that Art. II "conform with" the LUP (see PRC § 30513). Thus, the definition of "principal permitted use" in both the LUP and Article II **must** be consistent. Plus, the Land Use Plan is part of the Santa Barbara County General Plan. Since the General Plan is the "constitution" of local planning and zoning, the definition of the "principal permitted uses" in the General Plan is controlling. Plus, the County was required to find the definitions used in the General Plan and Article II to be consistent not only when the LCP was originally adopted, but every time Article II has been amended.

- The general plan is the single most important planning document. (*See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 570-71 [general plan is the "'constitution for all future developments' within the city or county' to which any local decision affecting land use and development must conform.])

- The general plan is the "constitution for all future development" and all zoning ordinances must be consistent with the general plan to be adopted and valid. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 540-41.) In *Lesher*, the Supreme Court found that an initiative measure was not a general plan amendment, but a land use regulation subordinate to the city's general plan. Since the measure was inconsistent with the general plan, the court found it invalid under the consistency doctrine. As the Supreme Court said, "The tail does not wag the dog." (*Id.* at 541.)

4. **Legislative Intent**. What did the Board of Supervisors intend to accomplish when it concurred in the Coastal Commission's suggestion to add the phrase "principal permitted use" to Art. II in 2008?

There are two conceivable interpretations of the phrase:

> Interpretation #1 – There Are No "Principal Permitted Uses." Article II does not define the phrase nor specify the uses that qualify for inclusion. Thus, under a literal reading of the language, there are **no uses** that qualify as "principal permitted uses" in any zone district. Since there are no such uses, every proposed use requires an appealable CDP. **Under this interpretation, the County has no final permitting authority, since every permitting decision is subject to appeal to the Coastal Commission**.
>
> Interpretation #2 – The Phrase "Principal Permitted Use" Is the Same as "Permitted Use." The same phrase is used in both the LUP and Art. II, and has the same meaning in both. The phrase is defined in the LUP, it has had the same definition since 1982, and has been defined as the list of principal permitted uses in Appendix B of the Land Use Plan.

Interpretation #2 is the only supportable interpretation, for the following reasons:

Principles of Statutory Interpretation. If an ordinance is arguably ambiguous, courts look to various extrinsic aids to interpret the language, including the entire statutory or regulatory scheme (in this case, the entire LCP), legislative history (which in administrative proceedings includes staff reports), and contemporaneous and prior interpretation by administrative agencies. These legal principles may be summarized as follows:

- "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. [Citation]" (*Golden State Homebuilding Association v. City of Modesto* (5th Dist. 1994) 26 Cal. App. 4th 601, 608 (emphasis added).)

- To resolve ambiguities, courts may employ a variety of extrinsic construction aids, including legislative history, and will adopt the construction that best harmonizes the statute both internally and with related statutes. [Citations.] (*Summers v. Newman* (1999) 20 Cal.4th 1021, 1026 (emphasis added).)

- Supreme Court Justice Ginsburg in the *Koons Buick* case stated that "statutory construction is a 'holistic' endeavor." (*Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 60 (2004)). The opinion further states:

  > "[A] provision that may seem ambiguous in isolation is often clarified by the remainder of statutory scheme – because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." (*Id.*) As part of this "holistic endeavor" the Court looked at: (1) the text of the provision; (2) the statutory history; (3) the legislative history; and (4) common sense. (*Id.* at pages 60 through 64))

- The courts considers how the word or phrase is used elsewhere in the same statute or how it is used in other statutes. (*Pierce v. Underwood* (1988) 487 U.S. 552) The court may consider how the possible meanings fit with the statute as a whole. For example, does one meaning render other provisions duplicative or superfluous? (*United States v. Fausto* (1988) 484 U.S. 439.) The court may also rely on the interaction of different statutory schemes to determine statutory plain meaning. (*Jett v. Dallas Independent School District* (1989) 491 U.S. 701 (emphasis added).)

- The enacting body is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes in

the light of such decisions as have a direct bearing upon them. (*People v. Overstreet* (1986) 42 Cal. 3d 891, 897.)

A. Consistency with General Plan and Coastal Act. As discussed above, the general plan is the constitution of local land use planning. Thus, the definition of "principal permitted use" in the Santa Barbara County General Plan controls. All implementing zoning ordinances must be consistent with the General Plan and the Coastal Act requires that the coastal zoning ordinance "conform with" the Land Use Plan. So, "principal permitted use" should be construed to have the same meaning in both enactments.

B. Definition Not in Article II, but in Larger Regulatory Regime. Courts regularly look to the larger statutory scheme (which in this case is the LCP) to construe a particular phrase. This tenet is especially applicable where the LUP was enacted by the County and certified by the Coastal Commission at the same time. Although Article II did not include the term "principal permitted use" when the LUP was enacted in 1982, the LUP -- which is part of the General Plan – did include that phrase. In 2008, when "principal permitted use" was first placed into Article II, it was not defined. However, the amendment to Article II was an amendment to the larger regulatory scheme (the LCP). Thus, it is proper to look for the definition of "principal permitted use" in the larger statutory scheme.

C. Unified Regulatory Scheme. When the same phrase is used in two parts of a unified regulatory scheme, and it is defined in one part and not in another, the courts presume that the legislative body (which in this case is both the CCC and the County) meant to use the phrase the same way in both places. So, even if Article II did not have to be consistent with or conform with the LUP, a court interpreting the phrase would still seek conformity.

D. Statutes Should Make Sense and Should Not Be Interpreted to Contain Surplusage. Under Interpretation #1, the County would construe "principal permitted use" so that it has no meaning since it does not refer to any land uses. Why would the County enact code language that makes no sense or has no effect? The courts disfavor an interpretation that renders a phrase in a statute as surplusage. The courts are more likely to conclude that the BOS intended that the phrase as used in Article II would have some legal effect, else it is devoid of meaning.

E. Legislative History. Under Interpretation No. 1, there are no identified "principal permitted uses" and thus every use requires an appealable CDP. The insertion of the phrase "principal permitted use" into Article II originated with the Coastal Commission staff. The staff explanation of that language (quoted above) indicates an intent to "clarify" the appeal provision. The staff report expresses a concern that the appeal provision might be read to only apply to Conditional Use Permit, whereas it should also apply to other types of decisions like "lot line adjustments and tract maps."

There is no evidence in this staff report that the Coastal Commission intended to broaden the appeal provision so dramatically that it would apply to every use of land on every parcel in the Coastal Zone. Likewise, there is no evidence that the Board of Supervisors intended to abdicate its permitting authority in the coastal zone by rendering every permit subject to appeal. Indeed, the Commission staff report describes the change as a mere "clarification." Thus, the Coastal

staff report supports the conclusion that neither the County nor the Commission intended the 2008 to result in a wholesale change in the coastal permitting scheme.

F. Consistent Contemporaneous Administrative Interpretation. The behavior of the County and the CCC from 1982 to today reinforces the conclusion that "principal permitted use" and "permitted use" have the same meaning, as the CCC and County have never interpreted the Coastal Act to allow an appeal to the CCC for any decision by the County regarding a "permitted use".

The Coastal Act has included the phrase "principal permitted use" since 1976. If Interpretation #1 is correct, then the County should have been allowing appeals to the Coastal Commission of every use of land on every parcel in the Coastal Zone since the County's LCP was originally certified in 1982. Yet, neither the Coastal Commission nor the County have implemented this interpretation in over thirty years, even after the San Luis Obispo case (*Vadnais v. California Coastal Commission,* (2001) WL 1545497) in 2001 and the "principal permitted use" language was added to Article II in 2008. It bears noting that the *Vadnais* case is not published, and thus is not citable precedent. In addition, it is a permit revocation case, and is readily distinguishable on its facts from the issues presented to the County.

Under California law, the meaning of an ordinance may be discerned by the interpretation given by the agency charged with applying its provisions. Here, P&D has the responsibility for applying Article II. Since it was enacted in 1982 and even since it was amended in 2008, P&D has consistently applied Article II as if "principal permitted use" had the same meaning as the same phrase in the LUP, i.e., that "principal permitted use" and "permitted use" in Article II refer to the same list of uses. The Coastal Commission has not challenged this interpretation. \

Thus, the agencies that both enacted the ordinance, and are tasked with implementing it, have consistently behaved as though "principal permitted use" has the same meaning as "permitted use." This interpretation is supported by the regulatory scheme itself, and plain common sense.