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March 23, 2009

LATE DIST

Hand Delivered

Board of Supervisors
County of Santa Barbara
105 East Anapamu Street – 4th Floor
Santa Barbara, CA 93101

Re: General Plan Amendment Initiation of the Hunter/La Purisima Resort
08GPA-00000-00002
APNs 099-131-008, 099-131-009, 099-131-010
East of Lompoc and Mission Hills on State Route 246
Fourth Supervisorial District

Dear Honorable Supervisors:

This office represents the La Purisima Golf Course, a California Limited Partnership, the owner and applicant for initiation of the above-referenced General Plan Amendment 08GPA-00000-00002 (the "Project"). The Project proposes a change in land use designation from Agriculture to Resort/Visitor Serving Commerical, and amendments to the text of the Land Use Element, to allow development of the Hunter/La Purisima Resort in the rural area of the County.

The Project was considered by the Planning Commission on December 10, 2008 and February 11, 2009. During the public hearings, planning staff, several commissioners, and members of the public raised questions regarding the Project's potential to set a precedent for conversion of agricultural land in rural areas of the County. The fear expressed was that approval of the proposed Project would lead the County down the inevitable path of approving similar GPA requests on similarly situated land.

To date there has been no legal opinion offered by County Counsel or members of the public clarifying the scope of the County's obligation with respect to similar GPA requests in the future. The purpose of this letter is to discuss the legal framework which vests the County with

broad discretionary powers to make regulatory determinations that affect the use of land within its territorial limits, and to discuss the limitations placed on that power by the federal and state constitutions. In doing so, this letter is intended to clarify, and ultimately dismiss, concerns that - were the County to approve a GPA for the Hunter/La Purisima Resort - it would be forced to approve subsequent similar requests on similarly situated land. Absent the involvement of a suspect class or fundamental right, the County would retain wide discretion to deny subsequent GPA requests, because for one legitimate reason or another, the circumstances justifying approval do not fit.

The legal basis for all land use regulation is the police power. (See *Berman v. Parker* (1954) 348 U.S. 26, 32-33.) The police power is the well-established, broad and evolving right vested in cities and counties to protect the public health, safety, and welfare of their residents. The right is "evolving" in the sense that it is elastic and capable of expansion over time to keep pace with the social, economic, intellectual and moral evolution of society. In this regard, the police power allows cities and counties to tailor regulations to suit the interests and needs of a "modern, enlightened and progressive community" as those interests and needs change over time. (*Rancho La Costa v. County of San Diego* (1980) 111 Cal App3d 54, 60.) It is within this context that cities and counties adopt and amend their general plans. The adoption or amendment of a general plan is a legislative act carried out by the legislative body of a city or county pursuant to its inherent police power authority. (Government Code Section 65301.5.)

The police power by definition is broad, but it is not unfettered. The Fifth and Fourteenth Amendments to the United States Constitution, and their equivalent counterparts in California's Constitution, establish three critical limitations on the scope of the police power authority: (1) The takings clause prohibits land use regulations and actions that are so restrictive as to "take" private property from a landowner without just compensation; (2) The due process clause establishes both procedural and substantive safeguards applicable to land use regulations entitling landowners to notice, an opportunity to be heard, and the right to be free from arbitrary or capricious governmental action; and (3) The equal protection clause provides that a city or county may not deprive a landowner equal protection of the laws. (See U.S. Constitution, Amendments V and XIV; see also California Constitution, Art. 1, §§ 7 and 19.)

The notion that a regulatory action, taken by a local legislative body pursuant to its police power authority, might create an unwanted precedent which forces the local agency's legislative hand on future requests for similar action, falls under the purview of the third category of constitutional limits, namely equal protection. This is because the equal protection clause requires cities and counties to treat similarly situated persons in a similar manner. The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Stated differently, equal protection ensures that "all persons similarly situated should be treated alike." (*Squaw Valley Development Co. v. Goldberg* (9th Cir 2004) 375 F3d 936, 944.)

The equal protection clause has been interpreted by the courts to protect individuals or classes of people against discrimination, and to safeguard fundamental rights. (*Romer v. Evans* (1996) 517 U.S. 620.) Thus, if a government land use action intentionally discriminates against a "suspect" classification – race, alienage, or national origin – the action is subject to the strict scrutiny standard of review and must be justified on grounds of a compelling state interest. (*City of Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 440.) Similarly, when a statute, ordinance, or other land use action taken by a local legislative body impinges on a fundamental right, the same strict scrutiny standard applies, and only a compelling state interest can justify the action taken. (*Plyler v. Doe* (1982) 457 U.S. 202, 216.) In all other cases, namely those not involving a suspect class or fundamental right, a more deferential "rational relationship" standard applies, and provided at least a fair debate exists that the action taken by the legislative body is rationally related to a legitimate government interest, it must be upheld. (*City of New Orleans v. Dukes* (1976) 427 U.S. 297, 303.)

Zoning and other land use regulations, by their nature, make distinctions that categorize land. In doing so, the regulations necessarily affect the owners of land who in many cases are similarly situated. In California, the ability to develop property is not considered to be a fundamental right. Nor are developers considered to be a suspect or protected class. (*Candid Enterprises, Inc. v. Grossmont High School District* (1985) 39 Cal 3d 878, 890.) As such, claims that strict scrutiny should apply, to overturn a land use decision which deprives one landowner a similar right to develop land granted another, will ordinarily fail. In this regard, equal protection does not require absolute equality or uniform treatment of those similarly situated. Rather, provided no suspect class or fundamental right is involved, cities and counties have wide latitude to exercise discretion and take regulatory action under their police power authority, without running afoul of the equal protection clause.

Courts presume the constitutionality of government actions when presented with equal protection claims. "Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a clear showing of arbirariness or irrationality." (*Kawaoka v. City of Arroyo Grande* (9th Cir 1994) 17 F3d 1227, 1234.) In this regard, denial of a requested GPA will not be held invalid under the equal protection clause, unless the distinctions drawn against prior GPA amendments are shown to be arbitrary and capricious because no rational relationship to a conceivable legitimate governmental purpose exists. (*Candid Enterprises, Inc. v. Grossmont High School District*, supra, 39 Cal 3d at 890.) "Absent the allegation of the invasion of fundamental rights, or the existence of a suspect classification, there is no violation of equal protection unless the classification bears no rational relationship to a legitimate state interest." (*Del Oro Hills v. City of Oceanside* (1995) 31 Cal App 4th 1060, 1082.)

It is within the foregoing legal context that the Board of Supervisors, as the legislative body of the County, must examine and ultimately dismiss arguments that the requested GPA will have a dangerous precedent setting effect in rural areas of the County. It can be fairly argued that approval of the requested GPA could lead to future requests by other landowners who possess similarly situated land.[1] However, it does not follow, and it cannot be fairly argued, that such an approval will lead the County down the unavoidable path of having to approve similar requests in the future. Would-be developers seeking similar treatment on similarly situated property are not part of a constitutionally protected class, nor do they hold a fundamental right to develop their property. As such, the County – in approving the requested GPA - would in no way be binding itself to approve additional projects on similar land in the future. Rather, the County would instead retain its full discretion to either approve or deny subsequent GPA requests on similar land, provided that, in the event of denial, some rational basis exists to support the denial, and it cannot be demonstrated that the County was treating the landowner requesting similar treatment in an arbitrary or capricious manner.

Absent a suspect class or fundamental right, the County has wide discretion to initiate and approve a GPA for the Hunter/La Purisima Resort, and subsequently deny similar GPA requests at other locations around the County, because for one reason or another, the circumstances justifying approval do not fit. What might be an appropriate land use regulation and work for purposes of developing the La Purisima site, may not be appropriate at other similar sites located elsewhere in the County. Board decisions denying similar projects would be entitled to a presumption of validity under the law, and could not be overturned absent a showing they were arbitrary or capricious. Provided some rational basis exists to support its future decisions on similar requests, the County retains broad discretion in taking legislative action pursuant to its police power. Unsupported and speculative concerns suggesting approval of the proposed GPA will somehow bind the County's ability to make future discretionary decisions should be dismissed.

Respectfully submitted,

HOLLISTER & BRACE
A Professional Corporation

By _____
Peter L. Candy

[1] The narrower the scope of the GPA for the Hunter/La Purisima Resort, and the more focused the proposed GPA is tailored to the specific site characteristics of the La Purisima Golf Course, the less chance there will be the County will see an increase in similar GPA requests by landowners asserting they hold similarly situated land.

Cc: Nathan Eady, Planner III
Development Review Division
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