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December 6, 2013

**Board of Supervisors  
County of Santa Barbara**

*Via Email and Fax*

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RE: Agenda of December 10, 2013  
Rose Petition for Termination of the Grove Non-Conforming Use on  
APN 133-220-020; Third Supervisorial District

Chrisman, Kelley and Clarke, PC represents Kelly Rose with regard to his Petition to the Board of Supervisors to terminate a nonconforming use on property located in the Santa Ynez Valley. We understand that the Planning and Development has taken the position that the Board may hear our Petition but the decision is fully discretionary and at the Board's pleasure. We have attached a supplement to our Petition. In this filing, we describe why the Board should provide clear guidance to Planning and Development regarding uniform enforcement of the Land Use and Development Code relating to nonconforming uses.

We greatly appreciate your attention to this important matter.

Sincerely,

A handwritten signature in black ink, reading "Matthew Clarke". The signature is written in a cursive, flowing style.

Matthew M. Clarke

MMC/ar

CC: John Karamitsos, P&D  
Alice McCurdy, P&D  
Bill Grove

## **PETITION TO TERMINATE – LEGAL NONCONFORMING USE WHY THE BOARD SHOULD HEAR OUR PETITION**

**We have prepared this brief summary to describe why this matter is of importance to the Board of Supervisors and why the Board should act now to hear our Petition.**

County Planning and Development has prepared a letter for the Board of Supervisors related to our Petition submitted to the Board on March 18, 2013. We understand that this letter was delivered to the Board on or about December 5, 2013 for discussion at the Board's Regularly Scheduled Meeting on December 10, 2013. Planning and Development has indicated that the Board may hear the Petition but its decision to do so is purely discretionary and at the pleasure of the Board. Given that Planning and Development has not encouraged the Board to hear the Petition, we have summarized the key issues to assist the Board in understanding the critical nature of this matter and the fact that the County's current regulations and rules are not being properly applied.

### **Importance and Timeliness of the Issue**

A significant portion of Santa Barbara County is rural, and many of the properties located in these rural areas have structures and land uses which have been determined to be "legal, nonconforming" under the County's Land Use and Development Code. As a result, the issue as to how the rules and regulations regarding legal nonconforming uses and structures are being applied impacts a large number of properties.

The number of properties impacted by Section 35.101 of the Land Use and Development Code (Nonconforming Uses, Structures and Lots) continues to grow. For example, under the Gaviota Coast Plan, the proposed rezoning resulting from adoption of the Plan will result in the creation of a substantial number of additional, new Nonconforming Uses, Structures and Lots.

It is important that the Board of Supervisors provides clarity, direction and guidance regarding this issue since the way the rules and regulations are currently being applied is substantially inconsistent with and contrary to the County's written rules and regulations. The rules and regulations governing nonconforming uses are already in place in the Land Use and Development Code; the problem is how they are being administered, interpreted and enforced.

The current process by which the County reviews and evaluates whether a Nonconforming Use or Structure is in compliance with the rules and regulations lacks transparency and the determinations reached are not supported by the evidence.

The specific Nonconforming Use set forth in our Petition is extremely relevant to the bigger picture and to the pervasive problem. Our Petition documents in a comprehensive manner how this "Legal Nonconforming Use" related to a structure was abandoned for nearly 20 years, but the County has ruled that the "Legal Nonconforming Use" was simply "idle" and not terminated. This determination was reached using a contorted,

convoluted and unreasonable interpretation of the rules and regulations. The result is also contrary to the evidence. While our Petition addresses a single property, it documents the current, flawed thought process and approach followed by the County in dealing with the issue of Nonconforming Uses.

### **The County's Regulations Are Simple, Straightforward and Legally Enforceable**

The Land Use and Development Code contains very specific language concerning Nonconforming Uses, as set forth below:

#### 35.101.010 – Purpose and Intent

A. Purpose. “This Chapter establishes uniform provisions for the regulation of nonconforming lots, structures and uses of land and structures that were lawful before the adoption, amendment, or revision of this Development Code .....

#### B. Intent

1. “It is the intent of this Development Code, with limited specific exceptions, to:  
a. **Discourage the long-term continuance of these nonconformities, providing for their eventual elimination...**”

2. “Generally, **this Chapter is intended to be administered in a manner which encourages the eventual abatement of these nonconformities.**”

#### 35.101.020 – Nonconforming Uses of Land and Structures

D. Abandonment/discontinuance. “**A nonconforming use that is discontinued for a continuous period of at least 12 consecutive months shall be considered to be abandoned and the rights to continue the nonconforming use shall terminate .....**”

The language contained in the County's Code concerning termination of legal nonconforming uses is substantially identical to that adopted and currently in place by many other major California Counties such as Santa Clara County, Ventura County, Orange County, San Diego County, San Bernardino County, Riverside County, Kern County, Monterey County, Sonoma County and Humboldt County.

The County's rules and regulations are clear, precise, straightforward, unequivocal and legally enforceable. They are easy to understand and should be easy to administer implement and enforce - - especially if the Board of Supervisors agrees to provide additional direction.

### **The California Supreme Court Case Called *Hansen* Does Not Apply**

The County has attempted to rely on the 1996 California Supreme Court Case called *Hansen* to defend its current position that the owner of a property must affirmatively and overtly express the intent to abandon a legal nonconforming use. The *Hansen* Case doesn't apply. It dealt with a very narrow issue - - the “diminishing asset doctrine”. The

nonconforming use related to an extractive industry (a rock and sand quarry) where such use might be temporarily stopped because of a change in economic circumstances. In Santa Barbara, as in many counties, quarries and mining are governed by entirely different provisions of the Code.

If anything, *Hansen* does support a county's authority to create rules and regulations to abate nonconforming uses. The ruling also establishes the obligation of the property owner to provide evidence to support that the cessation was temporary and that specific actions were being taken to continue the operations. *Hansen* found that "intent" or "desire" to continue was insufficient without action.

The immediate matter set forth in our Petition doesn't involve an extractive industry nor is there any evidence or support to show any continuity of its legal nonconforming use during a 19+ year period. Furthermore, in response to *Hansen*, the County has added definitions to its Land Use and Development Code as it relates to "extractive industries" (e.g. oil & gas and mining) to address the issue of temporary cessation of legal nonconforming activities. However, this additional language concerning "abandoned" and "idle" states that **"the following definitions apply only to those facilities subject to Chapter 35.56 ...."** The nonconforming use discussed in our Petition has nothing to do with Chapter 35.56 (Oil/Gas Land Uses).

The Code contains specific language regarding the overarching guidance and direction provided by the "Purpose" and "Intent" Sections of Chapter 35.101. Additionally, there is explicit and clear language regarding "Abandonment and Discontinuance" in that same Chapter. The County's misguided attempts to use *Hansen* to defend its decisions as well as ignoring compelling evidence of termination of use are clearly inconsistent with these provisions.

### **Our Petition Required Extensive Effort and Presents Clear and Compelling Evidence of the Problem**

It is simple and easy to accuse the County of not following its own rules and regulations. However, it is much more difficult to accumulate substantial compelling evidence to support such an accusation.

One of the best indicators of how far the County has deviated from its own rules and regulations is presented as Exhibit #11 to our Petition. We have included a Board Agenda Letter dated October 6, 2004 from the Director of Planning and Development which states that the owner of the very same property would be required to submit a Permit Application should the owner choose to use the very same structure in a manner consistent with its former legal nonconforming use. This conclusion was reached because the former legal nonconforming use had been discontinued for a 14 year period between 1991 and 2004. In July 2010, the former legal nonconforming use was re-started after nearly 20 years of non use. Yet, **no Permit Application has ever been filed to address the nonconforming use between 1991, when the use was discontinued, through the date of this document (August 2013).**

The Petition contains documents (almost all of which were obtained from County files) covering a period from 1978 through 2012. During a period of more than four years, thousands of County documents were reviewed in order to prepare a comprehensive and compelling case demonstrating how the County did not follow its own rules regarding termination of a nonconforming use. Hundreds of hours were spent preparing correspondence with the County, responding to correspondence from the County and in telephone calls and meetings with County personnel. In addition, hundreds of hours were spent assembling information and the associated documentation in our Petition. **All of this effort combined with the importance of the issue should convince the Board to hear and act on our Petition.**

#### **Action by the Board is in the Best Interest of the County and its Residents**

Our Petition focuses on one specific property and one specific use. However, the underlying facts and history are symptomatic and emblematic of a much larger and more pervasive problem. The process of administering and enforcing the County's rules and regulations regarding Nonconforming Uses is broken and will become increasingly more problematic with zoning changes and updates like the Gaviota Coast Plan.

The County and its residents/citizens need clear direction from the Board of Supervisors as to how the Board wants these rules and regulations applied. Everyone will benefit from the Board's action and resulting transparency. All the Board has to do is to say that the County will follow its own rules and regulations regarding nonconforming uses as they are currently written.

The specific property and specific use discussed in our Petition can be quickly and easily resolved. All the owner has to do is to file the required Permit Application to establish a legal, conforming use - - thus meeting the language and spirit of the regulations regarding abating nonconforming uses.