Th 17a

STATE OF CALIFORNIA -- THE RESOURCES AGENCY GRAY DAVIS, *Governor*

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

RECORD PACKET COPY

DATE: March 27, 2001

TO: Commissioners and Interested Persons

FROM: Charles Damm, Senior Deputy Director
Melanie Hale, Supervisor, Planning and Regulation
Steve Hudson, Coastal Program Analyst

SUBJECT: Santa Barbara County Local Coastal Program Amendment No. MAJ-1-00 (Lot Size Compliance and Lot Line Adjustment Program) for Public Hearing and Commission Action at the April 12, 2001, Commission Meeting in Santa Barbara.

SYNOPSIS

Santa Barbara County is requesting an amendment to its certified Local Coastal Program (LCP) to: (1) define a fraction lot, (2) exclude fraction lots from the minimum lot size exception provisions, and (3) establish standards for the approval of lot line adjustments.

The purpose of the proposed amendment is to address potential impacts to the County's agricultural resources and urban areas that result from the development of substandard size fraction lots and from large scale rural lot line adjustments. The amendment will result in the elimination of the potential for new residential development to occur on substandard sized fraction lots and will also provide standards and procedures for lot line adjustments to ensure consistency with other County land use policies and zoning ordinances.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing, ***deny*** the amendment to the certified LCP as submitted; then ***approve, only if modified***, the amendment to the LCP. The modifications are necessary to clarify procedural requirements and because, as submitted, the LCP amendment is not adequate to ensure consistency with the policies of the certified Land Use Plan. The motions to accomplish this recommendation are found on **page 3.** The suggested modifications are found on **pages 4 and 5.**

STANDARD OF REVIEW

The standard of review for the proposed amendment to the Implementation Plan of the certified Local Coastal Program, pursuant to Section 30513 and 30514 of the Coastal Act, is that the proposed amendment is in conformance with, and adequate to carry out, the provisions of the Land Use Plan (LUP) portion of the certified Santa Barbara County Local Coastal Program. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County LUP as guiding policies pursuant to Policy 1-1 of the LUP.

PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The County held a public hearing and received written comments regarding the project from concerned parties and members of the public. The hearing was duly noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of the California Code of Regulations, the County resolution for submittal may submit a Local Coastal Program Amendment that will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, because this approval is subject to suggested modifications by the Commission, if the Commission approves this Amendment, the County must act to accept the certified suggested modifications before the Amendment will be effective. Pursuant to Section 13544, the Executive Director shall determine whether the County's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. If the Commission denies the LCP Amendment, as submitted, no further action is required by either the Commission or the City.

Additional Information: Please contact **Steve Hudson**, California Coastal Commission, South Central Coast Area, 89 So. California St., Second Floor, Ventura, CA. (805) 641-0142.

I. STAFF RECOMMENDATION

MOTION I: ***I move that the Commission reject the proposed Implementation Program Amendment to the certified Santa Barbara County Local Coastal Program as submitted.***

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the amendment to the Implementation Program submitted for Santa Barbara County and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted

MOTION II: ***I move that the Commission certify the Implementation Program Amendment to the certified Santa Barbara County Local Coastal Program if it is modified as suggested in this staff report.***

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for Santa Barbara County if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program with the suggested modifications will meet

the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

II. SUGGESTED MODIFICATIONS

The staff recommends the Commission certify the following, with one modification as shown below. Language presently contained within the certified LCP is shown in straight type. Language recommended by Commission staff to be ~~deleted~~ is shown in ~~line out~~. Language proposed by Commission staff to be inserted is shown **underlined**. Other suggested modifications to revise maps or figures are shown in italics.

Modification 1

[Section 35-169.2.1(h)]

...The following activities shall be exempt from the issuance of a Coastal Development Permit:

...

~~h. Lot line adjustments not resulting in an increase in the number of lots.~~

Modification 2

[Section 35-134]

This section establishes the standards for the approval for a Lot Line Adjustment in the County consistent with this Article and Comprehensive Plan, and Chapter 21 of the County Code pursuant to the State Subdivision Map Act Section 66412. The provisions of this Section 35-134 and the procedures and requirements contained in County Code Chapter 21, Subdivision Ordinance, shall apply to all applications for Lot Line Adjustments undertaken in the unincorporated area of the County of Santa Barbara. **A lot line adjustment requires the issuance of a coastal development permit.** A Lot Line Adjustment application shall only be approved provided the following findings are made:

...

Modification 3

[Section 35-134.A.3(b)]

Except as provided herein, all parcels resulting from the Lot Line Adjustment shall meet the minimum parcel size requirement of the zone district in which the parcel is located. A Lot

line Adjustment may be approved that results in non-conforming (as to size) parcels provided that it complies with subsection a or b listed below:

...

b. The parcels involved in the adjustment are within the boundaries of an Official Map for the Naples Townsite adopted by the County pursuant to Government Code Section 66499.50 et seq. and the subject of an approved development agreement **certified by the Commission as an amendment to the Santa Barbara County Local Coastal Program** that sets forth the standards of approval to be applied to Lot Line Adjustments of existing adjacent parcels within the boundaries of the Naples Townsite Official Map. This exception provision shall expire 5 years after its effective date [Board Clerk to insert upon publication] unless otherwise extended **pursuant to a certified amendment to the Santa Barbara County Local Coastal Program.**

III. FINDINGS FOR DENIAL AS SUBMITTED AND APPROVAL OF THE LOCAL COASTAL PROGRAM IF MODIFIED AS SUGGESTED

The following findings support the Commission's denial of the LCP amendment as submitted, and approval of the LCP amendment if modified as indicated in Section II (*Suggested Modifications*) above. The Commission hereby finds and declares as follows:

A. Amendment Description

The County of Santa Barbara is requesting an amendment to its certified Local Coastal Program (LCP) to: (1) define a fraction lot, (2) exclude fraction lots from the minimum lot size exception provisions, and (3) establish standards for the approval of lot line adjustments. The proposed amendment language is included in its entirety as Exhibit 4 of this report and will involve the following changes to Article II, Chapter 35 of the Zoning Ordinance (Implementation Plan component) of the LCP:

1. Amend **Section 35-58** to define a ***fraction lot*** as "a lot created as a result of an instrument of conveyance, in which the lot is not separately conveyed as a distinctly described parcel. Fraction lots are identified by overlaying separate legal descriptions of real property within an area of land and then making reference to the cumulative boundary lines to describe parcels derived by their intersections. Fraction lots do not include remainder lots, which result from the conveyance of a separate and distinct legal description of real property, where the described property is conveyed to a new owner and the remainder portion is retained by the seller."

2. Amend nine (9) separate Zoning District **Sections: 35-68.6.2** *(Agriculture I)*, **35-69.6** *(Agriculture II)*, **35-70.6.2** *(Rural Residential)*, **35-71.6.2** *(Single-Family Residential)*, **35-72.6.2** *(Two-Family Residential)*, **35-73.5.3** *(Exclusive Residential)*, **35-90.7** *(Resource Management)*, **35-76.6.3** *(Medium Density Student Residential)*, and **35-**

77.6.3 *(High Density Student Residential)* to specifically exclude fraction lots from the minimum lot size exception provision.

3. Add **Section 35-134** to establish specific standards for the approval of lot line adjustments. The amendment would, in part, provide that lot line adjustments may only be approved provided that all resulting parcels meet the minimum parcel size requirements of the zone district in which the parcel is located unless such adjustment: (a) involves four or fewer existing parcels, and (b) does not result in increased potential for subdivision, and (c) does not result in a greater number of residential developable parcels. Additional standards would be required for any agricultural zoned parcels which have been previously subject to an Agricultural Preserve Contract. The amendment would also provide for an exception to the minimum parcel size standards for lots within the Naples Townsite pursuant to a potential future Development Agreement.

B. Background

The purpose of the proposed Lot Size Compliance and Lot Line Adjustment Program is to address potential impacts to the County's agricultural resources and urban areas that result from the development of substandard size fraction lots and from large scale rural lot line adjustments. The amendment will result in the elimination of the potential for new residential development to occur on substandard sized fraction lots and will also provide standards and procedures for lot line adjustments to ensure consistency with other County land use policies and zoning ordinances.

Specifically, the proposed amendment will provide for a definition of fraction lots in order to distinguish between fraction lots and other types of substandard size lots. Fraction lots, also known as "magic subdivisions", are defined as the random by-products formed by overlaying different legally recorded descriptions of the same parcels within an area of land and then making reference to the cumulative haphazardly occurring lot lines to "create" parcel pieces derived by their intersections (see Exhibit 2 for example). The legal validity of such fraction lots is uncertain and beyond the scope of this amendment to determine. Therefore, the proposed amendment only addresses development standards for fraction lots and does not address the legal status of fraction lots. The County's zoning ordinance currently allows for residential development to occur on parcels which do not meet the required minimum lot size requirements within nine of their zoning districts located within the Coastal Zone. The proposed amendment will ensure that new residential development does not occur on substandard size fraction lots by specifically eliminating fraction lots from the minimum lot size exception in the County's zoning ordinance.

In addition, the amendment will also serve to provide standards for the approval of lot line adjustments that will require all residentially developable parcels resulting from a lot line adjustment to meet the minimum parcel size requirements of their respective zoning districts unless such adjustment: (a) involves four or fewer existing parcels, and

(b) does not result in increased potential for subdivision, and (c) does not result in a greater number of residential developable parcels..

The County has indicated that the proposed amendment is necessary in response to a recent trend by property owners to seek to establish parcel legality for fraction lots in order to avoid the modern subdivision process. Because fraction lots result haphazardly from successive deed transactions which are recorded with overlapping parcel boundaries (see Exhibit 2), the existence of such accidentally created lots are unknown until a Certificate of Compliance application is filed with the County. By validating fraction lots as legal parcels, property owners can potentially confirm divisions of land without complying with the parcel and final map requirements of the Subdivision Map Act. As such, some property owners have an incentive to identify fraction lots and then apply for a Certificate of Compliance to confirm legality of the lot.

Moreover, when combined with the lot line adjustment process, which currently does not require existing substandard size parcels or the resulting parcels to satisfy minimum lot size requirements, identified fraction lots can be adjusted as part of large scale *ad hoc* subdivisions, potentially resulting in densities far greater than allowed by the LCP's zone district standards. As such, lot line adjustments may result in significant increases in the development potential of a given property and, therefore, also have the potential to result in significant adverse effects to environmental and agricultural resources.

As a point of clarification, the County has indicated that an inadvertent clerical error occurred as part of their original submittal of this amendment to the Commission. Although the submitted ordinance, signed by the County Board of Supervisors, correctly states that the proposed Lot Line Adjustment standards are proposed to be codified as Section 35-134; the County's LCP transmittal resolution (No. 00-319) inadvertantly indicates that the proposed Lot Line Adjustment standards will be codified as Section 35-170. The signed ordinance with the correct Section number 35-134 and all proposed amendment language is included as Exhibit 4 of this report.

Two letters of concern regarding the proposed amendment have been received (one letter from the Law Offices of Hatch and Parent in objection to the amendment and one letter from the Environmental Defense Center which indicates general support of the amendment but objects to the proposed Naples Townsite Exclusion component of the amendment). These letters are included as Exhibits 5 and 6 of this report.

C. New Development and Cumulative Impacts

Policy 2-6 of the LCP states, in part, that:

> ***Prior to issuance of a development permit, the County shall make the finding...that adequate public or private services (i.e., water, sewer, roads, etc.) are available to serve the proposed development.***

Policy 2-12 of the LCP states, in part, that:

> ***The densities specified in the land use plan are maximums and shall be reduced if it is determined that such reduction is warranted by conditions specifically applicable to a site, such as topography, geologic, or flood hazards, habitat areas, or steep slopes.***

Policy 8-2 of the LCP states:

> ***If a parcel is designated for agricultural use and is located in a rural area not contiguous with the urban/rural boundary, conversion to non-agricultural use shall not be permitted unless such conversion of the entire parcel would allow for another priority use under the Coastal Act, e.g., coastal dependent industry, recreation and access, or protection of an environmentally sensitive habitat. Such conversion shall not be in conflict with contiguous agricultural operations in the area, and shall be consistent Section 30241 and 30242 of the Coastal Act.***

Policy 8-3 of the LCP states:

> ***If a parcel is designated for agricultural use and is located in a rural area contiguous with the urban/rural boundary, conversion shall not be permitted unless:***
>
> ***a. The agricultural use of the land is severely impaired because of physical factors (e.g. high water table), topographical constraints, or urban conflicts (e.g., surrounded by urban uses...), and***
> ***b. Conversion would contribute to the logical completion of an existing urban neighborhood, and***
> ***c. There are no alternative areas appropriate for infilling within the urban area or there are no other parcels along the urban periphery where the agricultural potential is more severely restricted.***

Policy 8-4 of the LCP states that:

> ***As a requirement for approval of any proposed land division of agricultural land designated as Agriculture I or II in the land use plan, the County shall make a finding that the long-term agricultural productivity of the property will not be diminished by the proposed division.***

The LCP contains several policies regarding new development and protection of agricultural resources. Section 30250 of the Coastal Act, which has been included as a guiding policy of the certified LCP, requires that new residential development must be located within, or within close proximity to, existing developed areas able to accommodate able to accommodate such development. Consistent with Section 30250, Policies 2-1 and 2-6 of the LCP require that new development, including any division of land, must ensure adequate public services (i.e., water, sewer, roads, etc.)

are available. In addition, Policy 2-12 of the LCP provides that the densities specified in the land use plan are maximums and shall be reduced if it is determined that such reduction is warranted by site specific conditions. Sections 30241 and 30242 of the Coastal Act, which have also been included as guiding policies of the LCP, require that all agricultural lands be protected and maintained and that conversion of such lands shall be limited. Consistent with Sections 30241 and 30242, Policy 8-2 of the LCP provides that parcels designated for agricultural use located in rural areas shall not be converted unless such conversion would allow for another priority use under the Coastal Act such as public access, recreation, habitat protection, etc. Policy 8-4 of the LCP requires that land division of agricultural land shall not diminish the long-term agricultural viability of the parcels involved.

Santa Barbara County is requesting an amendment to its certified Local Coastal Program to: (1) define a fraction lot, (2) exclude fraction lots from the minimum lot size exception provisions, and (3) establish standards for the approval of lot line adjustments. The proposed amendment will result in the elimination of residential development eligibility of substandard sized fraction lots and provide standards for the approval of lot line adjustments to ensure that residentially developable parcels resulting from a lot line adjustment meet the minimum parcel size requirements of their respective zoning districts unless such adjustment: (a) involves four or fewer existing parcels, and (b) does not result in increased potential for subdivision, and (c) does not result in a greater number of residential developable parcels.

Fraction lots, also known as "magic subdivisions", are defined as the random by-products formed by overlaying different legally recorded descriptions of the same parcels within an area of land and then making reference to the cumulative haphazardly occurring lot lines to "create" parcel pieces derived by their intersections (see Exhibit 2 for example). The existence of such accidentally created lots are unknown until a Certificate of Compliance application is filed with the County. As such, the Commission notes that these unintended and previously unknown parcels were not included in the community buildout projections of the County's Comprehensive plan or the previously certified Local Coastal Program.

The County's zoning ordinance currently allows for residential development to occur on parcels which do not meet the minimum lot size requirements of their zoning districts provided that such parcels are determined to be legal lots or are evidenced by a recorded Certificate of Compliance. The Commission notes that new residential development of substandard size fraction lots (i.e., fraction lots that do not meet the required minimum parcel size of the applicable zone district) would result in the potential development of an area at significantly greater densities that would otherwise be allowed under the existing standards of the certified LCP.

In addition, in contradiction to Policies 8-2 and 8-4 of the Land Use Plan component of the LCP, new residential development of substandard size fraction lots would also result in potential significant adverse effects to the viability of agricultural landholdings in rural areas by allowing for the potential conversion of portions of large agricultural

holdings to smaller residentially developable lots that, on an individual basis, are not of sufficient size for the continuation of viable agricultural activities. Further, development of substandard size fraction lots (located contiguous to the remaining agricultural use parcels) with new residential development would result in the proliferation of residential development contiguous to and in close proximity to existing agricultural operations. The Commission notes that the LCP provides for less protection of agricultural lands within or adjacent to urban areas than would be otherwise be provided for agricultural land in rural areas. Policy 8-3 of the LCP allows for potential conversion of agricultural lands located adjacent to urban areas in certain instances when such conversion would allow for the logical completion of existing urban neighborhoods and prevent conflicts between urban/agricultural uses. As such, the Commission notes that allowing new residential development on agriculturally zoned lots adjacent to existing agricultural facilities (such as substandard sized fraction lots) would result in the potential urbanization of previously rural areas and would significantly increase the potential for subsequent conversion of the remaining portion of the agricultural facilities. Further, in contradiction to Policies 2-1, 2-6, and 2-12 of the Land Use Plan component of the LCP, allowing new residential development to occur on substandard size fraction lots in urban areas will also result in significant adverse effects to coastal resources, community density standards, and infrastructure planning due to the potential for excessive development to occur that was not previously considered within the County's Comprehensive Plan or previously certified Local Coastal Program. As such, the Commission notes that the proposed amendment to eliminate the potential for residential development to occur on substandard size fraction lots that do not meet the minimum lot size requirements of their respective zoning districts will serve to ensure that adverse effects to coastal resources, including agricultural resources, are minimized.

In addition, the Commission notes that lot line adjustments involve the redivision of land and result in a potential change in the density or intensity of the use of land. Section 35-58 of the LCP, states in relevant part, that development is defined as any:

> ***...change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....***

As such, the Commission notes that lot line adjustments constitute development under the provisions of the certified LCP and, therefore, require the issuance of a coastal permit. The purpose of the proposed amendment is, in part, to establish the specific standards for the approval of lot line adjustments which will ensure that all parcels resulting from such adjustments shall: (a) meet minimum parcel size requirements for residential development, (b) not result in a greater number of residentially developable lots than previously existed, and (c) not result in a increased potential for future subdivision of the lots. However, the amendment, as proposed, does not specifically state that lot line adjustments require the issuance of a coastal permit. Therefore,

Modification Two (2) has been suggested in order to clarify that a lot line adjustment requires the issuance of a coastal development permit.

In addition, the Commission notes that Sub-Section 35-169.2.1(h) of the zoning ordinance component of the LCP, in contradiction to Section 35-58, states, in part, that lot line adjustments not resulting in an increase in the number of lots should be exempt from the issuance of a coastal permit. However, the Commission notes that, by definition, it is not possible for a lot line adjustment to result in an increase in the number of lots and that the meaning of this section is unclear. Moreover, the above referenced section is inconsistent with the intent of the other policies of the LCP, including Section 35-58, as well as the proposed Section 35-134 which will specifically establish standards for the approval of lot line adjustments. Therefore, in order to clarify the appropriate process for approval of lot line adjustments and to ensure internal consistency between the different sections of the LCP, Modification One (1) has been suggested to delete Section 35-169.2.1(h).

The proposed amendment includes a provision that will allow for an exception to the minimum parcel size standards for lot line adjustments to occur within the Naples Townsite pursuant to a potential future development agreement. The townsite is an approximately 588 acre area which was created pursuant to the "Plan of Naples" dated 1888, and is located between the beach and Highway 101 approximately 17 miles west of Santa Barbara in a rural area of the County. The townsite is designated for agricultural use by the certified LCP (*Agricultural II*). With the exception of some limited development and agricultural activities, the site remains primarily undeveloped. Development of the site with new residential development would result in the loss of existing agricultural resources. In order to discourage residential development of Naples, Policy 2-13 of the certified LCP states:

> ***The existing townsite of Naples is within a designated rural area and is remote from urban services. The County shall discourage residential development of existing lots. The County shall encourage and assist the property owner(s) in transferring development rights from the Naples townsite to an appropriate site within a designated urban area which is suitable for residential development. If the County determines that transferring development rights is not feasible, the land use designation of AG-II-100 should be re-evaluated.***

The County has previously adopted an official map for the townsite recognizing approximately 280 individual lots varying in size from 3,700 sq. ft. to 18 acres (Exhibit 3). However, the Naples Property Owners Association asserts the existence of a greater number of lots within the township. The County is currently pursuing negotiations with the property owners regarding this and other development issues for the Naples Townsite. The County has asserted that application of the proposed standards regarding minimum parcel size for lot line adjustments to the Naples Townsite would impact their current effort to resolve the pending development issues at Naples by limiting their ability to develop a specific development agreement with the property owners.

As proposed, this amendment would provide that the Naples Townsite will remain subject to the new lot line adjustment regulations unless and until a development agreement that incorporates different standards for lot line adjustments is approved by the Board of Supervisors. In the event that no such agreement is reached, this exception provision would expire five years after certification of the amendment unless otherwise extended by the County. The Commission acknowledges that the proposed exception provision will allow the County to pursue a broader range of alternatives in order to reach a successful development agreement with the property owners for the Naples Townsite. However, the Commission also notes that because such an agreement is still pending, no details regarding the actual standards that might be applied as part of such an agreement have been submitted. As such, it is not possible to determine whether the future development agreement will serve to minimize potential adverse effects to coastal resources. Moreover, without adequate information regarding what such an agreement might involve, it is not possible for the Commission to determine whether such an agreement would be consistent with Policy 2-13 of the LCP which requires that residential development of the existing lots in Naples be discouraged by attempting to transfer development rights to other appropriate urban areas. Therefore, Modification Three (3) has been suggested in order to ensure that any future development agreement for the Naples Townsite shall be reviewed by the Commission as a new amendment to the LCP.

Therefore, the Commission finds that the proposed amendment to the LCP, only as modified, is consistent with the development policies of the Land Use Plan.

D. California Environmental Quality Act

Pursuant to Section 21080.9 of the California Environmental Quality Act ("CEQA"), the Coastal Commission is the lead agency responsible for reviewing Local Coastal Programs for compliance with CEQA. The Secretary of Resources Agency has determined that the Commission's program of reviewing and certifying LCPs qualifies for certification under Section 21080.5 of CEQA. In addition to making the finding that the LCP amendment is in full compliance with CEQA, the Commission must make a finding that no less environmentally damaging feasible alternative exists. Section 21080.5(d)(2)(A) of CEQA and Section 13540(f) of the California Code of Regulations require that the Commission not approve or adopt a LCP, "...if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment."

The proposed amendment is to the County of Santa Barbara's certified Local Coastal Program Implementation Ordinance. The Commission originally certified the County of Santa Barbara's Local Coastal Program Land Use Plan Implementation Ordinance in 1981 and 1982, respectively. For the reasons discussed in this report, the LCP amendment, as submitted is inconsistent with the intent of the policies of the certified Land Use Plan and feasible alternatives are available which would lessen any significant adverse effect which the approval would have on the environment. The

Commission has, therefore, modified the proposed LCP amendment to include such feasible measures adequate to ensure that such environmental impacts of new development are minimized. As discussed in the preceding section, the Commission's suggested modifications bring the proposed amendment to the Implementation Plan component of the LCP into conformity with the certified Land Use Plan. Therefore, the Commission finds that the LCP amendment, as modified, is consistent with CEQA and the Land Use Plan.

SMH-VNT
File: smh/sbcounty lcp/amendments/lcpa 01-1

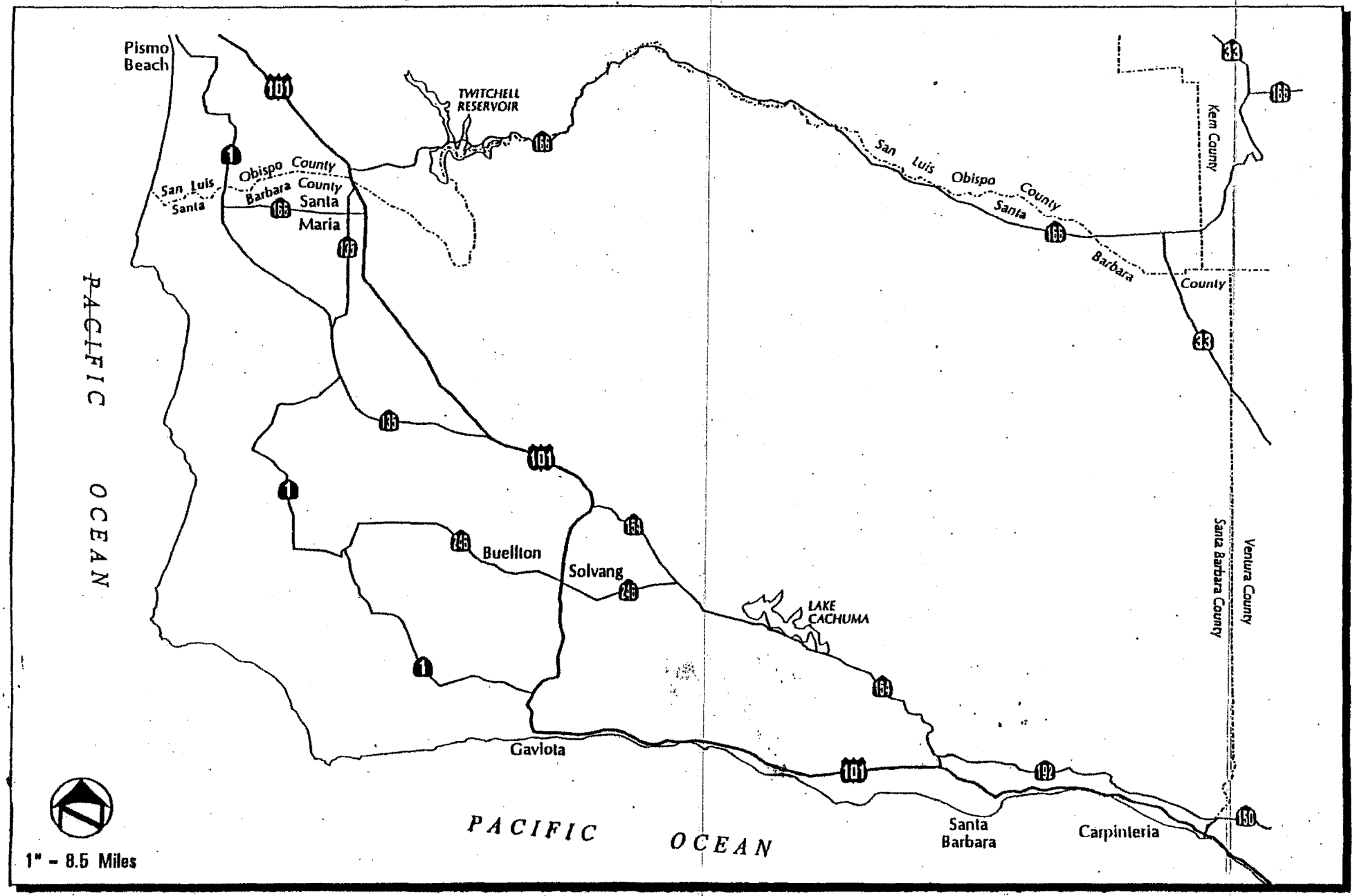


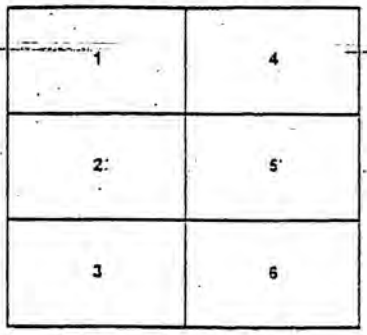
EXHIBIT 1
SB County LCPA 1-00
Regional Map

PROPOSED FRACTION LOT DEFINITION

A lot created as a result of an instrument of conveyance, in which the lot is not separately conveyed as a distinctly described parcel. Fraction lots are identified by overlaying separate legal descriptions of real property within an area of land and then making reference to the cumulative boundary lines to describe parcels derived by their intersections. Fraction lots do not include remainder lots, which result from the conveyance of a separate and distinct legal description of real property, where the described portion is conveyed to a new owner and the remainder portion is retained by the seller.

5

Concept of Fraction Lot Creation

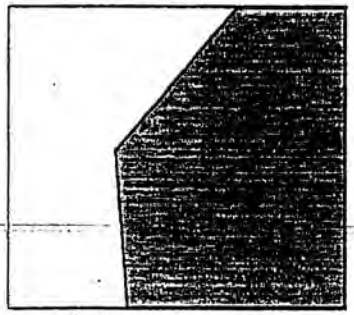


6 Separately created lots (1930)

Entire property comes under single ownership (1932)

6

Deeded Lot and Remainder



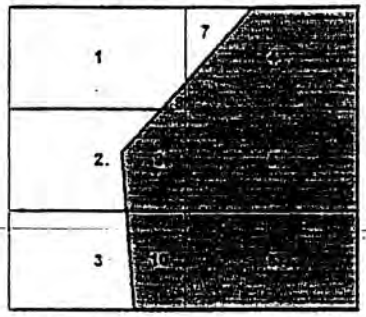
1) Owner sells property by metes and bounds (Deed) to second party (1940).

Deed

Remainder

7

Concept of Fraction Lot Creation



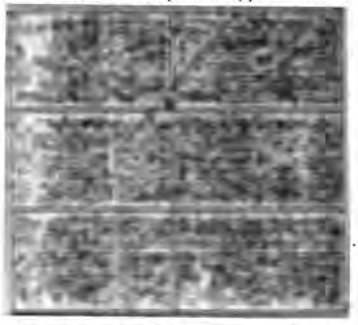
Fraction Lots #1,2,3,4,7,8,9,10 are created by the 1940 sale by deed.

Deed

Remainder

8

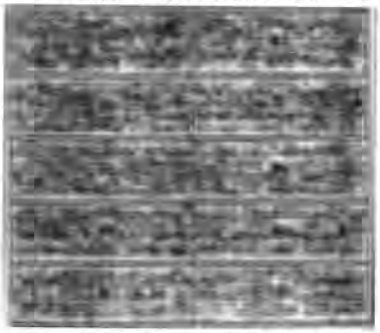
Certificate of Compliance Applications



All properties come under single ownership (1999).
The owner applies for ten Certificates of Compliance (2000).

9

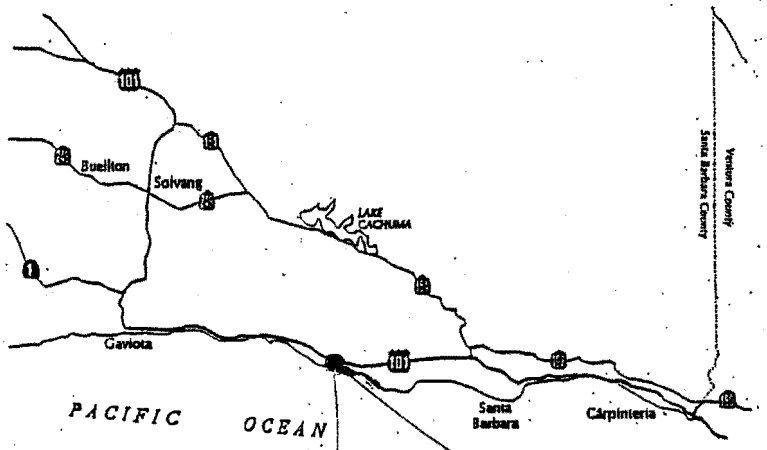
Example of Lot Line Adjustment



Original property changes from 6 to 10 lots.

10

EXHIBIT 2
SB County LCPA 1-00
Fraction Lot Example



Naples Townsite

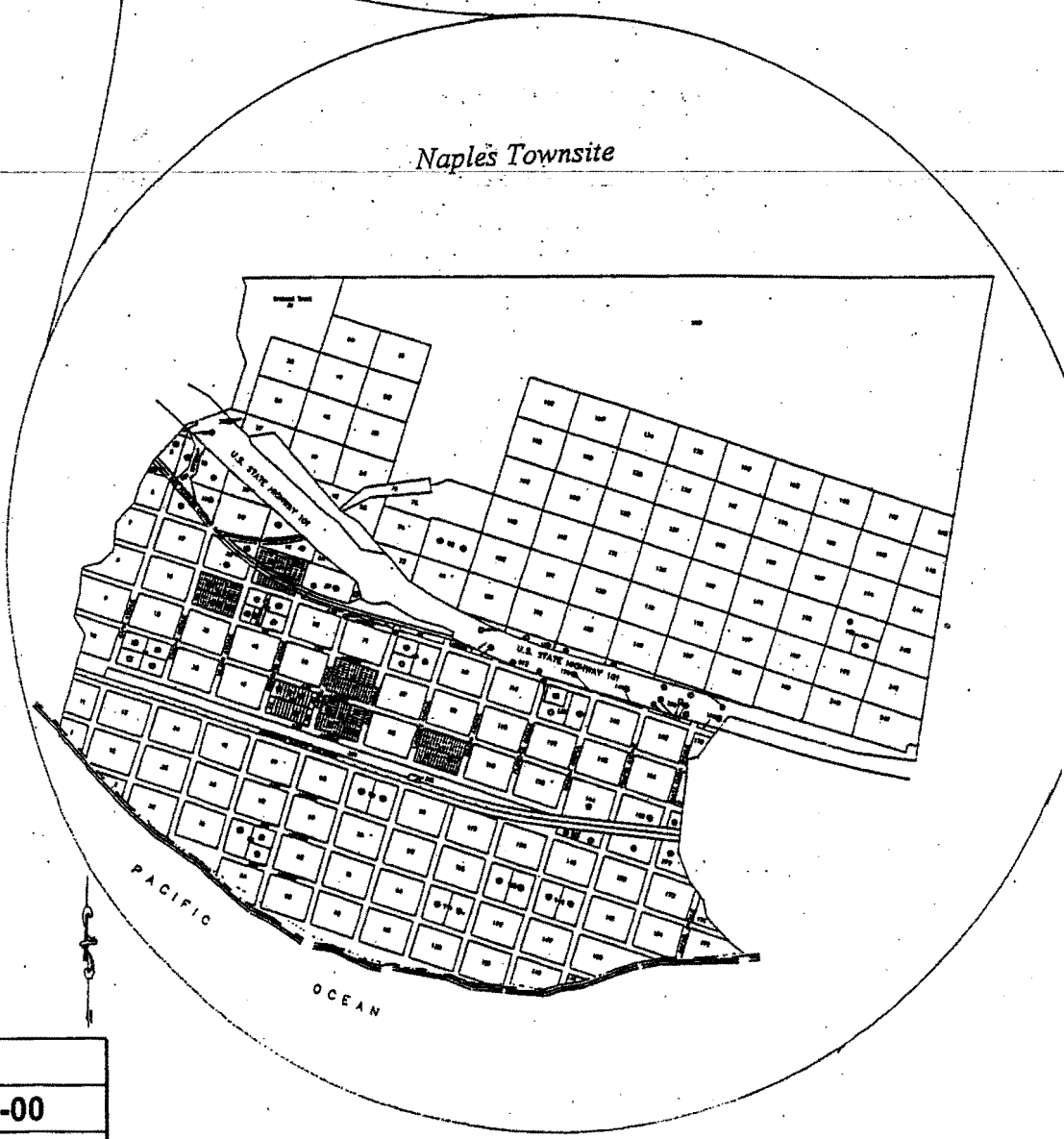


EXHIBIT 3
SB County LCPA 1-00
Naples Townsite Map

ATTACHMENT C

ARTICLE II AMENDMENT

ORDINANCE NO. 4406

AN ORDINANCE MODIFYING ARTICLE II OF CHAPTER 35 OF THE SANTA BARBARA COUNTY CODE BY AMENDING DIVISION 2 TO ADD A DEFINITION OF A FRACTION LOT. AMEND DIVISION 9 ZONING DISTRICTS (AGRICULTURE I, AGRICULTURE II, RURAL RESIDENTIAL, SINGLE-FAMILY RESIDENTIAL, TWO FAMILY RESIDENTIAL, EXCLUSIVE RESIDENTIAL, MEDIUM DENSITY STUDENT RESIDENTIAL, HIGH DENSITY STUDENT RESIDENTIAL, AND RESOURCE MANAGEMENT) TO EXCLUDE FRACTION LOTS FROM THE MINIMUM LOT SIZE EXCEPTION PROVISION, AND AMEND DIVISION 7 TO ADD LOT LINE ADJUSTMENT STANDARDS FOR APPROVAL.

Case Number 99-OA-011

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1:

DIVISION 2, Section 35-58., Definitions, of Article II of Chapter 35 of the Santa Barbara County Code is hereby amended to add a new definition as follows:

FRACTION LOT: A lot created as a result of an instrument of conveyance, in which the lot is not separately conveyed as a distinctly described parcel. Fraction lots are identified by overlaying separate legal descriptions of real property within an area of land and then making reference to the cumulative boundary lines to describe parcels derived by their intersections. Fraction lots do not include remainder lots, which result from the conveyance of a separate and distinct legal description of real property, where the described property is conveyed to a new owner and the remainder portion is retained by the seller.

SECTION 2:

DIVISION 4, Section 35-68. AG-I Agriculture I of Article II of the Santa Barbara County Code is hereby amended as follows:

EXHIBIT 4
SB County LCPA 1-00
Proposed Amendment Language

Sec. 35-68.6 Minimum Lot Size

Sec. 35-68.6.2

A dwelling may be located upon a smaller lot if such a lot is shown as a legal lot either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded certificate of compliance. except for fraction lots.

SECTION 3:

DIVISION 4, Section 35-69. AG-II Agriculture II of Article II of the Santa Barbara County Code is hereby amended as follows:

Sec. 35-69.6 Minimum Lot Size

A dwelling may be located upon a smaller lot if such a lot is shown as a legal lot either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded certificate of compliance, except for fraction lots.

SECTION 4:

DIVISION 4, Section 35-70. RR Rural Residential of Article II of the Santa Barbara County Code is hereby amended as follows:

Sec. 35-70.6 Minimum Lot Size

Sec. 35-70.6.2

A dwelling may be located upon a smaller lot if such a lot is shown as a legal lot either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded certificate of compliance, except for fraction lots.

SECTION 5:

DIVISION 4, Section 35-71. R-1/E-1 Single-Family Residential of Article II of the Santa Barbara County Code is hereby amended as follows:

Sec. 35-71.6 Minimum Lot Size

Sec. 35-71.6.2

A dwelling may be located upon a smaller lot if such a lot is shown as a legal lot either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded certificate of

compliance. except for fraction lots.

SECTION 6:

DIVISION 4, Section 35-72. R-2 Two Family Residential of Article II of the Santa Barbara County Code is hereby amended as follows:

Sec. 35-72.6 Minimum Lot Size

Sec. 35-72.6.2

Dwellings may be located upon a smaller lot if such a lot is shown as a legal lot either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded certificate of compliance. except for fraction lots. However, regardless of the preceding and the minimum lot sizes identified in the General Regulations Section of Article II (Section 35-128. Area of Lots), the minimum lot size for a duplex in the 10-R-2 zone district with the SUM Overlay District shall be 10,000 square feet.

SECTION 7:

DIVISION 4, Section 35-73. EX-1 One-Family Exclusive Residential of Article II of the Santa Barbara County Code is hereby amended as follows:

Sec. 35-73.5 Minimum Lot Size

Sec. 35-73.5.3

Dwellings may be located upon a smaller lot if such a lot is shown as a legal lot either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded certificate of compliance. except for fraction lots.

SECTION 8:

DIVISION 4, Section 35-76. SR-M Medium Density Student Residential of Article II of the Santa Barbara County Code is hereby amended as follows:

Sec. 35-76.6.3. Lot Size/Density

Sec. 35-76.6.3

A building or structure may be located upon a smaller lot if such lot, either:

a) is eligible for a Certificate of Compliance, or a Conditional Certificate of Compliance

with all conditions satisfied, and such lot was, at the time of its creation, in conformity with the zoning ordinance then in existence, except for fraction lots; or

b) was approved under provisions of the State Subdivision Map Act and/or local ordinances adopted pursuant thereto.

SECTION 9:

DIVISION 4, Section 35-77. SR-H High Density Student Residential of Article II of the Santa Barbara County Code is hereby amended as follows:

Sec. 35-77.6.3. Lot Size/Density

Sec. 35-77.6.3

A building or structure may be located upon a smaller lot if such lot, either:

c) is eligible for a Certificate of Compliance, or a Conditional Certificate of Compliance with all conditions satisfied, and such lot was, at the time of its creation, in conformity with the zoning ordinance then in existence, except for fraction lots; or

d) was approved under provisions of the State Subdivision Map Act and/or local ordinances adopted pursuant thereto.

SECTION 10:

DIVISION 4, Section 35-90. RES Resource Management of Article II of the Santa Barbara County Code is hereby amended as follows:

Sec. 35-90.7 Minimum Lot Size

Sec. 35-90.7.

Dwellings may be located upon a smaller lot if such a lot is shown as a legal lot either on a recorded subdivision or parcel map or is a legal lot as evidenced by a recorded certificate of compliance, except for fraction lots.

SECTION 11:

DIVISION 7 of Article II of the Santa Barbara County Code is hereby amended to add Section 35-134. *Lot Line Adjustments* as follows:

Sec. 35-134. Lot Line Adjustments.

This section establishes the standards for the approval for a Lot Line Adjustment in the County consistent with this Article and Comprehensive Plan, and Chapter 21 of the County Code pursuant to the State Subdivision Map Act, Section 66412. The provisions of this Section 35-134 and the procedures and requirements contained in County Code Chapter 21, Subdivision Ordinance, shall apply to all applications for Lot Line Adjustments undertaken in the unincorporated area of the County of Santa Barbara. A Lot Line Adjustment application shall only be approved provided the following Findings are made:

A. A Lot Line Adjustment application shall only be approved provided the following findings are made:

1. The Lot Line Adjustment is in conformity with the County General Plan and purposes and policies of Chapter 35 of this code, the Zoning Ordinance of the County of Santa Barbara.

2. No parcel involved in the Lot Line Adjustment that conforms to the minimum parcel size of the zone district in which it is located shall become nonconforming as to parcel size as a result of the Lot Line Adjustment.

3. Except as provided herein, all parcels resulting from the Lot Line Adjustment shall meet the minimum parcel size requirement of the zone district in which the parcel is located. A Lot Line Adjustment may be approved that results in nonconforming (as to size) parcels provided that it complies with subsection a or b listed below:

   a. The Lot Line Adjustment satisfies all of the following requirements:

      i. Four or fewer existing parcels are involved in the adjustment; and.

      ii. The Lot Line Adjustment shall not result in increased subdivision potential for any affected parcel; and.

      iii. The Lot Line Adjustment shall not result in a greater number of residential developable parcels than existed prior to the adjustment. For the purposes of this subsection only, a parcel shall not be deemed residentially developable if the documents reflecting its approval and/or creation identify that: 1) the

parcel is not a building site, or 2) the parcel is designated for a non-residential purpose including, but not limited to, well sites, reservoirs and roads. A parcel shall be deemed residentially developable for the purposes of this subsection if it has an existing single family dwelling constructed pursuant to a valid County permit.

Otherwise, to be deemed a residentially developable parcel for the purposes of this subsection only, existing and proposed parcels shall satisfy all of the following criteria as set forth in the County Comprehensive Plan and zoning and building ordinances:

1. *Water Supply:* The parcel shall have adequate water resources to serve the estimated interior and exterior needs for residential development as follows: 1) a letter of service from the appropriate district or company shall document that adequate water service is available to the parcel and that such service is in compliance with the Company's Domestic Water Supply Permit; or 2) a County approved onsite or offsite well or shared water system serving the parcel that meets the applicable water well requirements of the County Environmental Health Services.
2. *Sewage Disposal:* The parcel is served by a public sewer system and a letter of available service can be obtained from the appropriate public sewer district. A parcel to be served by a private sewage disposal (septic) system shall meet all applicable County requirements for permitting and installation, including percolation tests, as determined by Environmental Health Services.
3. *Access:* The parcel is currently served by an existing private road meeting applicable fire agency roadway standards that connects to a public road or right-of-way easement, or can establish legal access to a public road or right-of-way easement meeting applicable fire agency roadway standards.
4. *Slope Stability:* Development of the parcel including infrastructure avoids slopes of thirty (30) percent and greater.
5. *Agriculture Viability:* Development of the parcel shall not threaten or impair agricultural viability on productive agriculture lands within or adjacent to the property.
6. *Environmental Sensitive Habitat:* Development of the parcel avoids or minimizes impacts where appropriate to environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.
7. *Hazards:* Development of the parcel shall not result in a hazard to life and property. Potential hazards include, but are not limited to flood, geologic and fire.

8. *Consistency with the Comprehensive Plan and zoning ordinances:* Development of the parcel is consistent with the setback, lot coverage and parking requirements of the zoning ordinance and consistent with the Comprehensive Plan and the public health, safety and welfare of the community.

To provide notification to existing and subsequent property owners when a finding is made that the parcel(s) is deemed not to be residentially developable, a statement of this finding shall be recorded concurrently with the deed of the parcel, pursuant to Sec. 21-92 *Procedures.*

b. The parcels involved in the adjustment are within the boundaries of an Official Map for the Naples Townsite adopted by the County pursuant to Government Code Section 66499.50 et seq. and the subject of an approved development agreement that sets forth the standards of approval to be applied to Lot Line Adjustments of existing adjacent parcels within the boundaries of the Naples Townsite Official Map. This exception provision shall expire 5 years after its effective date [*Board Clerk to insert upon publication*] unless otherwise extended.

4. The Lot Line Adjustment will not increase any violation of parcel width setback, lot coverage, parking or other similar requirement of the applicable zone district or make an existing violation more onerous.

5. The subject properties are in compliance with all laws, rules and regulations pertaining to zoning uses, setbacks and any other applicable provisions of this Article or the Lot Line Adjustment has been conditioned to require compliance with such rules and regulations and such zoning violation fees imposed pursuant to applicable law have been paid. This finding shall not be interpreted to impose new requirements on legal non-conforming uses and structures under the respective County Ordinances: Article II (Section *35-161. and 35-162.).*

6. Conditions have been imposed to facilitate the relocation of existing utilities, infrastructure and easements.

7. Conditions have been imposed to facilitate the relocation of existing utilities, infrastructure and easements.

B. A Lot Line Adjustment proposed on agricultural zoned parcels which are under Agricultural Preserve Contract pursuant to the County Agricultural Preserve Program

Uniform Rules shall only be approved provided the following findings are made:

1. The Lot Line Adjustment shall comply with all the findings for Lot Line Adjustments in Sec. 35-134.A.
2. The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.
3. There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.
4. At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.
5. After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use.
6. The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.
7. The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.
8. The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the Comprehensive Plan.

SECTION 12:

This ordinance and any portion of it approved by the Coastal Commission shall take effect and be in force thirty (30) days from the date of its passage or upon the date that it is certified by the Coastal Commission pursuant to Public Resources Code Section 30514, whichever occurs later; and before the expiration of fifteen (15) days after its passage it, or a summary of it, shall be published once, together with the names of the members of the Board of Supervisors voting for and

against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this 12th day of September, 2000, by the following vote:

AYES: Supervisors Schwartz, Rose, Marshall

NOES: Supervisors Gray, Urbanske

ABSTAINED: None

ABSENT: None

SUSAN ROSE
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

MICHAEL F. BROWN
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

STEPHEN SHANE STARK
County Counsel

By _____
Deputy County Counsel

F:\GROUP\COMP\WP\fraction four\Board Hearing\Final Board Hearing\Art II amend.doc

Law Offices

HATCH AND PARENT

A Professional Corporation

STANLEY C. HATCH
GERALD B. PARENT
S. TIMOTHY BUYNAK
SUSAN F. PETROVICH
PETER N. BROWN
STANLEY M. RODEN
SCOTT S. SLATER
STEVEN A. AMERIKANER
GARY M. KVISTAD
CHRISTOPHER A. JACOBS
JEFFREY A. DINKIN
JEFFERY H. SPEICH
ROBERT J. SAPERSTEIN
LORI LEWIS PERRY
JOSEF D. HOUSKA
SARAH J. KNECHT
STEPHANIE OSLER HASTINGS
BRADLEY E. LUNDGREN
DEBORAH L. MARTIN
MICHELLE L. PICKETT
ROBIN L. LEWIS
TIMOTHY C. HALE
GRAHAM M. LYONS
JUSTIN J. LUCKE
MICHAEL T. FIFE
MINDY A. WOLFE
THOMAS A. VANDENBERG
CAROLYN L. TROKEY
MARGARET H. IRISH
RUSSELL M. McGLOTHLIN
STEVEN A. JUNG
TINA WALLIS

MAILING ADDRESS:
POST OFFICE DRAWER 720
SANTA BARBARA, CALIFORNIA 93102-0720

21 EAST CARRILLO STREET
SANTA BARBARA, CALIFORNIA 93101-2782
TELEPHONE: (805) 963-7000
FACSIMILE: (805) 965-4333
www.HatchParent.com

Of Counsel
CHRIS FRAHM
KIRK R. WILSON
JOSEPH D. ALLEN
STEVEN L. HOCH
GEORGE SHORT

KEVIN J. NEESE
1959 - 1999

LOS ANGELES
9841 AIRPORT BLVD., SUITE 1010
LOS ANGELES, CA 90045-6409
TELEPHONE: (310) 646-8830

SAN DIEGO
110 WEST C STREET, SUITE 2200
SAN DIEGO, CA 92101
TELEPHONE: (619) 702-6100

SOUTH LAKE TAHOE
THE SUMMIT
SOUTH LAKE TAHOE, CA 96150
TELEPHONE: (530) 542-7800

OUR FILE # 6094.11
DIRECT DIAL # (805) 882-1438
INTERNET: MWolfe@HatchParent.com

February 16, 2001

VIA FACSIMILE and U.S. MAIL
(805) 641-1732

Mr. Steve Hudson
California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001-2801

Re: Santa Barbara County Local Coastal Program Amendment; Lot Size Compliance and Lot Line Adjustment Program [99-OA-011, 99-GT-009]

Dear Mr. Hudson:

Hatch and Parent represents several property owners within the Coastal Zone who oppose the amendment to the Santa Barbara County ("County") Local Coastal Program to incorporate the County's Lot Size Compliance and Lot Line Adjustment Program ("Program"). We appreciate this opportunity to provide a summary of our concerns regarding this ill-advised Program.

There was extensive public comment, both written and oral, during the County's public review of the Program. We presume that you have received the environmental record and have reviewed it thoroughly. If not, we urge you to do so. Issues concerning the Program include:

A. Lack of Adequate CEQA Review.
B. Adverse Impacts on County Housing Element Goals.
C. Adverse Impacts on Agricultural Flexibility and Viability.
D. Program Inconsistencies with the Coastal Act and Local Coastal Plan.

EXHIBIT 5
SB County LCPA 1-00
Letter of Objection

A. Lack of Adequate CEQA Review.

One of the most substantial flaws of the Program is the lack of adequate environmental review under the California Environmental Quality Act ("CEQA"). Substantial public comment urged the County to prepare an Environmental Impact Report ("EIR"). The environmental issues, particularly as they concern housing and agriculture, are of grave concern in the Coastal Zone. Despite the potential for significant unmitigable environmental impacts, the County has approved a Final Negative Declaration ("ND") for the Program. Following publication of the ND and after public comment on the ND had been closed, the County modified the Program to exempt the Naples project entirely from the Program. In short, without conducting new environmental review or even providing notice to the general public of the change, the County substantially modified the project analyzed in the ND by deleting a large coastal property from its provisions.

1. Failure to Provide an Adequate and Accurate Project Description.

The ND must include, among other things, (1) a complete and accurate description of the project, preferably shown on a map, and the name of the project, if any; and (2) the location of the project, preferably shown on a map. (CEQA Guidelines § 15071(a)-(b).) In addition, a ND must include a copy of the initial study that must also contain a project description. Since the project description provides the basis for all environmental review, it must accurately reflect the proposed action. In *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, the court found the initial study deficient upon which the subsequent ND was based because it omitted the project's address and legal description, and described the project in only vague terms. Without an accurate description of the project, an agency cannot determine the possible environmental effects and, therefore, cannot approve a ND. (See *id.*)

From the description in the Program, it is impossible to determine what is and is not a "fraction lot" because the definition is so ambiguous and vague. The ambiguity and vagueness is so great as to prevent adequate notice to affected property owners. For example, the Program acknowledges a distinction between "fraction lots" (not buildable) and "remainder lots" (buildable) but it is virtually impossible to distinguish which is which. The inadequacy of the project description has been raised at the administrative level, both in public written comment and at public hearings. It was also noted during public testimony (and admitted by County staff during the public hearings) that no one knows how many lots are impacted by the Program or where those lots are located. County staff recommended conducting public workshops so that property owners and the public could determine what lots are and are not "fraction lots"! Without disclosing what lots are impacted by the Program, the overall environmental impact of the Program cannot be known because the project area has not been identified or described.

2. **Modification of Project Description *After* Completion of Environmental Review Without Preparing a New or Revised Environmental Document.**

CEQA Guideline § 15070 allows the lead agency to prepare a ND when the initial study shows there is no substantial evidence that the proposed "project" may have a significant effect on the environment. CEQA Guideline § 15073.5 requires a lead agency to recirculate a ND if the document has been substantially revised after public notice of its availability has been given, but before it has been adopted.

Public Resources Code § 21080.1 and Guideline § 15070 reiterate the importance of the project description in CEQA review. Both sections require the lead agency to review the "project" and determine what action is necessary based on the potential environmental effects. If the project changes, clearly the lead agency's analysis must be reconsidered. Guideline § 15073.5 provides the appropriate procedure when a project description is changed after notice of the ND is given but before it is adopted – recirculation of a revised ND.

The County has never explained or justified its major, eleventh hour modification of the Program when, during the hearings before the Board of Supervisors (after completion of the environmental process and after the Planning Commission hearings), it suddenly deleted the Naples property (located in the Coastal Zone) entirely from the applicability of the Program.

3. **Failure to Prepare an Environmental Impact Report Rather than a ND.**

CEQA requires an EIR whenever the initial study has produced, or the record otherwise includes, substantial evidence supporting a fair argument that the proposed project *may* produce significant environmental effects. (Public Resources Code §§ 21080 (d), 21082.2 (d); CEQA Guidelines § 15064 (g)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 [118 Cal.Rptr. 34].) Even if other evidence in the record supports a finding to the contrary, the agency must nevertheless prepare an EIR. (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988 [165 Cal.Rptr. 514].)

The decision to prepare an EIR rather than a ND is governed by the "fair argument" standard. This standard creates a "low threshold" for requiring preparation of an EIR. (*Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748 [272 Cal.Rptr. 352].) The standard is founded upon the principle that since a ND has a terminal effect on the environmental review process, an EIR is necessary to resolve the uncertainty created by conflicting assertions and to "substitute some degree

of factual certainty for tentative opinion and speculation." *(No Oil, supra*, 13 Cal.3d at 85.) Doubts about the possible significance of a project should be resolved in favor of environmental review when the question is whether such review is warranted. *(Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307 [8 Cal.Rptr.2d 473].)

Although members of the public, including at least one farmer, pointed out that the Program would have significant adverse impacts upon the continuing viability of agricultural lands, particularly smaller agricultural parcels and specialty crops by prohibiting smaller growers from living on their farmland, the County failed to adequately investigate or analyze these impacts. Although members of the public highlighted the housing shortage in the County and the potentially significant impact of the Program on housing supplies, the County failed to analyze these impacts.

4. **Failure to Assess Adverse Impacts of the Project.**

CEQA places the burden of proof of environmental investigation on the government, not the public. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 [248 Cal.Rptr. 720].) Thus, an agency should not be allowed to hide behind its own failure to gather relevant data. The *Sundstrom* court noted that:

> If a local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.

When the lead agency has not addressed a particular impact of the project in the record, the court will look to the general public, through oral and written testimony, to present substantial evidence there exists a fair argument that the project may adversely affect the environment. In the event the public has not presented such evidence, a court may on occasion rely on its own intuition and determine that additional environmental review is necessary. For example, in *Christward*, supra, the court held it was "apparent" that the concentration of solid waste facilities in one particular area was likely to have a potentially significant environmental impact. The *Christward* court reached this conclusion even though the record contained no supporting evidence.

5. **Failure to Identify Feasible Mitigation Measures; Failure to Identify and Analyze Feasible Alternatives to the Project.**

Because the County failed to prepare an EIR and failed to adequately analyze potentially significant environmental impacts of the Program (particularly on housing and agriculture), it also failed to identify feasible mitigation measures and feasible alternatives to the Program. Public Resources Code § 21002 requires agencies to

adopt feasible mitigation measures or feasible environmentally superior alternatives in order to substantially lessen or avoid otherwise significant adverse environmental impacts. (Pub. Res. Code § 21002, 21081 (a); CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15091(a)(1).) To satisfy this requirement, an EIR or ND must set forth mitigation measures that decision makers can adopt at the findings stage of the process. (Pub. Res. Code § 21100(b)(3); CEQA Guidelines § 15126(c).)

Proposed mitigation measures should be capable of: (a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the impacted environment; (d) or reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. (CEQA Guidelines § 15370.)

An EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project, or the location of the project, which (1) offer substantial environmental advantages over the project proposal, and (2) may be feasibly accomplished in a successful manner considering the economic, environmental, social, and technological factors involved. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553 [276 Cal.Rptr. 410].) In general, EIRs must produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. (*San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738 [202 Cal.Rptr. 423]; CEQA Guidelines § 15126(d)(3).) If an agency finds that certain alternatives are infeasible, its analysis must explain in meaningful detail the reasons and facts supporting that conclusion. (*Marin Municipal Water District v. KG Land Corporation California* (1991) 235 Cal.App.3d 1652 [1 Cal.Rptr.2d 767].)

Because the County's environmental review of the Program was so shoddy and overlooked potentially significant environmental impacts, neither mitigation measures nor alternatives were considered prior to adoption of the Program. Mitigation measures and alternatives to the Program should be considered prior to acceptance by the California Coastal Commission.

6. **Failure to Provide Adequate Notice**.

CEQA Guideline § 15071 requires a ND that is circulated for public review include, among other things, a brief project description and the project's location, preferably shown on a map. Guideline § 15072 requires that the lead agency provide notice if it intends to adopt a ND for the proposed project. Once proper notice has been given, Guideline § 15073 requires that the lead agency allow not less than 20 days for public review and comment on the proposed action for the project.

If the project is not accurately described, § 15071 cannot be satisfied. If § 15071 is not satisfied, the agency cannot satisfy § 15072, since this section requires notice be given for the proposed project. Furthermore, even if notice of an inaccurately defined project has been given, thus satisfying § 15072, § 15073 cannot be satisfied since the public was not reviewing the actual project.

The project has not been accurately described, therefore notice of the project is inherently flawed. The public has never had an opportunity to review the actual impacts of the Project.

Because the environmental document for this Program does not meet the requirements of CEQA, and because the adequacy of the environmental review is the subject of pending litigation that asserts, among other things, that the Program's environmental review does not comply with CEQA, we do not believe that the Coastal Commission has the authority to approve incorporation of the Program into the County's Local Coastal Plan. The five (5) cases challenging the Program are Santa Barbara Superior Court Case Nos. 01036996, 01036997, 01036998, 0103699, and 01037000.

B. Adverse Impact on County Housing Element Goals.

One major flaw in the Program is the adverse impact it will have on the local housing supply by removing legally created lots from the housing market. The County Housing Element ("Housing Element") identifies the shortage of affordable housing within the County. This Program, in direct conflict with the Housing Element goals, removes existing legal parcels from eligibility for construction of new housing. This reduction in potential housing supply forces South Coast workers to commute from North County, Ventura and San Luis Obispo thereby increasing impacts on the environment due to traffic, parking and energy problems. These environmental impacts were not adequately addressed in the ND.

The Coastal Commission's Statewide Interpretive Guidelines, adopted by the Coastal Commission pursuant to Public Resources Code section 30620(b), include a citation to Public Resources Code section 30250(a), providing that new development be located within, contiguous with, or in close proximity to existing developed areas. Most fraction lots, because they were created by deed, are in or near developed areas. The Coastal Commission's Interpretive Guidelines note: "The basic purpose of this section of the Coastal Act is to concentrate new development by promoting infill of existing urban centers, limiting sprawl and providing for orderly, planning expansion of developed areas where needed, and where the expansion will be consistent with Coastal Act policies. Accordingly, the section specifies that development should first be channeled into existing developed areas able to accommodate it . . ." Although some fraction lots may lie outside existing developed areas, the impact of the Program on coastal resources and policies cannot be assessed adequately with the information

provided by the County because the County expressly made no attempt whatsoever to identify where existing fraction lots are located. The constraints on lotline adjustments incorporated into this Program prohibit, or inhibit, the development of infill lots or the reconfiguration of existing legal lots in a manner that makes them more readily developable. Not only does this discourage good planning by making it difficult or impossible to adjust lot lines to avoid impacts on natural resources, to render building sites more accessible, etc., it prevents the very infill that the Coastal Act encourages.

The California State legislature mandates the development of a local Housing Element at Government Code Section 65302(c) because the "availability of housing is of vital statewide importance, and the early attainment of decent housing and suitable living environment for every Californian, including farm workers, is a priority of the highest order." Government Code Section 65580(b) states that early attainment of "this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels." The Program impedes County movement towards the attainment of the state housing goal and the regional housing needs by reducing the number of parcels eligible for residential units.

C. Adverse Impacts on Agricultural Viability.

The County's ND concludes, without adequate analysis or evidentiary support, that the Program will benefit agriculture. Not true. Only one view is presented in the ND -- that of a staff that has no agricultural experience.

Pre-Program land use regulations allowed a farmer (particularly a small operator) to live on the land he/she farms, regardless of the fact that it is what the County is now calling a "fraction lot." Family farmers, organic farmers, farmers with specialty or experimental crops, and other modest operators comprise a major component of the viable agriculture in this County, particularly on the South Coast and in the Coastal Zone. They are struggling to survive and to maintain their land in agricultural production. Being able to live on their farmland is a major component of their success. Being able to adjust their lot lines, to maximize production or even to sell off unproductive or marginally productive land in order to supplement their operational income, provide necessary capital to increase yield or to change crops, or pay estate taxes when a family member dies, is a valuable asset enjoyed by farmers under pre-Program land use regulations. This should have been part of a "no project" alternative analysis within an EIR for the Program. Instead, it was ignored altogether in the analysis of the potential impacts of this Program on agricultural viability. The environmental analysis of the Program, as it pertains to impacts on agriculture, is totally inadequate.

D. Program Inconsistencies with Coastal Act and Local Coastal Plan.

As noted above, the Program is inconsistent with the Coastal Act and Coastal Commission Statewide Interpretive Guidelines encouraging in-fill. In addition, the impacts of the Program are contrary to the policies contained in the Santa Barbara County Local Coastal Program.

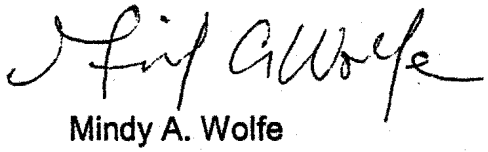
Public Resources Code Section 30241 requires that the maximum amount of prime agricultural land be maintained in agricultural production to assure the protection of the area's agricultural economy. For the reasons stated above the Program is inconsistent with this Coastal Act policy.

The Program also fails to address the circumstances when development is being contemplated and the choice is between one agriculturally viable buildable lot and a non-agriculturally viable "fraction lot." The Program automatically and randomly eliminates the possibility of development on the "fraction lot," thereby encouraging development of the agriculturally viable lot. This is inconsistent with Section 3.8.1 (d) of the Local Coastal Program which requires the preservation of the maximum amount of prime agricultural land "by developing available lands not suitable for agriculture prior to the conversion of agricultural lands." The Program results in an increased likelihood of prime agricultural land being converted before non-prime agricultural land.

In addition, for the reasons stated above, the Program is inconsistent with the policies stated in the housing policies of the Local Coastal Program found at Section 3.5 of the Local Coastal Program.

Most of the above issues are the subject of the ongoing litigation with the County. We appreciate the opportunity to share the concerns surrounding the Program as currently proposed.

Sincerely,



Mindy A. Wolfe
For HATCH AND PARENT

MAW:mth

February 2, 2001

Steve Hudson
California Coastal Commission
89 South California Street, 2nd Floor
Ventura, CA 93001

Re: COMMENT LETTERS SUBMITTED TO SANTA BARBARA COUNTY DURING RECENT LOT LINE ADJUSTMENT PROGRAM HEARINGS

Dear Mr. Hudson:

As per our phone conversation earlier today, please find the enclosed letters for your consideration and review. While EDC continues to support Santa Barbara County's Lot Line Adjustment Program ("the Program), we also continue to object to the provisions that allow the Naples Property to be excluded from the requirements of the Program. Specifically, by providing an exemption and excluding the Naples Property from the requirements of the Program (namely, that lot line adjustments meet the minimum parcel size requirement of the zone district in which the parcel is located), a grave inconsistency is created.

Essentially, the Naples exemption is inconsistent with Santa Barbara County Local Coastal Plan Policy 2-13 which envisions the Naples Property as a designated rural area and strongly encourages the County to assist Naples property owners "in transferring development rights from the Naples Townsite to an appropriate site within a designated urban area which is suitable for residential development." (LCP Policy 2-13). Instead of fulfilling its duty to discourage residential development of existing (Naples) lots, the Naples exemption does exactly the opposite by shielding the Naples Townsite from the protections of the Program, most of which are aimed at ensuring the rural and agricultural nature of properties in northern Santa Barbara County and along the Gaviota Coast. Accordingly, EDC continues to advocate for the removal of the Naples exemption.

Thank you in advance for your consideration of these letters. Please feel free to contact me with any questions or concerns. I look forward to receiving a copy of your staff report to the Coastal Commission in the coming weeks.

Sincerely,

Steve Velyvis
Staff Attorney

Enc.

906 Garden Street
Santa Barbara, CA 93101
Phone (805) 963-1622
FAX (805) 962-3152
edc@rain.org

2021 Sperry Avenue, Suite 18
Ventura, CA 93003
Phone (805) 677-2570
FAX (805) 677-2577
edcvent@west.net

EXHIBIT 6
SB County LCPA 1-00
Letter of Concern

July 14, 2000

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

RE: Lot Size Compliance & Lot Line Adjustment Program

Dear Honorable Supervisors,

This letter is submitted by the Environmental Defense Center (EDC), a non-profit public interest environmental law firm, in support of the proposed Lot Size Compliance and Lot Line Adjustment Program (LSC/LLA Program). The EDC routinely represents environmental organizations and citizen's groups on a wide range of land use and planning issues. In representing such organizations, it is often EDC's goal to ensure that governmental and administrative agencies implement sound planning principles so as to protect and preserve the communities and environments in which we live. With regard to the proposed LSC/LLA Program, the EDC is pleased to support the adoption of that program as it falls squarely within the parameters of the sound planning principles EDC so often hails.

I. Lot Size Compliance & Lot Line Adjustment Program: Proposed Ordinance Amendments Regarding Development Potential on Fraction Lots

EDC has observed that over the course of the last few years, a recent trend has developed. That trend consists of an increase in the number of applications for Certificates of Compliance (CC), particularly in agriculturally zoned districts. Furthermore, the Santa Barbara County Surveyor reports that fifty percent (50%) of the recent applications for CC's involve fraction lots, and that seventy percent (70%) of those "fraction lot CC applications" were directly related to development permit applications, such as Lot Line Adjustments (LLA's). While LLA's are typically used to correct minor access, fence or other structural encroachments on adjacent properties, attempts to secure large multi-parcel LLA's in agriculturally zoned districts are on the rise.

This increase in the use, or rather abuse, of the LLA process is the product of attempts to accomplish the re-division of property in order to create additional developable parcels without going through the subdivision process mandated by the Subdivision Map Act (SMA). By removing such divisions of land from the strictures of the SMA, applicants essentially preclude the County from exacting fees, and more importantly, ensuring that such divisions are consistent

906 Garden Street
Santa Barbara, CA 93101
Phone (805) 963-1622
FAX (805) 962-3152
edc@rain.org

2021 Sperry Avenue, Suite 18
Ventura, CA 93003
Phone (805) 677-2570
FAX (805) 677-2577
edcvent@west.net

864 Osos Street, Suite A
San Luis Obispo, CA 93401
Phone (805) 781-9932
FAX (805) 781-9384
edcmal@west.net

with local and coastal policies aimed at ensuring minimum lot size requirements and General Plan consistency. EDC is extremely concerned about the possible effects of this loophole on agricultural viability, natural resources, the provision of adequate public services, the County's ability to regulate development in rural and agricultural areas, and the integrity of the County's General Plan (in particular, the Agricultural and Land Use Elements) and Local Coastal Plan.

As a founding member of the Gaviota Coast Conservancy, EDC is particularly concerned about the potential conversion of agriculturally zoned lots on the Gaviota Coast. The development of fraction lots and the use of the LLA process to increase the development potential of large rural properties flies in the face of policies aimed at favoring development in urban areas, promoting open space, and ensuring agricultural viability on lands so designated. Thankfully, the County has also recognized this trend and acted with quickness and foresight to eliminate this loophole. The proposed LSC/LLA program is a comprehensive effort that not only ends the current abuses of the CC-LLA processes, but also underscores the County's resolve to enact and enforce zoning ordinances that uphold the overarching policies contained in the Comprehensive Plan. Those policies and ordinances are in place to promote the orderly and effective growth of our County while at the same time preserving the open space and quality of life we all hold so dear. The LSC/LLA Program is not only good government, but desperately needed to curtail the blight of sprawl and preserve our agricultural and open space lands. Without it, the abuse of the CC-LLA processes is sure to continue, creating incentives for rapid and sporadic residential growth in agricultural districts instead of encouraging planned and orderly growth in urban areas. EDC warmly welcomes the LSC/LLA Program and strongly urges the Board of Supervisors to accept the recommendations from the Planning Commission and its staff to adopt the proposed program.

II. Proposed Exemption From the LSC/LLA Program for the Naples Townsite

While EDC is extremely pleased with the proposed LSC/LLA Program overall, it does not support all of the recommendations offered by your staff. EDC's excitement over the proposed program was tempered by the eleventh hour addition of a proposed exemption from the LSC/LLA Program for the Naples Townsite. EDC objects to the inclusion of the Draft Exemption Provisions for Official Maps & Development Agreements (Attachment J, Planning & Development Staff Report on LSC/LLA Program) for the following reasons:

A. Exemption is Inconsistent with Local Coastal Plan Policy 2-13

First and foremost, the proposed exemption from the LSC/LLA Program for the Naples Townsite is inconsistent with Local Coastal Plan (LCP) Policy 2-13. The staff report cites the impact of the LSC/LLA Program on existing settlement negotiations on Naples development issues as the primary reason for its inclusion in the program. However, the Santa Barbara County Local Coastal Plan envisions the Naples property as a designated rural area and strongly encourages the County to assist Naples property owners "in transferring development rights from

the Naples Townsite to an appropriate site within a designated urban area which is suitable for residential development." (LCP Policy 2-13). Instead of fulfilling its duty to "discourage residential development of existing (Naples) lots" (Id.), the proposed exemption does exactly the opposite by shielding the Naples Townsite from the LSC/LLA Program's protections. EDC feels that the Board of Supervisors could reject the proposed exemption for the Naples Townsite on this ground alone. However, there are numerous other equally-important reasons to reject the Naples Townsite exemption.

B. The Naples Exemption was NOT Part of the Planning Commission's Recommendation and was NOT Considered in the Negative Declaration

Upon receiving the staff report, EDC was surprised to find that the staff was recommending an exemption from the LSC/LLA Program for the Naples Townsite, especially in light of the Planning Commission's opposite conclusion. Not only did the Planning Commission consider all the issues surrounding the Naples exemption, but specifically recommended to the Board of Supervisors that all existing and future MOU's or settlement agreements ***should not*** be excluded from the LSC/LLA Program ordinance amendments. Regardless, in the face of that suggestion from the Planning Commission, staff for Planning and Development drafted an exemption and recommends its inclusion in the Program ordinance amendments.

Importantly, the proposed (Naples) exemption was ***not*** part of the Initial Study which concluded that the proposal will not have a significant effect on the environment, and recommends that a Negative Declaration (ND) be prepared. Thus, the proposed exemption has not gone through the appropriate environmental and public review. Throughout the Final Negative Declaration (Attachment I, Staff report), the County reports that the proposed ordinance amendments will actually create environmental benefits by enabling the County to regulate and reduce the development potential of an unknown number of fractions lots. Further, the ND boasts that by eliminating development eligibility of substandard size fraction lots which do not meet the minimum parcel size and by providing regulations for LLA's, the County can ensure that future development is consistent with the Comprehensive Plan and zoning ordinances. As a result, the County concluded that the LSC/LLA Program will not result in any significant environmental impacts, and prepared an ND. By failing to include an impacts analysis of the proposed exemption, the ND is improper and fatally flawed.

It goes without saying that if the Program ordinance amendments will enable the County to regulate development potential on fraction lots and ensure that LLA's and future development is consistent with the Comprehensive Plan and zoning ordinances, providing an exemption from the Program would not only preclude such beneficial results, but quite possibly create significant environmental impacts. Surely, the multi-parcel division of agriculturally zoned land, inspired by an increase in developable parcels without any review, regulations, or government oversight clearly may result in significant environmental impacts. In fact, the unchecked division and

development of agricultural land, along with the detrimental impacts such actions are sure to produce, was the impetus behind the creation of the LSC/LLA Program in the first place.

Without a doubt, the County's attempt to interject the proposed (Naples) exemption at the eleventh hour of the process runs afoul of the California Environmental Quality Act. At a minimum, the Final Negative Declaration is deficient because it failed to consider the possible impacts related to exempting the Naples Townsite from the LSC/LLA Program and because the County failed to re-circulate the environmental review documents for public comment after adding new provisions to the Program (Naples exemption) that are likely to result in environmental impacts.

C. The Naples MOU does NOT require this exemption

As justification for the exemption, the County argues that the application of the LSC/LLA Program ordinance amendments to the Naples Townsite "could seriously undermine the possibility of globally resolving development issues at Naples." The validity of that reasoning aside, it is curious why the County is going to such great lengths to protect the Naples settlement negotiations. The current Memorandum of Understanding (MOU) doesn't require such an exemption, and Vintage Communities Inc., a major signatory to the MOU, has acted in bad faith and breached the terms of the MOU, effectively terminating its utility.

The MOU for the Naples Townsite property was entered into to provide a protocol for the settlement and compromise of the disputes surrounding the development of the Naples property and to avoid additional litigation in the matter. A significant element of the MOU relates to the application of LLA's for optimum development of the Naples property. The MOU is conflicting and unclear concerning the County's obligation to exempt lot line adjustments on the Naples property. Regardless, one provision is clear, MOU Section 5.5.1 which states:

> This Agreement shall not preclude the application of changes to state or federal laws, enactments or regulations or changes in County ordinances, rules, regulations and official policies to the extent such changes are required to be applied because of changes in state or federal laws, enactments or regulations; provided, however, that the County shall use its best efforts to exempt lot line adjustments on the Property, from such changes in state or federal law with respect to applications for such lot line adjustments that could be filed within six (6) months of the termination of this MOU (***unless such termination is caused by a breach of the MOU by MRI and/or VRI***).

(MOU, §5.5.1; at 12) (emphasis added).

From the above MOU section, it is crystal clear that if the MOU is terminated by a breach of the MOU by either the Morehart Related Interests (MRI), and/or the Vintage Related Interests (VRI), the County is undeniably relieved of any duty to exempt LLA's on the Naples property

from changes in state or federal law, ***including County ordinances***. Just such a termination by a breach of the MOU occurred when Matt Osgood, Principal for VRI, failed to secure an Acquiring Agency Option Agreement for the acquisition of the Naples property South of Highway 101 before February 15, 2000. Accordingly, the requirement that the County provide an exemption for the Naples property, per the MOU or any other document or provision, is ***null and void.***

Lastly, the developer/Naples property owner is not exempt from future legislative actions nor do they have any vested rights in the development of the property. This is true because under California law, a "vested right" to proceed with development requires that the developer acquire actual building or other permits for identifiable buildings and substantial work has been done thereafter in reliance on those permits. *Avco Community Developers, Inc. v. South Coastal Regional Comm'n,* 17 Cal. 3d 785, 791 (1976). In response to the *Avco* case, the state legislature adopted the Development Agreement Act (*Gov't Code* §§65864-65869.5) which enabled an agency and a developer to enter into an agreement whereby the developer is insulated from future land use actions by the agency which might otherwise prevent the developer from completing the approved development. Without obtaining valid building permits for the Naples property or entering into a Development Agreement with the County (both of which have not occurred), the Naples property is not, and ***should not*** be exempt from future zoning or ordinance changes.[1]

Further, even if the MOU had not been terminated and was still effective, it clearly stated that it "does ***not*** create in VRI or MRI any entitlements, rights or approvals for the ultimate development of the Property." (MOU §3, Effect of MOU; Reservation of Police Power). On top of that, the MOU declares that it may not be legal to exempt the Naples property from future laws such as the LSC/LLA Program ordinance amendments **especially if no development agreement exists**. (MOU §5.5.3; Enforceability). To date, no development agreement exists for the Naples property.

To be fair, it is absolutely true that if the Naples property **already** had a Development Agreement, it could be legally exempt from future laws. That is the main incentive for a developer to seek a Development Agreement, to confer vested rights to development project of rules in place at time the Development Agreement was entered into. However, without such an agreement in place at the time the LSC/LLA Program ordinance amendments are adopted, there is no vesting for the Naples property and the proposed exemption violates state planning laws and principles.

---

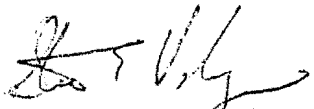
[1] There is one additional method for securing a "vested right" to proceed with development. In 1984, the legislature added a new Chapter to the Subdivision Map Act which established a new form of tentative map for subdivisions in California- the "Vesting Tentative Map". *See* Gov't Code §§66498.1-66498.9. However, the benefits of securing the approval of a "Vesting Tentative Map" are **inapplicable** to the Naples property due to the fact that divisions on the Naples property are by the CC-LLA processes which are being used to circumvent the Subdivision Map Act altogether.

CONCLUSION

On the whole, EDC strongly supports the proposed Lot Size Compliance/Lot Line Adjustment Program and respectfully requests the Honorable Board of Supervisors of the County of Santa Barbara to approve and adopt all of the recommended ordinance amendments, ***with one exception***. That exception being the removal of Planning and Development's proposed exemption for the Naples property from the LSC/LLA Program.

Thank you for your consideration of these comments.

Sincerely,



Steve E. Velyvis
Staff Attorney
Environmental Defense Center

August 29, 2000

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

Re: Recent Grandfather Clause exception to the Lot Line Adjustment Program

Dear Honorable Supervisors:

This letter is submitted by the Environmental Defense Center (EDC), a non-profit public interest environmental law firm, to express concerns regarding your Board's conceptual motion to include an additional exception to the Lot Line Adjustment Ordinance currently before you. Specifically, EDC is strongly opposed to the proposed language that would provide a grandfather clause type exception for Lot Line Adjustment applications that have been deemed complete on or before August 8, 2000.

EDC has consistently stated that each and every exception you provide to the Lot Line Adjustment Ordinance Amendments, whether it be for the Naples Property or for LLA applications deemed complete by a date certain, further erodes the integrity of the program your Board initiated many years ago. However, the latest grandfather clause exception is even more troubling. The problems are two-fold.

I. Fairness Rationale is Suspect and Open to Challenge.

The problem with the grandfather clause exception is that the County's proposed rationale for providing it, fairness, is very suspect. Several supervisors have stated that it would be unfair for the Board to change the LLA regulatory scheme for those who have complete LLA applications and are waiting for the County to process those applications.

The first misconception held by the Board is that persons with complete LLA applications have a right to NOT have the regulations changed at this stage in the process. THAT IS SIMPLY NOT TRUE. In fact, state law requires that development proposals shall be subject to the policies, ordinances and regulations in place at the time of project approval. The ability to retain discretion and police power to impose whatever regulations are necessary to protect the public health, safety, and welfare at the time of project approval is one of the most important planning tools available today. Those with complete LLA applications do NOT have a legal or vested right to have their applications

906 Garden Street
Santa Barbara, CA 93101
Phone (805) 963-1622
FAX (805) 962-3152
edc@rain.org

2021 Sperry Avenue, Suite 18
Ventura, CA 93003
Phone (805) 677-2570
FAX (805) 677-2577
edcvent@west.net

864 Osos Street, Suite A
San Luis Obispo, CA 93401
Phone (805) 781-9932
FAX (805) 781-9384
edcmal@west.net

judged by previous LLA rules or regulations unless they satisfy one of the limited exceptions recognized by law and/or statute. Namely, securing a development agreement with the County, securing a "complete" determination for a vesting tentative map, or by obtaining a valid building permit for their proposed development AND performing substantial work based on that permit.[1] The proposed exemption does not fit within any of these lawful vested rights exceptions.

It is clearly misleading to say that the rationale for providing the grandfather clause exception rests primarily on fairness, as that leads one to believe that if the Board did not provide this exception and change the rules for these applicants, they would deprive them of a legal right. Doing so will not only confuse the public with respect to vested rights, but sets a horrible precedent and opens the door to each and every future permit applicant to argue the fairness issue. Any time the County seeks to update its regulations, policies, or ordinances to alleviate gaps in the law and address matters of important public concern, private landowners will try to avoid such protections by filing development applications and arguing that it would be unfair to apply any new regulations, policies or ordinances to them because they had an application in with the County before the new laws were adopted. In fact, that is exactly what happened here.

In June 1997, the Board of Supervisors directed Planning and Development Staff to return with recommendations regarding the issue of substandard size and fractional lots. Between June 1997 and August 8, 2000, 5 of the 6 properties slated to qualify for the proposed grandfather clause exception raced to submit their LLA applications before the Board revisited the issue and adopted more stringent LLA regulations. By adopting the proposed grandfather clause exception, the Board will not only perpetuate this practice, but cause and enable it to proliferate through the Toro Canyon Community Plan process and in other County legislative matters.

II. The Grandfather Clause Exception is Simply NOT Needed

By looking at the rash of exception proposals and properties clamoring to be excluded from the LLA Ordinance Amendments, one would conclude that the new LLA regulations are drastically different and require LLA applications to meet onerous new requirements. That too, is simply not true. The primary difference between the LLA regulations before and after the proposed LLA Ordinance Amendments is that the new LLA regulations require that LLA's must meet the minimum parcel size requirement of the zone district in which the parcel is located. That simple requirement was the seed for this program, and remains the penultimate requirement of LLA applications processed under the new LLA policies and finding requirements.

---

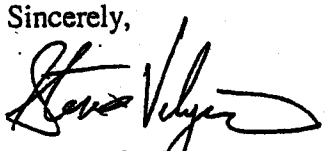
[1] *See* Gov't Code §65864 *et seq.* (Under this Act, an agency and a developer can enter into an agreement whereby the developer is insulated from future land use actions by the agency that might otherwise prevent the developer from completing the approved development); Gov't code § 66498.1(b) (which provides that the approval of a vesting tentative map confers a vested right to proceed with development in compliance with laws in place at the time the application for approval of the vesting tentative map is deemed complete); *Avco Community Developers, Inc. v. South Coastal Reg'l Comm'n*, 17 Cal.3d 785, 791 (1976) (stating that there is no vested right to develop until actual building or other permits for identifiable buildings have been issued and substantial work has been done in reliance on those permits).

However, for LLA's involving four or fewer adjacent parcels, **THE MINIMUM LOT SIZE REQUIREMENT IS ELIMINATED**, and is replaced with a set of requirements that will allow the LLA, irrespective of lot size requirement, when met. Those requirements include four or fewer parcels, no increase in subdivision potential, and no increase in the number of residentially developable lots. To determine whether a LLA of four or fewer lots will result in a greater number of residentially developable lots, various developability standards are to be met. Those include water supply, sewage disposal, access, slope stability, agricultural viability, environmentally sensitive habitat, hazards, and determinations of General Plan and Zoning Ordinance consistency. In fact, all of those standards derive in some form from the policies and requirements found in the General Plan and Zoning Ordinances.

Since LLA's involving four or fewer parcels already are exempt from the minimum parcel size requirement, the seemingly differentiating factor would be the potential increase in "developability". The developability determination also derives from General Plan policies and Zoning Ordinance standards. However, the County *already requires* all LLA applications to satisfy General Plan consistency review. The logical result is that for LLA applications consisting of four or fewer adjacent parcels, it does not matter if they are exempt from the new LLA Ordinance because they will have to satisfy a consistency review regardless. Therefore, providing the grandfather clause exception accomplishes nothing new, except for the less than desirable results discussed above.

Thank you in advance for your consideration of this letter. I would be happy to talk with you to discuss any questions or concerns you may have about this comment letter or the LLA Ordinance in general. Please feel free to call me anytime prior to the Sept 5th hearing.

Sincerely,



Steve Velyvis
Staff Attorney

Cc: Planning and Development Department