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January 14, 2011

Chairwoman Joni Gray and Members
of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, California 93101

Re: Recommendations regarding Coastal Commission Action - Item 2
January 18, 2011 Agenda

Dear Chairwoman Gray and Members of the Board:

I am writing to you today as General Counsel of the Hope Ranch Park Homes Association, a 770 member homeowners' association in Santa Barbara (the "Association"). As most of you know, the Association has been actively involved in the discussions regarding the Coastal Commission's changes to the County's Land Use and Development Codes. On behalf of the Association, I have submitted several letters to your Board, appeared at your hearings, and testified before the Coastal Commission at their hearing in November. Throughout this process, the Association has been tremendously impressed by the efforts made by your staff in representing the position of the vast majority of the County's residents and opposing the onerous changes proposed by the Commission staff. The County staff has worked diligently, and made great progress in convincing the Commission staff to modify many of the changes to address the concerns expressed by the citizens at the various hearings and workshops held throughout 2010. We are very grateful for their efforts.

Unfortunately, despite the best efforts of staff and Supervisor Farr at the November Coastal Commission hearing on this matter, as well as those of Coastal Commissioner Dan Secord, the Commission failed to make any significant compromises to address the substantial negative impacts created by their proposed changes, voting instead to adopt the changes in virtually the same form as proposed by their staff. Even a compromise position offered by the Environmental Defense Center was dismissed. As a result, we believe that your Board has no choice but to respond in the same unequivocal manner, and reject the Commission's certification of the County and Montecito Land Use and Development Codes with their suggested modifications. The reasons for our position include the following:

Private Beach Access

Like many of the changes adopted by the Coastal Commission, the draconian measures aimed at eliminating private beach access are claimed by the Commission staff to be required by the Coastal Act. The Commission staff argues that the longstanding practice of finding properly engineered and sited private stairs consistent with the Coastal Act is now a "misinterpretation" of the law, as bluffs are inherently unstable and private stairs will accelerate bluff erosion. This misinterpretation is impossible to support, however, given the fact that the law is silent on the distinction between public and private beach stairways. Moreover, the record lacks even one example of a permitted private staircase which has accelerated erosion, nor any information proving that private stairways are any more damaging to the stability of the bluff than those open to the public.

In addition to lacking legislative or factual support, the prohibition of new private beach stairways completely overlooks the fact that, in many cases, at least a portion of the beach is part of the individual owner's private property. This is a substantive property right which is being taken without due process or compensation and without any showing that the "re-interpretation" is required by the Coastal Act. It seems hard to imagine a better example of a "takings" claim than to preclude an individual owner's access to a portion of his or her land, but allow the public use of that private property. On this point alone, we believe the Commission's certification should be rejected.

Finally, the proposed language permitting partial repair of existing private stairs is equally without foundation and largely unenforceable. If these structures are to become nonconforming through the adoption of a prohibition on new construction, the existing stairs must, like any nonconforming structure, be allowed to be competently repaired for the remainder of their useful life. To do otherwise risks the safety not only of the owners of the stairs, but all beachgoers who may be injured by failing components.

Animal Keeping

Many of the Commission's changes to the provisions governing animal keeping demonstrate their attempt to craft a solution to a problem which doesn't exist. Of greatest concern for the members of Hope Ranch are the new requirements for the keeping of horses. While again we congratulate County staff on the progress made to exempt existing horse facilities from Coastal Development Permit ("CDP") requirements, we remain opposed to the Commission's requirement that new horse facilities require CDPs. There is no mention of how one demonstrates that horses were kept on a lot in the past, and are therefore exempt, nor why the CDP requirement is now necessary, apart from a claim that the keeping of horses can degrade a riparian area or sensitive habitat. If that is

Chairwoman Joni Gray and Members
of the Board of Supervisors

January 14, 2011

Page three

indeed the problem, a CDP should be required for new horse facilities in those designated areas, not for the vast majority of equestrian properties which are in neither riparian or sensitive habitat zones.

Mergers

While not a significant issue in Hope Ranch, we do object to the Commission's unwavering insistence that mergers require an appealable CDP, as it is a clear overstatement of the law. The Commission staff argues that because the Coastal Act defines development as a change in the density or intensity of use of land or any other division of land, voluntary mergers require an appealable CDP. Apart from the fact that mergers, by definition, are not divisions of land, the only change in intensity or density which results from a merger is a *decrease*, which arguably was understood by the authors and the reason why the language regarding changes in density or intensity was included. If the legislators had intended all changes to require permits, the descriptive language would have been unnecessary. The Commission staff lacks the authority to demand an amendment to the County's LCP to meet their own mistaken interpretation of the law.

Conclusion

Perhaps the most important reason to reject the Commission's certification lies in the language of the Coastal Act itself. Section 30512.2 of the Public Resources Code specifically restricts the authority of the Commission, stating that "[T]he Commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan" and goes on to state that "[T]he Commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) only to the extent necessary to achieve the basic state goals specified in Section 30001.5." The changes adopted by the Commission clearly abridge the authority of the County and intrude upon our local jurisdiction's ability to interpret the Coastal Act in a manner consistent with the basic goals of coastal preservation, as has been demonstrated over the last 30 years.

Finally, we believe that the argument that the County's "failure" to identify principally permitted uses to the Commission's satisfaction (again, despite the 30 year history of the present language satisfying the statute) will open the County to appeals of every development in the non-appeals zone, is nothing short of blackmail: a clear threat to coerce the County into accepting the changes to avoid the unknown. We urge you to stand up to the Commission, take back our statutorily granted local authority, and reject the Commission's certification.

Chairwoman Joni Gray and Members
of the Board of Supervisors
January 14, 2011
Page four

With those comments, we would again like to extend our thanks to the County staff and your Board for your efforts in negotiating with the Commission on this important document, and we urge you to continue that fight for the citizens of Santa Barbara County. Thank you very much.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kathleen M. Weinheimer', written in a cursive style.

Kathleen M. Weinheimer