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July 2, 2010

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Hand Delivered

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

**Re: California Coastal Commission Staff Recommended Modifications to
County and Montecito Land Use and Development Codes
July 6, 2010 Board Hearing
Agenda Item No. 5**

Dear Honorable Chairperson Wolf and Honorable Supervisors:

This office represents 1260 BB Properties, LLC (Coral Casino-1281 Channel Drive; Four Seasons' Biltmore Hotel-1260 Channel Drive); Hill Road Ventures, LLC (The Breakers-1180 Channel Drive); 1205 Hill Road; 1210 Channel Drive); and Fairway BB Property, LLC (1025 Fairway Road).

On behalf of our above-named clients, we would like to register their strong opposition to the California Coastal Commission Staff's recommended modifications to the Santa Barbara County and Montecito Land Use and Development Codes ("LUDCs"). Our client's specific objections are set forth below:

1. **Lack of Due Process.**

Coastal Act Section 30006 clearly provides that the public has the right to participate in decisions affecting coastal planning:

"The Legislature . . . 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.**

It would appear that there is little awareness by the public and particularly by property owners of the broad scale changes that will affect them should the Coastal Commission Staff's proposed modifications to the LUDCs be adopted. In fact, the public has had very little time to digest these recommended modifications, which would result in a significant departure from the LUDCs that underwent literally years of public review at the County level. As Planning Commissioner Cooney stated in a recent hearing on this topic: "This isn't really our old LUDC, the one that we compromised and worked on two, three years ago." Commissioner Cooney went on to state that the changes are substantive enough to require public discussion. To do otherwise constitutes a violation of Coastal Act Section 30006. The County negotiated an LCP and a Coastal Zoning Ordinance with the Coastal Commission almost 30 years ago, following significant public debate and hearings. Any substantive changes to those documents should receive the same level of consideration rather than being rushed through the process as appears to be the case with the proposed modifications to the LUDCs.

2. Principally Permitted Uses.

Coastal Commission Staff wants the County to designate within each land use category a "Principally Permitted Use" and to require that all other uses be subject to a Coastal Development Permit ("CDP") with a hearing appealable to the Coastal Commission. The County's LUDCs and its previous zoning ordinances which were previously certified by the Coastal Commission did not provide for a principal use in each zone district. Rather, as found in most zoning ordinances in California, they provided a list of permitted uses and a list of uses that are conditionally allowable. Coastal Staff now believes that the LUDCs need to identify principal uses for consistency with Coastal Act § 30603(a)(4) which section provides for an appeal to the Coastal Commission after certification of an LCP for any "development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance...." This added permit requirement and appeal potential detrimentally affects the viability of uses in all zone districts, particularly commercial, resort/visitor serving commercial and industrial zones where pyramid/style zoning effectively allows lesser impact uses, such as residential or recreational mixed use projects. If the Commission Staff's recommendation is adopted, uses that are not principally permitted or deemed accessory would require a CDP and a hearing at the Montecito Planning Commission, with a potential appeal to the Coastal Commission, even if the property is located outside the appeals jurisdiction. Thus, the County's entire coastal zone becomes the de facto appeals jurisdiction.

Moreover, the list of accessory structures to the "Principally Permitted Uses (i.e., landscaping, parking, infrastructure, equipment) is woefully inadequate. We can easily foresee a situation in which the Biltmore Hotel would be required to come before the Montecito Planning Commission for something as benign as a badminton court or an outdoor whirlpool, simply because the proposed structure is not an expressly identified structure accessory to the Biltmore's Principally Permitted Use as a hotel. This issue could be even more problematic for the Breakers because a conference center is not a Principally Permitted Use in a residential zone. Thus, any non-residential structure, including a small garden shed, even if accessory to the conference center and outside the appeals jurisdiction, would require a CDP and a hearing at the Montecito Planning Commission, with a potential appeal to the Coastal Commission. Further, country clubs will now be prohibited in the CV Zone which could render the Coral Casino a non-conforming use.

3. Requiring Approval of a CDP with Hearing Following a Discretionary Amendment to a CUP or Development Plan.

The Commission Staff's proposed Modification #3 would result in a requirement to obtain approval of a CDP with hearing following the approval of a discretionary Amendment to a CUP or a Development Plan. Amendments, by definition, do not have new environmental impacts that have not been considered and, as stated in the County LUDC, "a public hearing shall not be required for amendments...." However, if the Coastal Commission Staff's recommendations are approved, applicants would be subject to "double jeopardy" by having to go through the discretionary Amendment process, which involves public noticing and an opportunity for appeal. This would then be followed by a CDP public hearing for the identical request. Both the applicant and the County would bear the cost of bringing the request to a public hearing. As stated by P & D Staff, this is inconsistent with existing County procedures.

Our client still has painful memories of the quadruple jeopardy that the Coral Casino and Biltmore Hotel rehabilitation projects encountered on the issuance of every single permit during the development approval process, in the form of multiple appeal periods which allowed opponents four (4) separate opportunities to appeal approvals. The Coastal Commission Staff's proposed Modification #3 maintains this inequity by requiring an appealable public hearing following an approval of a Director Amendment.

4. Restricting Stairways on Coastal Bluffs for Public Access Only.

Since the inception of the County's LCP and Coastal Zoning Ordinance nearly 30 years ago, property owners have had the ability to construct engineered private staircases following an exhaustive and thorough County analysis of proposed plans. Now, nearly

30 years later, Coastal Commission Staff has opined that the provisions in the LCP and Coastal Zoning Ordinance have been misinterpreted by the County and that only public staircases are allowed pursuant to proposed Coastal Commission Staff Modification #21. Thus, existing private stairways would become non-conforming if the Commission Staff's recommendations are adopted. Moreover, a provision to abolish private access may serve only to encourage illegal and poorly designed beach access, thereby causing far more damage than it seeks to prevent. Further, there is no substantial evidence to support the Commission Staff's assertion that these engineered and permitted staircases are causing significant bluff damage. And, if Commission Staff's Modification #21 is adopted, it is possible that the policy could be interpreted so as to negatively impact the existing privately owned staircases at the Biltmore and Coral Casino, which could result in an inability to improve or repair these stairs in the future. It should be noted that the public uses the Biltmore's stairs, notwithstanding the fact that they are private.

5. Prohibition of All Development Within 15 Feet of the Bluff Edge.

Commission Staff's proposed Modification #21 also prohibits all development, including fences or patios, within 15 feet of the bluff edge. This proposal could potentially impact development of all of Ty Warner's bluff properties. In fact, if the proposed modification had been in place at the relevant time, the Channel Drive bike path that was constructed and fully financed by Mr. Warner would not have been allowed because of its proximity to the bluff edge.

6. Requirement That Subdivisions, Lot Line Adjustments and Voluntary Mergers Obtain an Appealable CDP.

Under the current LUDC and previous zoning ordinance, certain land division procedures such as Lot Mergers and Lot Line Adjustments can be deemed so minor so as not to require a public hearing. Coastal Commission Staff's proposed Modification #13, if adopted, will require that subdivisions, lot-line adjustments and voluntary mergers be classified as "land uses" that must obtain an appealable CDP with a hearing because they are not designated as Principally Permitted Uses. Since Montecito does not have a Zoning Administrator, these hearings would have to be heard by the Montecito Planning Commission. Additionally, under Proposed Modification #14, Lot Line Adjustments that include parcels that are non-conforming as to size cannot be permitted if they have any impact on environmentally sensitive habitat or buffer areas. If the proposed Modification is approved, even projects which have a net benefit on the environmental resource could not be approved. While protection of ESH is a fundamental and shared goal, there is no nexus for a denial of a Lot Line Adjustment when there are no significant impacts on the resource.

7. **Elimination of Exemptions for Properties Adjacent to a Beach.**

Coastal Commission Staff's proposed Modification #11 and pages 92-93 of its March 30, 2010 Staff Report revise the exemption section of the LUDCs. The Staff Report states that the following types of development are not exempt and must obtain a CDP:

“Any significant alteration of land forms, including removal or placement of vegetation occurs on a beach, wetland, stream, or sand dune, or within 100 feet of the edge of a coastal bluff, in environmentally habitat areas, or within areas designated as highly scenic....”

“On property that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach....” **Coastal Commission Staff Report, pp. 92-93.**

The Commission Staff report also eliminates pre-existing exemptions for irrigation lines, grading under 50 cubic yards, and for doors, windows and sky lights. These proposed modifications would detrimentally affect our clients' properties. For example, if a proposed project included planting a “significant” amount of new vegetation, or even installing new irrigation lines, the proposed change would require a CDP with a hearing before the Montecito Planning Commission, and create the potential for an appeal to the Coastal Commission. As the proposed modifications exclude even doors and windows from being exempt activities, even a new door at the Coral Casino would require an appealable CDPH.

Conclusion

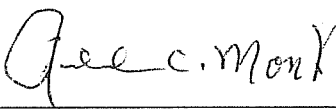
As discussed above, the public is, by and large, unaware of the very existence of the Coastal Commission Staff's proposed modifications to the County LUDCs. These wide-ranging proposed regulatory changes are based on new interpretations of the Coastal Act, made without the benefit of environmental review or an adequate public process consistent with due process requirements. The Coastal Commission did not solicit any input from local citizens in making these recommendations, nor has it held any public meetings or workshops on the matter. Coastal Commission Staff should not be directing policy regarding the Santa Barbara coastal zone. Rather, your Board should be the decisionmaker implementing such policy, and only after affording the widest opportunity for public participation as required by Coastal Act Section 30006. We therefore recommend that your Board reject the Coastal Commission Staff's recommendations.

Honorable Board of Supervisors
County of Santa Barbara
July 2, 2010
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The attachment to this letter summarizes our specific requested action on the relevant Coastal Commission Staff's recommendations.

Respectfully submitted,

HOLLISTER & BRACE
A Professional Corporation

By 

Richard C. Monk
Attorneys for 1260 BB Properties, LLC;
Hill Road Ventures, LLC, and Fairway
BB Property, LLC

RCM/crr
Attachment

cc: Bill Medel
Richard J. Cremieux, Esq.

**RECOMMENDED ACTION ON COASTAL COMMISSION
STAFF'S PROPOSED MODIFICATIONS TO COUNTY LAND USE AND
DEVELOPMENT CODES**

- **REJECT** Modification #3: This Modification would require hearings and appealable CDPs following discretionary decisions for Amendment.
- **REJECT** Modification #9: This Modification introduces “Principally Permitted Uses”, which will unnecessarily complicate review for ministerial projects and outlaws schools and churches within many areas of the coastal zone.
- **REJECT** Modification #11: This Modification revises the “exemption” section of the LUDCs. Public discussion should occur on these changes.
- **REJECT** Modification #13: This Modification requires discretionary CDPs for all subdivisions, including lot mergers, when most subdivisions are already subjected to a discretionary hearing.
- **REJECT** Modification #14: This Modification prohibits Lot Line Adjustments on constrained parcels. This Modification would prohibit even projects that would have a net benefit to ESH such as relocating development away from a constrained area (e.g., relocation of a driveway away from a creek).
- **REJECT** standards that are provided without explanation or scientific basis including:
 - o Modification #21: This Modification eliminates private engineered staircases to the beach and prohibits ALL development including within 15’ of the bluff edge, even minor development such as a split rail fence or a deck.
 - o Modification #33: This Modification places limitations on affordable housing bonus density and conflicts with the IV Master Plan.
 - o Modification #34: This Modification provides standards on analysis of sea-rise without providing scientific basis for these standards.