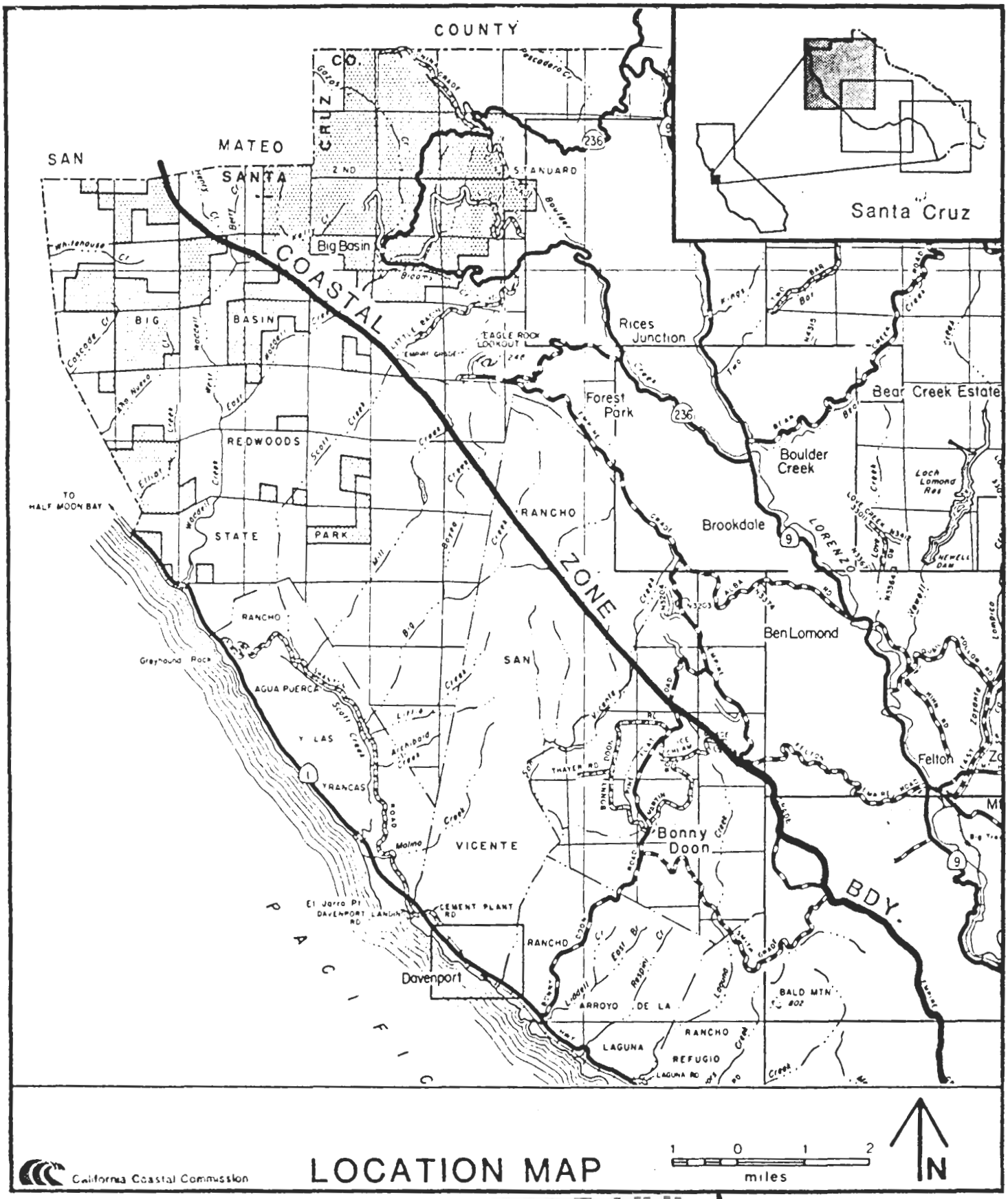

California Coastal Commission

LOCATION MAP

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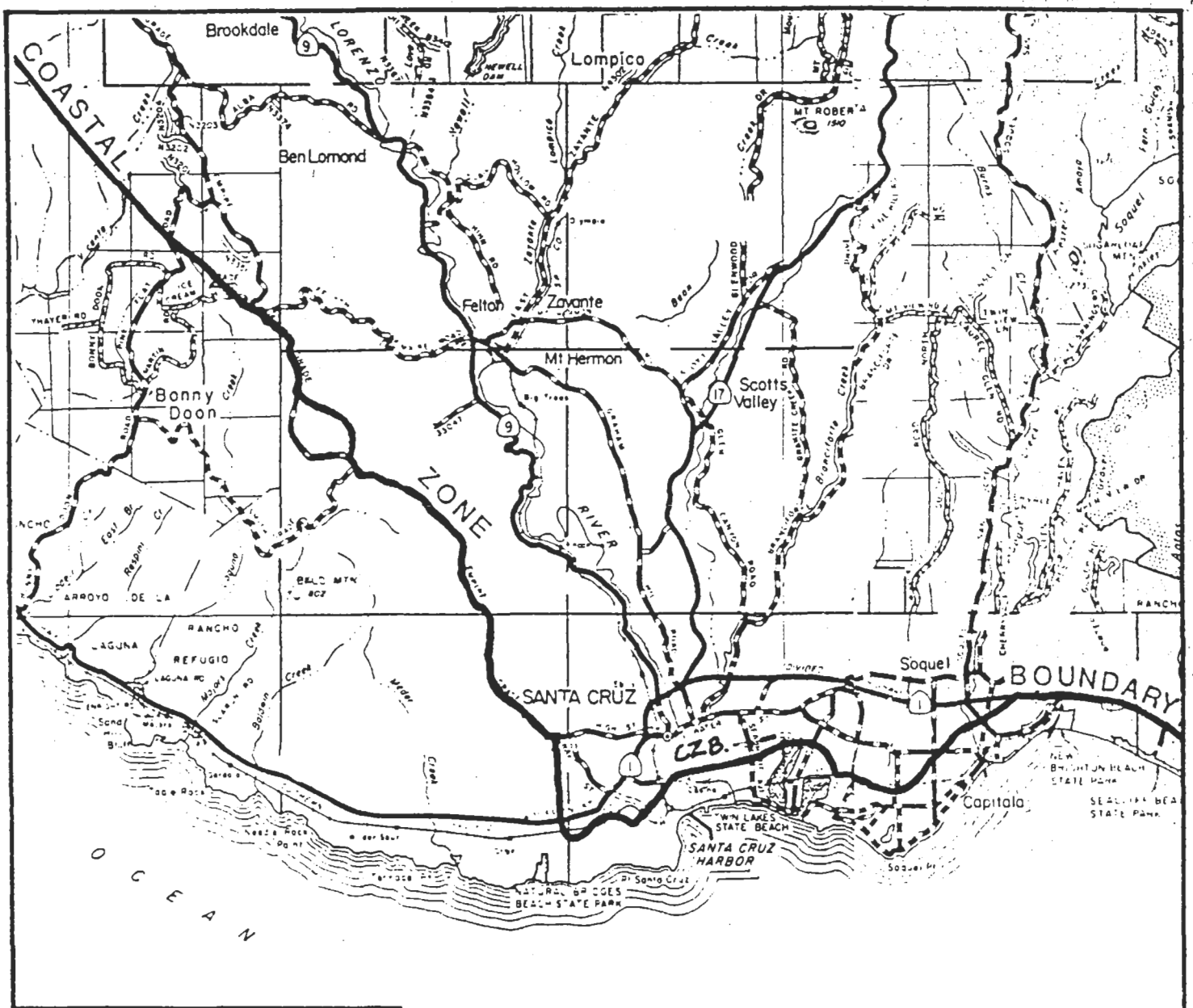
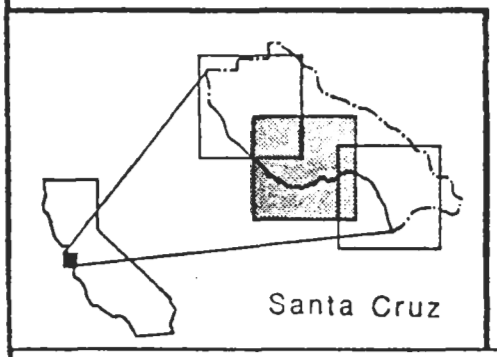
County of Santa Cruz

CCC Exhibit 1
(page 1 of 3 pages)

Sheet 1 of 3





California Coastal Commission

LOCATION MAP

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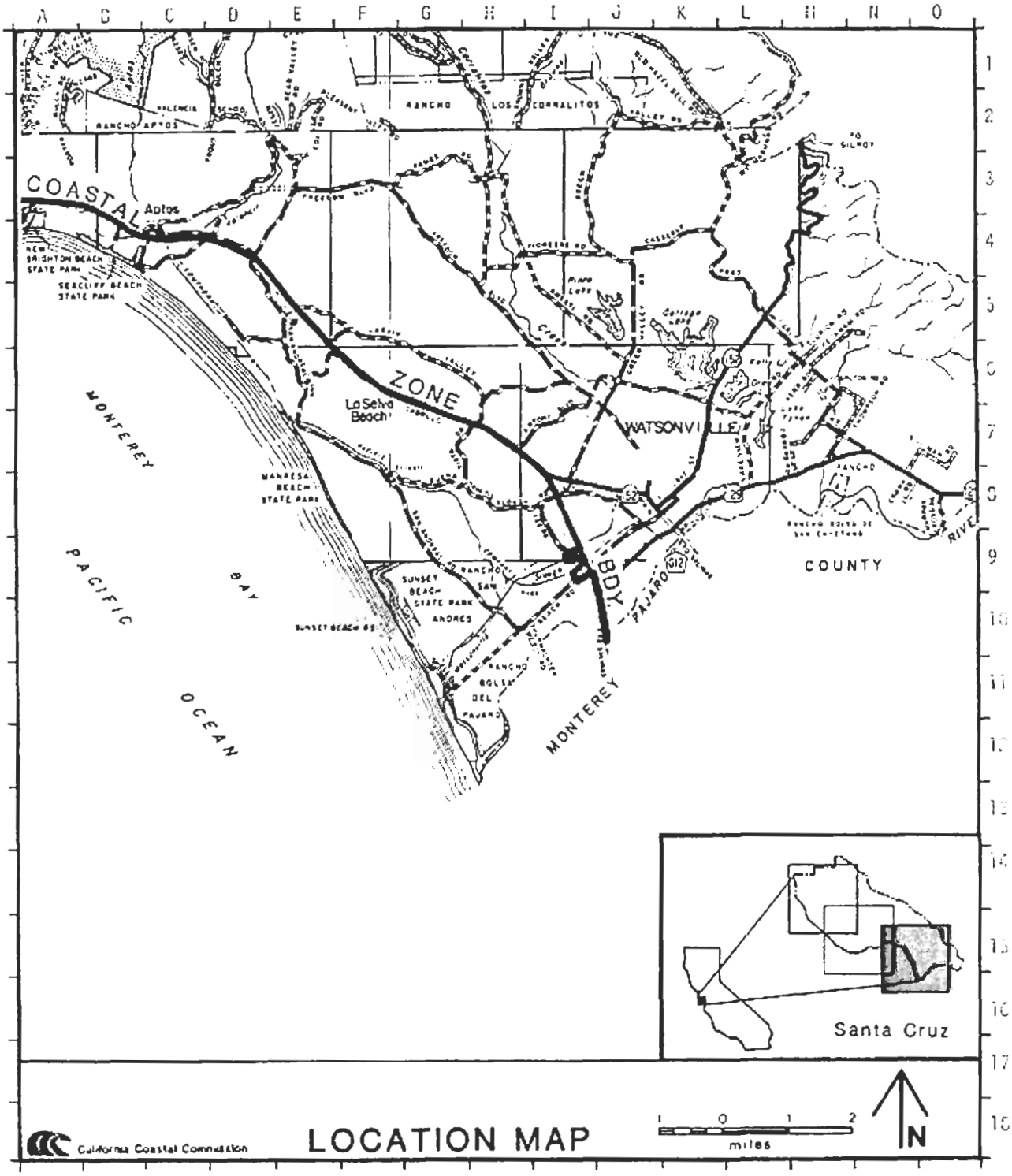
County of Santa Cruz

CCC Exhibit 1
(page 2 of 3 pages)



County of Santa Cruz

Sheet 3 of 3

CCC Exhibit 1
(page 3 of 3 pages)

ORDINANCE No. 4814

ORDINANCE AMENDING COUNTY CODE
SECTIONS 13.10.312(B), 13.10.332(B),
13.10.352(B), 13.10.362(B), AND 13.10.372(B)
AND ADDING SECTION 13.10.686
OF CHAPTER 13.10 OF THE SANTA CRUZ COUNTY CODE
REGARDING LARGE FAMILY CHILD CARE HOMES

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

SECTION I

Subdivision (b) of Section 13.10.312 of the Santa Cruz County Code is hereby amended by adding the category "Child Care Homes, Large" to the Agricultural Uses Chart under "Agricultural Support and Related Facilities" and below the category of "Caretaker's quarters, permanent, subject to the provisions of Section 13.10.631", to read as follows:

USE	CA	A	AP
Child Care Homes, Large Family (must be in conjunction with residential use) (See Sections 13.10.686 and 13.10.700-C definition)	5	5	5

SECTION II

Subdivision (b) of Section 13.10.332 of the Santa Cruz County Code is hereby amended by adding the category "Child Care Homes, Large Family (must be in conjunction with residential use)(See Section 13.10.700-C definition)" to the Commercial Uses Chart under the general category of "Residential Uses, such as", below the category of "Repair, alteration, expansion or reconstruction of dwelling units and accessory structures which are inconsistent with the General Plan, subject to Sections 13.10.260 and .261 Nonconforming Uses", to read as follows:

USE	PA	VA	CT	C-1	C-2	C-4
Child Care Homes, Large Family (must be in conjunction with residential use) (See Sections 13.10.686 and 13.10.700-C definition)	5	–	–	5	5	–

CCC Exhibit 2
(page 1 of 5 pages)

SECTION III

Subdivision (b) of Section 13.10.352 of the Santa Cruz County Code is hereby amended by adding the category "Child Care Homes, Large Family (must be in conjunction with residential use)(See Section 13.10.700-C definition)" to the PR Uses Chart under the general category of "Residential Uses, permanent, such as", and above the category of "One single-family dwelling, subject to the Parksite Review process pursuant to Chapter 15.01", to read as follows:

USE	PR
Child Care Homes, Large Family (must be in conjunction with residential use) (See Sections 13.10.686 and 13.10.700-C definition)	5

SECTION IV

Subdivision (b) of Section 13.10.362 of the Santa Cruz County Code is hereby amended by adding the category "Child Care Homes, Large Family (must be in conjunction with residential use)(See Section 13.10.700-C definition)" to the PF Uses Chart under the general category of "Residential Uses" and above the category of "Residential uses pursuant to a master use permit", to read as follows:

USE	PF
Child Care Homes, Large Family (must be in conjunction with residential use) (See Sections 13.10.686 and 13.10.700-C definition)	5

SECTION V

Subdivision (b) of Section 13.10.372 of the Santa Cruz County Code is hereby amended by adding the category "Child Care Homes, Large Family (must be in conjunction with residential use)(See Section 13.10.700-C definition)" to the TP Uses Chart under the general category of "Residential" below the category of "dwelling groups of single-family dwelling (Subject to the density and other requirements in Section 13.10.373, .374, and .375)", to read as follows:

USE	TP
Child Care Homes, Large Family (must be in conjunction with residential use) (See Sections 13.10.686 and 13.10.700-C definition)	5

CCC Exhibit 2
(page 2 of 5 pages)

SECTION VI

The Santa Cruz County Code is hereby amended by adding Section 13.10.686 entitled "Large Family Child Care Homes in Non-Residential Zone Districts" to read as follows:

13.10.686 Large family child care homes in non-residential zone districts.

(a) Purpose. The purpose of this section is to provide for and regulate Large Family Child Care Homes in order to provide needed child care in a home setting, as well as minimize or prevent potential conflicts between child care and other on-site or adjacent uses.

1. Purpose in Agricultural Districts. The purpose of this section in agricultural districts is to provide opportunities for Large Family Child Care Homes to be located in areas which are zoned agriculture but have a residential character, or in the location of farmworker housing where childcare is needed.

2. Purpose in Commercial Districts. The purpose of this section in commercial districts is to provide opportunities for Large Family Child Care Homes to be located in residences with proximity to places of employment.

3. Purpose in Parks, Recreation and Open Space District. The purpose of this section in the Parks, Recreation and Open Space districts is to provide opportunities for Large Family Child Care Homes to be located in residences in proximity to outdoor activities, residential neighborhoods and commercial areas.

4. Purpose in Public and Community Facilities District. The purpose of this section in the Public and Community Facilities district is to provide opportunities for Large Family Child Care Homes to be located in residences in proximity to public facilities, such as schools, and near residential areas.

5. Purpose in Timber Production Districts. The purpose of this section in the Timber Production district is to provide opportunities for Large Family Child Care Homes to be located in residences on land zoned for timber production consistent with the provisions of Section 13.10.375.

(b) Application Requirements. In those non-residential zone districts where Large Family Child Care Homes are allowed in conjunction with a residential use, a Level V use approval is required. Approval of these permits shall be processed in accordance with the provisions of Chapter 18.10.223. Large Family Child Care Homes proposed to be located within the Coastal Zone shall require a Coastal Permit which is also processed at Level V.

1. Upon application submittal, the applicant must submit a statement of operation which includes the following information:

(i) Number of employees.

(ii) Number of children.

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(page 3 of 5 pages)

(iii) Hours and days of operation.

(iv) Site plan which clearly illustrates the pick up/drop off area, on site circulation and parking spaces.

(c) Required Findings. Before a Development Permit (Level V use approval) for Large Family Child Care Home can be granted, the general findings for Development Permits set forth in Section 18.10.230 (a) and where applicable, Coastal Permit findings set forth in Section 13.20.110 shall be made in addition to the following findings:

1. In Agricultural Districts (A, CA and AP), the Agricultural Policy Advisory Commission shall review proposals and make recommendations to the approving body and the approving body shall make the following findings:

(i) The Large Family Child Care Home use on the parcel will not conflict with on-site or adjacent agricultural activities (including but not limited to herbicide and pesticide use); and

(ii) The Large Family Child Care Home is consistent with the preservation of the agricultural resources on site.

(iii) The Large Family Child Care Homes is proposed to be located in an area which either has a residential character, or is located in conjunction with farmworker housing.

(iv) Section 16.50.095 pertaining to agricultural buffer setbacks shall apply where a structural addition is proposed as part of the Large Family Child Care Home use or where an intensification of human use of outdoor areas will result from the Large Family Child Care Home use.

2. In Timber Production Districts (TP), the following additional findings shall be made:

(i) The Large Family Day Care Home use does not conflict with the growing and harvesting of sustained yield tree crop and all timber harvesting activities.

(ii) The Large Family Day Care Home operation is consistent with Section 13.10.375(a)(1).

(d) Requirements. Before a Large Family Child Care Home, authorized by a development permit, or, if applicable, a coastal permit, can commence operation, the following requirements shall be met:

1. Location: The Large Family Child Care Home must be operated in a residence or in the residential portion of a mixed use structure.

(i) In the commercial zones, the percentage of residential square footage of the structure must comply with Section 13.10.332(b).

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(page 4 of 5 pages)

(ii) The large family child care home shall operate in the residential portion of the structure.

2. Occupancy: The owner or occupant of the residence must be the operator of the Large Family Child Care Home and must be listed on the State License as the operator. The operator must live at the premises full-time.

3. Parking: Sufficient on-site parking must be provided for all employees of the Large Family Child Care Home. Sufficient off street parking equates to a minimum of one off street parking space per full time employee and a minimum of one off street drop off/pick up parking space. Any alternative off street parking standard must be deemed appropriate by the Zoning Administrator based on site constraints which would otherwise preclude the operation of a Large Family Child Care Home on the property. Additionally, there shall be sufficient off-street and on-street parking such that the operation of this use will not impede local traffic nor cause traffic congestion during peak drop-off and pick-up periods.

4. Traffic: Unless found to be unnecessary due to ample drop off and pick up areas, a plan for staggering drop-off and pick-up times to minimize traffic shall be submitted and reviewed as part of the application. An operational condition shall require implementation of this traffic control plan.

5. Other Conditions: Other conditions deemed appropriate by the approving body may be applied to the development permit of a Large Family Child Care Home to further the purposes of this Section.

SECTION VIII

This Ordinance shall take effect on the 31st day after the date of final passage outside the Coastal Zone and upon certification by the California Coastal Commission within the Coastal Zone.

PASSED AND ADOPTED this _____ day of _____, 2006, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

_____
Chairman, Board of Supervisors

ATTEST: _____
Clerk of the Board

APPROVED AS TO FORM: _____
County Counsel

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(page 5 of 5 pages)

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. 40-2006

On the motion of Supervisor: Wormhoudt
Duly seconded by Supervisor: Beautz
The following Resolution is adopted:

RESOLUTION ADOPTING ORDINANCE AMENDMENTS REGARDING LARGE FAMILY CHILD CARE HOMES

WHEREAS, the provision of child care is an important resource in the County of Santa Cruz (the "County"), and providing opportunities for a variety of child care options is valuable to the community; and

WHEREAS, the Board of Supervisors directed that an ordinance be drafted and ordinance amendments be developed to allow Large Family Child Care Homes in non-residential zones in Volume II of the Santa Cruz County Code and Local Coastal Program; and

WHEREAS, the County desires to expand the opportunities to allow Large Family Child Care Homes in non-residential zones under specific circumstances and with regulations; and

WHEREAS, Large Family Child Care Homes provide a type of child care which is an asset to the community; and

WHEREAS, amending the County Code and the Local Coastal Program to reflect this goal requires an amendment to the County Code and the Local Coastal Program Land Use Plan regarding Large Family Child Care Homes; and

WHEREAS, the proposed amendments were submitted to the Agricultural Policy Advisory Commission for their review and recommendation and were reviewed at public meetings on April 21, 2005 and May 19, 2005; and

WHEREAS, the proposed amendments were submitted to the Planning Commission for their review and recommendation and were reviewed at public meetings on October 26, 2005 and December 14, 2005; and

WHEREAS, the Planning Commission has held a duly noticed public hearing and has considered the proposed amendments, and all testimony and evidence received at the public hearing; and

WHEREAS, the Planning Commission found that the proposed Local Coastal Program amendments and proposed amendments to the Santa Cruz County Code will be consistent with the policies of the General Plan and Local Coastal Program and other provisions of the County Code, and will contribute to the provision of child care throughout the community; and

WHEREAS, the proposed amendments were submitted to the Board of Supervisors for their review and adoption and were reviewed at a public meeting on February 7, 2006; and

WHEREAS, the Board of Supervisors has held a duly noticed public hearing and has considered the proposed amendments, and all testimony and evidence received at the public hearing; and

WHEREAS, the Board of Supervisors finds that the proposed Local Coastal Program amendments and proposed amendments to the Santa Cruz County Code will be consistent with the policies of the General Plan and Local Coastal Program and other provisions of the County Code, and will contribute to the provision of child care throughout the community; and

WHEREAS, pursuant to the California Environmental Quality Act, this action is statutorily exempt under CEQA Guidelines Section 15274 – Family Day Care Homes (Health & Safety Code Section 1597.46(b)) and partially exempt under CEQA Guidelines Section 15265—Amendments to Local Coastal Plans (Public Resources Code Section 21080.9) and categorically exempt under Class 1—Existing Facilities CEQA Guidelines Section 15301 and Class 3—New Construction or Conversion of Small Structures CEQA Guidelines Section 15303; and

WHEREAS, Chapter 13.10 of the County Code is an implementing ordinance of the Local Coastal Program (LCP) and the proposed amendments to Chapter 13.10 constitute an amendment to the Local Coastal Program; and

WHEREAS, the proposed amendments are consistent with the California Coastal Act.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors hereby finds this action statutorily and categorically exempt from the California Environmental Quality Act and applicable State and County Guidelines; and

BE IT FURTHER RESOLVED, that the Board of Supervisors adopts the proposed amendments to County Code Sections 13.10.312(b), 13.10.332(b), 13.10.352(b), 13.10.362(b), 13.10.372(b) and the proposed addition of 13.10.686 be adopted to allow Large Family Child Care Homes in non-residential zones as set forth in Exhibit A to this Resolution, and the Notice of Exemption from the California Environmental Quality Act as set forth in Attachment 3, and incorporated herein by reference, be approved by the Board

of Supervisors and submitted to the California Coastal Commission as part of the Local Coastal Program Update.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this 7th day of February, 2006 by the following vote:

AYES: SUPERVISORS Beautz, Pirie, Wormhoudt, Campos and Stone
NOES: SUPERVISORS None
ABSENT: SUPERVISORS None
ABSTAIN: SUPERVISORS None

MARK W. STONE

Chairperson

ATTEST: GAIL T. BORKOWSKI
Clerk of the Board

APPROVED AS TO FORM:

COUNTY COUNSEL

cc: County Counsel
Planning Department

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ) ss
I, SUSAN A. MAURIELLO, County Administrative Officer and ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz, State of California do hereby certify that the foregoing is a true and correct copy of the resolution passed and adopted by and entered in the minutes of the said board. In witness whereof I have hereunto set my hand and affixed the seal of the said Board on 2/14 20 06.
SUSAN A. MAURIELLO, County Administrative Officer
By _____ Deputy

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(page 3 of 3 pages)

EXHIBIT A

0499

ATTACHMENT 11

COUNTY OF SANTA CRUZ

OFFICE OF THE COUNTY COUNSEL

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Special Counsel
Dwight Herr
Deborah Steen

December 1, 2005

Hon. Chair Bremner and Members
Planning Commission
County of Santa Cruz
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: Large Family Child Care Home Ordinance

Dear Chair Bremner and Planning Commissioners:

You have requested that this office respond to Mr. Jonathan Wittwer's letter dated October 25, 2005 and related oral testimony on October 26, 2006. Mr. Wittwer represents the Crest Dive Neighbors ("CDN") who oppose the County's proposed adoption of zoning ordinance amendments (the "Ordinance") that would allow large family child care homes ("LFCCHs") within agricultural zones in the County subject to approval of a Level 5 development permit. Previously, in a letter dated August 19, 2005, CDN suggested numerous revisions to the draft Ordinance that have been reviewed by Planning staff and addressed in the staff report. This letter will address the legal issues raised by CDN.

I. General Plan Consistency

CDN asserts that the Ordinance is inconsistent with General Plan Section 5.13, which provides that the County is to recognize that agriculture is a priority land use, and to resolve policy conflicts in favor of preserving and promoting agriculture on designated agricultural lands. CDN asserts that unnamed County regulations (presumably the General Plan) require agricultural uses to have priority over child care facility uses. CDN's conclusion that LFCCHs are not compatible with agricultural uses is based on concerns expressed by the Agricultural Policy Advisory Commission ("APAC") and the Santa Cruz County Farm Bureau. However, CDN does not mention General Plan Policies 5.13.23 through 5.13.33 which contemplate that residential uses will be allowed on and adjacent to Commercial Agricultural land and that policies exist to minimize the conflicts between these uses.

CDN's position assumes that an inherent land use conflict exists between LFCCHs and agriculture. However, a stated purpose of the Ordinance is to provide opportunities for LFCCHs

to be located in areas that while zoned agriculture, have a residential character, and to allow for childcare opportunities in close proximity to farmworker housing. Clearly, these purposes are not inconsistent with the General Plan policy cited by CDN. Furthermore, the proposed Ordinance is specifically designed to minimize potential conflicts by requiring APAC to review proposals and make recommendations regarding the LFCCHs. The approving body must also make findings that the LFCCH "will not conflict with on-site or adjacent agricultural activities" and "is consistent with the preservation of the agricultural resources on site". *See* Ordinance Section 13.10.686. In addition, Section 13.10.686(d)(1) requires that the proposed LFCCH must be operated in a residence or in the residential portion of a mixed used structure. This would prohibit a LFCCH from being proposed for a structure currently being used solely for agricultural purposes further minimizing conflicts with agriculture.

Courts generally defer to a legislative body's finding of consistency with a general plan and a determination of consistency carries a strong presumption of regularity. *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1338. Courts have recognized that legislative bodies are in the best position to interpret sometimes competing land use policies to determine such consistency.[1] A reviewing court reviews decisions regarding consistency with a general plan under the arbitrary and capricious standard; the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. *Endangered Habitats league, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777,782. Under this standard the appellate court defers to an agency's fact finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it. *Id.*

Here, it would appear that a reasonable person could conclude that the Ordinance is consistent with the General Plan policy cited by CDN. Although General Plan Policy 5.13 is extremely general in nature, it does make clear that preserving and promoting agricultural uses is a high priority. The draft Ordinance is consistent with this priority in that it contains the numerous safeguards discussed above intended to minimize conflicts between the agricultural and LFCCH uses. Therefore, based upon the deferential standard of review that a court would likely apply, the Ordinance is likely to be found consistent with General Plan Policy 5.13.[2]

II. Conflicts with Voter Approved Initiative

CDN asserts that the Ordinance conflicts with Chapter 17.01 of the Santa Cruz County Code which was adopted by the voters in 1978 as Measure J. The primary purpose of Measure J was to regulate the character, location, amount and timing of development in the County and to encourage the development of affordable housing. CDN relies on Section 17.10.030 (a) (which should be a reference to 17.01.030 (a)) which states, "It shall be the policy of Santa Cruz County that prime agricultural lands and lands which are economically productive when used for agriculture shall be preserved for agricultural use." In addition, CDN cites Section

[1] For example, General Plan Policy 7.14 encourages adequate child care facilities to alleviate shortages in these facilities.
[2] Similarly, it is reasonable for the County to conclude that the Ordinance complies with the Coastal Act at Public Resources Code section 30241 which requires minimization of conflicts between agricultural and urban land uses.

17.01.020(d)(1) that states that agricultural lands are being lost to development, and the continued viability of commercial agriculture is threatened by inappropriately placed development.

First, a basic review of the Ordinance and Chapter 17.01 indicates that the Ordinance does not directly amend any of Chapter 17.01 or Measure J. Thus, CDN urges the Planning Commission to conclude that the Ordinance indirectly amends Chapter 17.01 due to the purported negative impacts of the Ordinance on agricultural uses. CDN again assumes that introduction of LFCCHs on land zoned for agriculture will lead to conflicts with agricultural uses. The County respectfully disagrees with this assumption based upon on the Ordinance's safeguards to minimize conflicts as discussed in Section I above.

Second, CDN impliedly argues that agricultural land will be "threatened by... inappropriately placed development," presumably due to a proliferation of LFCCHs on land zoned for agricultural uses. This argument ignores the fact that a LFCCH use can only take place within an existing permitted residential structure or a proposed residential structure that will be required to undergo and comply with all applicable requirements for residential uses in agriculture zones, including APAC review, agricultural compatibility findings, and other requirements intended to minimize conflicts between agricultural and non-agricultural uses. The purpose of the Ordinance is to require that LFCCHs within existing or proposed residential structures be subject to the additional requirement of obtaining a Level 5 use permit and to impose additional necessary regulations on the LFCCH use so that conflicts between the LFCCH and on-site or adjacent agricultural uses will be minimized.

Finally, we have reviewed the case law cited by CDN relating to the initiative power. CDN does not discuss the facts in these cases because they are not similar to County's consideration of adoption of the Ordinance. These cases do provide general statements upholding the use of the initiative process in the land-use (the *San Mateo* case) and other contexts (the *Quackenbush* case involving an insurance initiative). These cases also stand for the general proposition that an ordinance enacted by initiative cannot be amended by the legislative body unless such amendment is authorized by the initiative.

It is undisputed that Chapter 17.01 is not being directly amended by the Ordinance. Furthermore, a review of the Ordinance as compared to the general policy statements cited by CDN do not lead to the conclusion that the Ordinance indirectly amends Chapter 17.01 for all of the reasons discussed above. Therefore, these cases are not applicable.

III. 200 Foot Buffer Requirement

CDN asserts that the County General Plan requires a 200 foot buffer between a LFCCH use and adjacent agricultural uses. CDN relies on General Plan Policy 5.13.23 which states as follows:

> "Agricultural Buffers Required. Require a 200 foot buffer area between commercial agricultural and non-agricultural land uses to prevent or minimize potential land use

conflicts, between either existing or future commercial agricultural and non-agricultural land uses."

CDN argues that the Ordinance contains no express requirement that a 200 foot buffer be maintained. However, under the Ordinance, only where a LFCCH is proposed to be located in a pre-existing residence requiring *no structural alterations* would the buffer requirement be exempted. Ordinance Section 13.10.686(c)(iii). Any structural alterations would be subject to the buffer requirements, if applicable.

CDN's argument ignores the potential for farmworker housing based childcare that could constitute an agriculturally related use. It also ignores the fact that such child care use can only occur within a permitted residential use, which is itself a permitted use in the Commercial Agricultural zone. CDN also does not discuss General Plan Policies 5.13.24 and related policies that allow for a reduced setback as long as certain findings and requirements can be met including review by APAC (which is required under the Ordinance).

APAC is tasked in the General Plan and County Code with reviewing and making recommendations regarding agricultural buffer setbacks for specific development proposals. General Plan Policy 5.13.25 "Agricultural Policy Advisory Commission Review" describes the task of APAC: "require the following projects to be reviewed by the Agricultural Policy Advisory Commission for the purpose of recommending an appropriate setback and/or buffer area of non-developable land adjacent to commercial agricultural lands, consistent with the Agricultural Preservation and Protection ordinance:

> *(a) Habitable structures within 200 feet of commercial agricultural lands.*
> (b) *Land divisions within 200 feet of commercial agricultural lands. (Emphasis added)*
> Density Credit shall be given for the buffer area."

This policy suggests that APAC will review proposals for habitable structures and land divisions within 200 feet of commercial agricultural lands and recommend the appropriate setback and/or buffer for that project proposal. Nothing in this policy suggests that the addition of children to an existing residential structure would require an agricultural setback and/or buffer or APAC review that would not otherwise be required.

Similarly, Section 16.50.095(b) of the County Code addresses when an agricultural buffer setback is required. Section 16.50.095(b) specifies that agricultural buffer setbacks are required for "all development for habitable uses" within 200 feet of commercial agricultural land.

Development is specifically defined in the County Code as:

> Development. On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of 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 use 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 harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

State law considers LFCCHs in residential zones and small family child care homes residential uses. LFCCHs outside the residential zones are also considered a residential use by Planning staff. There is no change of use (assuming no structural alteration is required) where a LFCCH is proposed for an existing residential structure.

CDN has asserted that LFCCHs should be considered an intensification of use for the purposes of triggering the agricultural buffer requirements. However, when read in the context of the definition of development, the "change in the density or intensity of use of land" anticipates these changes to include subdivisions and other land divisions as increasing the intensity of the use of land. The addition of children cared for in a permitted residential structure is not comparable to the division of land into smaller parcels. Additionally, the County does not regulate the number of individuals that can be housed in residential structures. Therefore, an increase in occupancy of a residential unit does not constitute an "intensity of use of land". As such, the inclusion of children cannot be considered an "intensity of use of land".

Additionally, according to Planning staff, the inclusion of the agricultural buffer setback provisions in the August 2005 version of the ordinance resulted from APAC's recommendation that such be required. Upon further evaluation by Planning staff, it became clear that an agricultural buffer setback would not be required for these uses because the LFCCH use, alone, would not trigger an agricultural buffer setback review by virtue of the fact that the General Plan does not require it. Therefore, the inclusion of the requirement of compliance with the agricultural buffer setback regulations is not appropriate in that LFCCHs would automatically meet the requirements and would not trigger the need for an agricultural buffer setback because they can only be located in permitted residential structures.

IV. California Environmental Policy Act ("CEQA") Compliance

Planning staff has determined that the Proposed Ordinance is exempt from environmental review under CEQA. CDN disputes this conclusion. With respect to non-Coastal Zone land, CDN cites no legal authority for its conclusion that the statutory and categorical exemptions cited by Planning staff apply only to specific development proposals, not ordinance amendments of Countywide impact.

No published appellate case law has interpreted Health and Safety Code Section 1597.45 and CEQA Guidelines Section 15274. Health and Safety Code Section 1597.45 states that: "(b) A

large family day care home shall not be subject to the provisions of Division 13 commencing with Section 21000) of the Public Resources Code." CEQA Guidelines section 15274(b) adds that the "establishment or operation of a small family day care home is a ministerial action that is not subject to CEQA."

CDN urges a narrow reading of the statutory exemption to not apply to a zoning ordinance authorizing a LFCCH; however, such an interpretation would arguably conflict with the Legislature's clear intent to promote LFCCHs; if local agencies and opponents could use the CEQA process to block the establishment of LFCCHs. Thus, there is a legal basis for the County to rely on this statutory exemption, although no court opinion has yet interpreted it. With respect to the application of the Type 1 (Existing Facilities) and Type 3 (New Construction or Conversion of Small Structures), the County is relying on these exemptions based upon the overall requirement that LFCCHs will only be located in existing or proposed permitted residential dwellings and the LFCCH use is considered a residential use.

With respect to lands within the Coastal Zone, CDN argues that statutory exemption contained at Public Resources Code Section 21080.9 and CEQA Guidelines Section 15265 does not apply. CDN then asserts that even if this exemption does apply the County would still be obligated to prepare an "equivalent environmental review" similar to CEQA. This conclusion is contradicted by the express language of CEQA Guideline Section 15265(c) that states that:

> "This section shifts the burden of CEQA compliance from the local agency or the state university or college to the California Coastal Commission."

This section is entitled to deference and would have no meaning if the County was required to do a CEQA equivalent analysis prior to consideration by the Coastal Commission. In response to a request from the Coastal Commission as part of the Coastal Commission's consideration of the Ordinance (LCP Amendment), the County will provide information as deemed necessary by the Coastal Commission, but the statutory exemption relieves the County's obligation to conduct formal environmental review.

CDN points to the fact that the court in *Santa Barbara Flower and Nursery Growers Ass'n v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 871 cites the Coastal Act's general procedures for adoption and amendments to local coastal plans for the proposition that a submission by a local government must include a complete environmental review; however a review of these sections does not reveal such a requirement. Furthermore, the *Santa Barbara* case cites CEQA Guideline section 15265(c) with approval for the proposition that neither the County nor the Coastal Commission is required to prepare an EIR for an LCP approval. Even if the Coastal Act sections cited by the *Santa Barbara* court and CDN did impose such an obligation on the County this requirement would appear to create a conflict between CEQA and the Coastal Act as to who must prepare the environmental review, and no published appellate case has addressed who has ultimate responsibility for conducting the CEQA analysis. Therefore, it is reasonable for the County to apply the exemption based upon the statutory language and the CEQA Guideline.

CCC Exhibit 4
(page 6 of 13 pages)

If you have any additional, questions please let me know.

Sincerely,

DANA McRAE, COUNTY COUNSEL

By _____
CHRISTOPHER R. CHELEDEN
Assistant County Counsel

CC: Tom Burns, Planning Director
Julianne Ward, Planner IV
Dana McRae, County Counsel
Rahn Garcia, Chief Assistant County Counsel

CCC Exhibit 4
(page 7 of 13 pages)

The Santa Cruz County
Child Care Planning Council
El Consejo de Planeación de Cuidado Infantil del Condado de Santa Cruz
www.childcareplanning.org

February 7,2005

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Large Family Child Care Homes

Dear Commissioners:

The Santa Cruz County Child Care Planning Council is pleased with the most recent version of the proposed ordinance amendments regarding large family child care homes in non residential zones. In particular, we are in agreement that the APAC should review and make recommendations regarding applications in agricultural zones but that the actual findings required by the ordinance should be made by the approving body. We also appreciate staffs clarification that since LFCCHs will be located within existing residential homes the property being considered will already be in compliance with the Agricultural Buffer Setback ordinance.

The Child Care Planning Council is concerned with the provision of quality, licensed child care opportunities for all residents of Santa Cruz County. With more than half of our population living in the unincorporated areas of the county we look for ways of supporting child care programs in both urban settings as well as in our more rural locations. While the vast majority of family child care homes are located in residential zones there are exceptions when a non-residentially zoned location can also be desirable. This proposed ordinance will allow the flexibility for these special situations to exist when they are appropriate. This ordinance does not allow or place children in a setting which is not already residential in nature and does not set a precedence that would compromise the uses that are already designated for these non-residentially zoned areas.

While we agree that a Level V review is appropriate for LFCCHs in non-residential zones we are Concerned with the high cost involved in that review process. A $5,000 application fee for this type of review would be prohibitive for a small home-based business. Since the actual number of non-residential LFCCH applications will be extremely low we would suggest that the fees charged be kept to a minimum and in any case under $500. We ask that the Planning Commission recommend that this type of fee reduction be considered in relation to this ordinance.

Sincerely;

Wilma Gold

Wilma Gold
Chair, Santa Cruz County Child Care Planning Council

CCC Exhibit: 4
(page 8 of 13 pages)

809-H Bay Avenue · Capitola, CA 95010 · (831) 477-5521 · FAX (831) 479-1316

EXHIBIT H
ATTACHMENT 6

048

The Santa Cruz County
Child Care Planning Council
www.childcareplanning.org

August 24, 2005

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

SUBJECT: Large Family Child Care Homes

Dear Commissioners:

The Policy and Local Planning Committee of the Santa Cruz County Child Care Planning Council is concerned that local planning and zoning policies are in place that are user-friendly and supportive of the diverse network of child care centers and family child care homes that make up our local child care industry. We believe that there are some locations in non-residential zoned areas of the county that are safe and appropriate for large family child care homes and we strongly support the proposed ordinance. We have a few concerns about the draft ordinance that we would like to share with you:

1. The level V review proposed for Large Family Child Care Homes (LFCCH) is the same level required of child care centers that could serve up to 60 or more children. A level V review for a child care center costs approximately $5,000 to $6,000. We need to remember that a large family child care home is a small home-based business with only one or two employees. Asking them to pay this level of fee would make the application process prohibitive. Since the actual number of non-residential LFCCH applications will be extremely low we would suggest that the fees charged be kept to a minimum and in any case under $500. We ask that the Commission recommend that this type of fee reduction be considered in relation to this ordinance.
2. We are concerned that the Agricultural Policy Advocacy Commission (APAC) has already issued a statement that LFCCH's are not compatible with agricultural zones at all. With this statement already on the record, it seems that we are automatically setting up a scenario that will require appeal to the Board of Supervisors in every case, creating a de facto level VI review for a small family business. We would suggest that the findings that the proposed ordinance requires to be made by the APAC be made, instead, by the Zoning Administrator.

CCC Exhibit 4
(page 9 of 13 pages)

63

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3. The APAC finding C. should be dropped as a requirement. The issuance of a LFCCH permit will not change the residential use of any property receiving the permit and will not allow any structural modifications or additions to the home. Thus the agricultural buffer setback requirements for an existing residence will not be affected by the issuance of a LFCCH permit. Leaving this requirement in the ordinance only misleads people to thinking that the permit process will trigger changes in the buffer setbacks.

Sincerely,

Wilma Gold
Chair, Santa Cruz County Child Care Planning Council

HASELTON
& HASELTON
ATTORNEYS AT LAW

2425 Porter Street, Suite 14
Soquel, California 95073
Telephone: 831.475.4679
Facsimile: 831.462.0724

Britt L. Haselton, Esq.
Joseph G. Haselton, Esq.

SENT BY FAX

February 6, 2006

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Re: Resolution Adapting Ordinance Amendments Regarding Large Family Child Care Homes At Board of Supervisors' Meeting February 7, 2006

Dear Members of the Board of Supervisors:

Our firm represents, Susun Gallery, who currently operates a state licensed day care facility at her home in the La Selva Beach area. While we are in favor of the Board approving a Resolution which effectuates allowing Large Family Child Care Homes in non-residential zones, we have several significant concerns with the proposed Resolution.

Firstly, the Level V use requirement is much too stringent and expensive for the child care providers to comply with. To require these individuals to go through this extensive application process is unfair and will result in not permitting day care centers to operate in these lovely rural neighborhoods which are entirely appropriate settings for child care centers. Health and Safety code § 1597.46 (a)(3) demands that, "the local government shall process any required permit as economically as possible." Day care center applicants going through this process can expect to pay $5-6,000.00 or more to get through the application process. This is completely unfair to these providers as even after suffering this financial setback, some may not be approved. We would strongly suggest that the fees in this area be reduced to bring it into compliance with California law.

Secondly, to require a 200' agricultural buffer is unnecessary and will effectively bar otherwise perfectly adequate facilities from operating their businesses. Our client has had experience operating her center adjacent to agricultural land for many years and she has never had a complaint from her farmer neighbors. On the contrary, there has always been a mutually courteous and supportive relationship between the two parties. Large family day care homes are almost exclusively regulated by state law, Health and Safety code § 1597.40. Health and Safety code §1597.46 (a)(3) states that a county may only prescribe reasonable standards, restrictions,

CCC Exhibit 4
(page 11 of 13 pages)

02/06/2006 16:36 18314620724 FBWC&L PAGE 02

and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes. We believe that the agricultural setback requirement is outside the purview of the county's regulatory authority.

As the Planning Department states in its letter of January 9, 2006, there currently exist 64 LFCCHs in the county, one exists in the C-4 zone and one exists in the CA zone. These proposed regulations and requirements will currently only affect two individuals who operate these centers. Interestingly, one of the members of the Board resides in the neighborhood where our clients' day care center is attempting to operate, and this Supervisor has been openly opposed to its existence. Upon moving to her property, our client made many improvements to the dilapidated buildings and weed infested lot. Her business is appreciated by many families whose children attend her day care, some of them farm worker's families. Yet she has been met with hostility from a vocal lobby consisting of a handful of neighbors. There exists in this case a strong conflict of interest.

Finally, constitutional issues exist since the regulation will effect so few that the ordinance may be construed as discriminatory against our client, The courts are concerned when the exercise of legislative power exceeds constitutional limitation and could be called upon in this matter to make such a determination. We believe that the purer goal of quality child care should be considered of ultimate importance and that the barriers as created by this Board's direction be lessened.

We thank you for your consideration of this matter.

Very truly yours,

Britt L. Haselton

Britt L. Haselton,
Haselton & Haselton
Attorneys at Law

CCC Exhibit 4
(page 12 of 13 pages)

63

Robert E. Varni Company
524 Browns Valley Road • Watsonville, Ca 95076

To whom it may concern;

Susan Gallery & Byron Levey have always been very good and trust worthy people.

I have farmed the McGrath Ranch for the past twelve years at which they were my neighbors and had their day care and art school next to my field. The children never were a problem due to the way Susan conducted the school.

I followed the laws set forth by the county & State when conducting my operation next to their art school. Susan & Byron were always Agriculture friendly enjoyed me & my farming operation. They were always pleasant people to have as neighbors thank you.

Yours Truely

Robert Varni

CCC Exhibit 4
(page 13 of 13 pages)

EXHIBIT 1

ATTACHMENT 7

0484

Working For The People Who Work The Land

SANTA CRUZ COUNTY
Farm Bureau

October 25, 2005

Planning Commission
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Large Family Child Care Homes

Dear Commissioners:

The Santa Cruz Farm Bureau does not support family childcare homes in an agricultural zoned district.

Santa Cruz County has ordinances that do not allow subdivisions on agricultural land. The County has buffer policies in place and has passed a Right to Farm Ordinance for the purpose of supporting the agricultural economy in Santa Cruz County by reducing urban and rural conflicts. Day care facilities, schools, and residential uses in agricultural zoned districts can cause conflicts with on-going farming operations.

This matter was presented to the Agricultural Policy Advisory Commission. APAC recommended Family Day Care Centers **NOT** be located on agricultural land.

The Santa Cruz Farm Bureau supports APAC's recommendation. We are mindful of the need for daycare facilities in the County, but do not support this use in agricultural zoned districts in Santa Cruz County.

Thank you for considering our concerns on this matter.

Sincerely,

Matt Bissell
President

MB/rk

CCC Exhibit 5
(page 1 of 28 pages)

63

141 Monte Vista Avenue • Watsonville, CA 95076 • (831) 724-1356 / FAX (831) 724-5821

Working For The People Who Work The Land

SANTA CRUZ COUNTY
Farm Bureau

March 13, 2006

RECEIVED
MAR 15 2006
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Santa Cruz County Board of Supervisors
701 Ocean St., Rm 500
Santa Cruz, CA 95060

Re: Large Day Care Centers

Dear Members of the Board:

The implications of your decision in regard to Large Day Care Centers (LDCC) create great concern in the farm community. Farm Bureau members depend on a representative government to educate itself in an attempt to understand issues that are beyond the scope of their life experiences. This is why the Farm Bureau supports and defends the positions developed by Agricultural Policy Advisory Commission (APAC). The members of APAC understand intrinsically the challenges of everyday farm life. In general, the Farm Bureau supports the permitting of more Day Care Centers whether large or small and supports a lower fee to encourage more people to participate. We do not support them in or adjacent to agriculturally zoned areas.

There is great concern over the ability of a senior planner to understand past and future friction that will be created because of two diverse purpose entities. The presence of children in close proximity to production agriculture will only super-sensitize these areas of friction. The Farm Bureau prefers that you revisit the issue and:

- Adhere to APAC in your LDCC planning process
- Identify and encourage LDCC in areas that will not create hardship on children, parents and farmers.

If the Board of Supervisors approves their existing recommendations we strongly suggest that:

- Decisions regarding the desirability of areas with 'residential like character' adjacent to or in agriculturally zoned land must involve APAC recommendations.
- In areas of 'residential like character' their must be a 'Right to Farm Ordinance' acknowledgment by LDCC operators and parents of children in attendance.
- Strict agricultural buffer setbacks applied.

Thank you for the opportunity to address this issue.

Sincerely,

Matt Bissell, President

MB/rk

cc: California Coastal Commission, Central Coast District

CCC Exhibit 5
(page 2 of 28 pages)

141 Monte Vista Avenue • Watsonville, CA 95076 • (831) 724-1356 / FAX (831) 724-5821

EXHIBIT F /
Copy To Each Supervisor 0472

SIERRA CLUB
FOUNDED 1892

Santa Cruz County Group of the Ventana Chapter
P.O. Box 604, Santa Cruz, California 95061 phone: (831) 426-4453
FAX (831) 426-5323 web: www.ventana.org e-mail: scscrg@cruzio.cor

August 4, 2005

ATTACHMENT 4

Supervisor Ellen Pirie
County Board of Supervisors
701 Ocean Street
Santa Cruz, CA 95060

Re: Large Family Day Care Homes in Agricultural Districts

Dear Supervisor Pirie:

On November 16, 2004 your Board gave direction to the Planning Department to "develop proposed ordinance amendments, for review by the Planning Commission and final review by the Board, which would allow Large Family Day Care Homes as a conditional use within particular non-residential zone districts." On May 19, 2005, the Agricultural Policy Advisory Commission ("APAC") reviewed a draft ordinance which would allow Large Family Day Care Homes ("LFDCH") in Agricultural Zoned Districts. APAC voted to not recommend the ordinance. The basis of APAC's vote was that (1) the ordinance removed the 200 foot agricultural buffer requirements for LFDCHs, (2) APAC was removed from the review process for future LFDCHs, and (3) it did not make sense to have agriculture and children mixed together.

The Sierra Club would like to encourage you and your Board to reject any ordinance pertaining to LFDCHs being allowed in agriculturally zoned districts, based on the same reasoning that was given by APAC to deny recommendations of such an ordinance. Combining agriculture and children is not in the best interest of the safety and welfare of children and places unfair risks and restrictions on the farmers and ranchers. The Sierra Club is aware of the need for daycare for children, but encourages you and your Board to look in other areas besides agriculturally zoned districts. There are plenty of locations throughout the County where LFDCHs may be placed without jeopardizing our need to maintain the agricultural productivity and lands of the County.

If you find it necessary to allow LFDCHs in agriculturally zoned districts (which the Sierra Club opposes), at a minimum, the 200 foot agricultural buffer should be intact. It is, however, the Sierra Club's position that anything less than a 1000' buffer in place would expose the children and caregivers to harm. When children are nearby anything less than 200 feet would be harmful to the safety of the children, not to mention the impediment it places on the agricultural production. Additionally, it is important that APAC remain in the process of approving future LFDCHs. APAC is the group that knows the most about what is best for keeping agriculture viable in the County as the members are working ranchers and farmers. Removing APAC from the decision-making process removes a vital component of the review to determine whether the proposed LFDCH would be tenable in the proposed location.

Thank you for your consideration of this matter.

Sincerely,

Aldo Giacchino
Chair, Executive Committee
Sierra Club-Santa Cruz County Group

CCC Exhibit 5
(page 3 of 28 pages)

63

"...to explore, enjoy and protect the wild places of the earth."

Printed on recycled paper

Jonathan Wittwer
William P. Parkin
Shandra Dobrovolny

WITTWER & PARKIN, LLP
147 SOUTH RIVER STREET, SUITE 221
SANTA CRUZ, CALIFORNIA 95060
TELEPHONE: (831) 429-4055
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PARALEGAL
Jana Rinaldi

RECEIVED
OCT 05 2004
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 5, 2004

Diane Landry, District Manager
Central Coast District
California Coastal Commission
725 Front Street, Room 300
Santa Cruz, CA 95060

Re: ***Family Day Care Homes Not Allowed on Commercial Agricultural Land in the Coastal Zone Absent Amendment of the Local Coastal Program***

Dear Ms. Landry:

This Office represents Crest Drive Neighbors. Enclosed please find a copy of a letter I sent today to Rahn Garcia in Santa Cruz County Counsel. The purpose of this letter is to request your review and analysis of the issue of whether Family Day Care Homes may be allowed on Commercial Agricultural land in the Coastal Zone absent certification by the Coastal Commission of an amendment to the Santa Cruz County Local Coastal Program which currently does not allow such use. The County Board of Supervisors is scheduled to give further consideration to Family Day Care Homes at its October 19, 2004 meeting so any review and analysis prior to that date would be greatly appreciated.

Thank you for your consideration of this matter.

Very truly yours,
WITTWER & PARKIN, LLP

Jonathan Wittwer

Jonathan Wittwer

Encl.
cc: Rahn Garcia, Chief Assistant County Counsel
Crest Drive Neighbors
Santa Cruz County Farm Bureau

Jonathan Wittwer
William P. Parkin
Shandra Dobrovolny

WITTWER & PARKIN, LLP
147 SOUTH RIVER STREET, SUITE 221
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TELEPHONE: (831) 429-4055
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E-MAIL: office@wittwerparkin.com

PARALEGAL
Jana Rinaldi

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OCT 0 5 2004
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 5, 2004

Rahn Garcia, Chief Assistant County Counsel
Office of the County Counsel
County of Santa Cruz
701 Ocean Street, Room 505
Santa Cruz, CA 95060

Re: ***Family Day Care Homes Not Allowed on Commercial Agricultural Land Absent Amendment of Local Coastal Program Land Use Plan***

Dear Mr. Garcia:

By letter dated August 6, 2004, the Planning Director submitted a letter report to the Board of Supervisors on the subject of Family Day Care Homes. Further consideration of this letter the letter report is scheduled for the October 19, 2004 Board of Supervisors Meeting. The Planning Director's letter report acknowledges that Family Day Care Homes are allowed in all "Residential zone districts", but are "not an allowed use in any other zone districts" (including Commercial Agricultural zone districts). The letter report further concludes that the County "must modify [its] current regulations to comply with State law" and recommends that the Board of Supervisors "Direct the Planning Department to prepare amendments to the Zoning Ordinance for review by" a variety of County agencies "and final action by [the] Board."

This office represents the Crest Drive Neighbors who live adjacent to what the Planning Director's letter report describes as "[a] proposed Family Day Care Home on Commercial Agricultural land in the La Selva Beach area [which] prompted re-examination of County Code provisions and State law, and preparation of this report." This proposed Family Day Care Home on Commercial Agricultural land would be located in the California Coastal Zone and be subject to the California Coastal Act and the Local Coastal Program Land Use Plan ("LCPLUP") required thereby. The Planning Director's letter report makes no mention of any need to amend the LCPLUP in order to render any modifications to the County Zoning Ordinance applicable in the Coastal Zone. As will be explained below, an amendment of the LCPLUP is required in order to render such modifications effective in the Coastal Zone.

County Code Section 13.03.050 establishes that the Board of Supervisors shall adopt a Local Coastal Program for the Coastal Zone of the County **in fulfillment of the requirements of**

the California Coastal Act and that the Santa Cruz County Local Coastal Program ("LCP") includes the implementing ordinances from County Code Chapter 13.10 (among others). Chapter 13.10 contains the regulations which are the source of the Planning Director's statement that Family Day Care Homes are allowed in all "Residential zone districts", but are "not an allowed use in any other zone districts."

The California Attorney General has opined (65 Ops.Atty.Gen 88 [1982]) that it is the California Coastal Commission, **a state body** (Pub. Res. C. §30300), that certifies local coastal programs (§§30512-30513), while all amendments of local coastal programs must be certified by the Commission (§30514). Not only must local coastal programs meet the requirements of State law (see §§30512-30513), but the Commission has the duty to see that the programs are being implemented in accordance with the provisions of the Coastal Act (§30519.5). **The state's involvement in the creation and implementation of local coastal programs is pervasive.** (See §§30004, subd. (b); 30519.5.)

The California Attorney General has also opined (70 Ops.Atty.Gen. 220 [1987]) that counties have only those powers which are granted to them by the constitution and laws of the state. Their authority to plan and regulate land uses in the coastal zone is defined and limited by the Planning and Zoning Law and the Coastal Act. Their powers to enact ordinances under article XI, section 7 of the constitution is limited to those police power measures which do not conflict with general law such as the Planning and Zoning Law and the Coastal Act. Thus a county ordinance which would authorize a use of land in the coastal zone which is not permitted in an LCP certified by the Commission is subject to the provisions of section 30514 whether it was adopted by the legislative body of the county or by the electorate. Section 30514 expressly states that a certified LCP and all implementing ordinances, regulations and other actions may be amended by the appropriate local government, however the effectiveness of such an amendment is made to depend upon certification by the Commission. This means that a county may adopt such an amendment at any time but such amendment does not become effective until it has been certified by the Commission. Such an ordinance before it has been certified by the Commission is therefore not effective to authorize a use not permitted by a certified LCP.

Here, any County of Santa Cruz Ordinance modifying the Agricultural Uses Chart contained in Section 13.10.312 of the County Code to authorize a Family Day Care Home which is not allowed under the certified LCP would qualify as an amendment to the LCP which must first be certified by the California Coastal Commission pursuant to Public Resources Code Section 30514. Until it is so certified, it cannot be effective to authorize a use (such as a Family Day Care Home) not permitted by the currently certified LCP.

The California Attorney General (*Id.*) points out that the Legislative Findings contained in

Section 30004 of the Coastal Act provide in part that "it is necessary to provide for continued state coastal planning and management through a state coastal commission" and hence the Attorney General concluded that the subject of requiring local ordinances and actions in the coastal zone to conform to state coastal planning and management is a matter of statewide concern and not a municipal affair.

Interested parties have previously argued that where there is a State law governing an aspect of land use (such as Health and Safety Code Section 1597.46 which relates to Family Day Care Homes) such law should prevail over the regulations established by a Local Coastal Plan. First of all, as set forth above the provisions of the California Coastal Act itself require an amendment to the LCP for a new, previously uncertified use to be authorized. Furthermore, in litigation where State laws were claimed to trump an LCP, the LCP has withstood those efforts. For example, in *Getz v. Pebble Beach Community Services Dist.*(1990) 219 Cal. App. 3d 229, property owners sought to require a Community Services District ("CSD") provide sewer service to an addition to their residence which qualified as a senior citizen housing unit. This would have been contrary to the permit issued by the Coastal Commission to the CSD which limited sewer service to purposes consistent with the Del Monte Forest Land Use Plan, which did not include such senior housing units. The Court of Appeal described this as a case presenting a conflict between two competing State policies: one of encouraging senior housing units and the other of controlling development to protect California coastal waters by limiting effluent discharge to Carmel Bay.

The Monterey County Ordinance authorized by State law bore a remarkable resemblance to the State Health and Safety Code Section regarding Family Day Care Homes. It permitted senior housing units "on any lot or parcel in any zoning district that allows single family dwellings, subject to a use permit in each case...." The Court of Appeal held that since the California Coastal Commission, as a condition of its permit to the CSD, mandated that allocation of sewer service be consistent with the Del Monte Forest Land Use Plan, the CSD had no discretion to allocate its sewer capacity in any other way. The Court of Appeal concluded that "the general, statewide policy which supports building senior housing must yield in this case to the competing state policy which mandates protection of ecologically fragile coastal waters and to the local land use plan which implements this policy."

In the situation at hand involving State law as to Family Day Care Homes, there is a State Coastal Act policy requiring that protection of the areas' agricultural economy and minimization of conflicts between agricultural and urban land uses. Pub. Res. C. §30241. Furthermore, the established and State-certified LCP prohibits authorization of a Family Day Care Home absent an amendment of the LCP which has also been certified by the State Coastal Commission. Thus under both the statutory law (Public Resources Code Section 30514) and the common law regarding potential conflicts between State statutes addressing land use, amendment of the certified LCP is

required in order to authorize a previously unauthorized use on CA-zoned land

Thank you for your consideration of this matter. Please feel free to call me with any questions or concerns.

Very truly yours,
WITTWER & PARKIN, LLP

Jonathan Wittwer

cc: Tom Burns, County Planning Director
California Coastal Commission, Central Coast District
Santa Cruz County Farm Bureau
Crest Drive Neighbors

DL | DC

Jonathan Wittwer
William P. Parkin
Shandra Dobrovolny

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RECEIVED
MAY 02 2005
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

April 29, 2005

Tom Burns, County Planning Director
Planning Department
County of Santa Cruz
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: ***Family Day Care Homes Not Allowed on Commercial Agricultural Land***

Dear Mr. Burns:

By letter dated August 6, 2004, the Planning Director submitted a letter report to the Board of Supervisors on the subject of Family Day Care Homes. The Planning Director's letter report acknowledges that Family Day Care Homes are allowed in all "Residential zone districts", but are "not an allowed use in any other zone districts" (including Commercial Agricultural zone districts). This office represents the Crest Drive Neighbors who live adjacent to what the Planning Director's letter report describes as "[a] proposed Family Day Care Home on Commercial Agricultural land in the La Selva Beach area [which] prompted re-examination of County Code provisions and State law, and preparation of this report."

At its November 16, 2004, meeting the County of Santa Cruz Board of Supervisors gave direction to the Planning Department to "develop an interim policy interpretation consistent with County Counsel's opinion, to inform the staff and public that Large Family Day Care Homes are currently only allowed within the residential zone districts and to develop clarifying ordinance language as part of the next round of zoning ordinance cleanup changes." (See Minutes of November 16, 2004 Board of Supervisors Meeting; Item No. 39).

The Susan Art Gallery, the large Family Day Care Home described in the Planning Director's August 6, 2004, letter report is part of the public that should be notified, especially considering it is operating without a permit. According to the information we received, this home has not been sent any correspondence from the Planning Department as indicated would be done at the November 16, 2004 Board of Supervisors meeting.

As you are aware, an ordinance to amend the ability of a Large Family Day Care Home to be located on Commercial Agricultural zoned land is now being drafted and reviewed by APAC. Please inform as to whether you intend to inform the public, including the Susan Art Gallery, to the fact that Large Family Day Care Homes are not presently allowed on Commercial

Agricultural zoned lands.

Thank you for your consideration of this matter. Please feel free to call me with any questions or concerns.

Very truly yours,
WITTWER & PARKIN, LLP

for JW

Jonathan Wittwer

cc: California Coastal Commission, Central Coast District
Crest Drive Neighbors
Haselton & Haselton

EXHIBIT G
ATTACHMENT 5
0473

Jonathan Wittwer
William P. Parkin
Shandra Dobrovolny

WITTWER & PARKIN, LLP
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PARALEGAL
Miriam Celia Gordon

August 19, 2005

Planning Commissioners
County of Santa Cruz
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: *Large Family Day Care Homes Ordinance*

Dear Commissioners:

This office represents the Crest Drive Neighbors. This letter will address Item 9 on the August 24, 2005 Planning Commission Agenda concerning a public hearing to consider proposed ordinance amendments to allow large family child care homes ("LFCCH") in non-residential zone districts.

As a preliminary matter, we would like to point out that the proposed ordinance title does not include the fact that the ordinance would add Section 13.10.686 to the Santa Cruz County Code. The rest of this letter will address our concerns with regard to adding Section 13.10.686 to the Santa Cruz County Code and thereby allowing LFCCHs in agricultural zone districts.

SUPPORT FOR APAC RECOMMENDATION AGAINST LFCCHs ON AGRICULTURAL LAND

At both of the hearings before the Agricultural Advisory Policy Commission ("APAC") we suggested that allowing LFCCHs in non-residential zone districts was not good planning. We request that you follow the recommendation of APAC which provided "that LFCCHs are not compatible with agricultural uses and should not be allowed on agricultural land (A, CA, AP or TP) at all," and recommend that the Board of Supervisors remove all portions of the proposed ordinance allowing LFCCHs on agricultural land. We submit that at minimum allowing LFCCHs on agricultural land would be contrary to the Coast Act agricultural land preservation requirements of Public Resources Code Sections 30241 and 30242. Public Resources Code Section 30241 provides that "conflicts shall be minimized between agricultural and urban land uses."

REQUESTED REVISIONS IF PLANNING COMMISSION RECOMMENDS LFCCHs ON AGRICULTURAL LAND

However, if the Planning Commission ("Commission") decides to go forward with recommending the Board of Supervisors adopt an ordinance allowing LFCCHs in agricultural

CCC Exhibit 5
(page 11 of 28 pages)

farmworker housing where childcare is needed. Again, this proposal would conform to the stated purposes of allowing LFCCHs in agricultural zone districts as earlier described in Section 13.10.686 (a) 1.

4. Section 13.10.686 (c) 1. E. Page 4, Lines 11-24. Add subsection E to say "If access to the Large Family Child Care Home is limited to a privately maintained roadway, the Applicant has joined any existing private road maintenance association and has executed a written commitment to pay a proportionate share of the roadway maintenance as determined by such association. If no private road maintenance association exists, the applicant has agreed that s/he will undertake to create such an association and/or otherwise pay for a proportionate share of the ongoing roadway maintenance expenses." This subsection addresses the fact that many of the roads in agricultural-zoned areas are privately owned and maintained. The addition of many new drivers on private roads creates upkeep issues which should be addressed in the planning review process. The proposed text would ensure that the operators of LFCCHs in agricultural zone districts avoid future conflicts by prior agreement to pay their proportionate share of roadway maintenance.

5. Section 13.10.686 (c) 1. F. Page 4, Lines 25-37. Add subsection F to say "The Large Family Child Care Home has agreed as a condition of its permit to provide written notice to each of its customers about the potential risks to their children which might be caused by agricultural activities on adjacent parcels and has further agreed to obtain a signed, written acknowledgment from each customer that each customers has been advised of the potential health risks from adjacent agricultural activities including, but not limited to, pesticide and herbicide spraying." To protect the interests of both children and the growers, this new subsection would require the operators of LFCCHs to provide a basic consumer notice to the parents of its students. LFCCHs proposed in agricultural zone districts may pose potential health risks to the children who will be attending. If a child is injured by heavy equipment on the adjacent fields or timber areas, an obvious conflict could develop.

6. Section 13.10.686 (d) 5. Page 5, Lines 29-32. Add subsection 5 to say "Adequate fencing is in place between the Large Family Child Care Home and adjacent property owners or the owner has agreed in writing to construct adequate fencing prior to beginning operation." This new subsection would require adequate fencing before an LFCCH starts operation in any non-residential zone district. This will serve to prevent conflicts with activities on agricultural land adjacent sites and protect the children attending the LFCCH.

7. Section 13.10.686 (d) 5. Page 5, Lines 36-41. Change to subsection 6 and add the language "Such conditions shall be sufficient to ensure that the applicant or the applicant's successor-in-interest remains in compliance during the life of the operation of

zone districts, we would like you to consider the following revisions to the proposed ordinance prepared by Planning Department staff.

At the APAC hearings we strongly encouraged any ordinance to provide that APAC play a pivotal role in approving applications for LFCCHs if they are allowed in agricultural zone districts. We are happy to see that this provision was placed back in the ordinance. We believe it is critical that APAC's recommendation be considered in allowing a use that may have adverse impacts on the agricultural use of an area in agricultural zone districts. In addition, we are pleased to see that the 200 foot buffer was placed back in the ordinance. This 200 foot buffer, at a minimum, should be required. Traditional school and daycare center uses are not allowed to be established within less than 200 feet of agriculturally productive land and we see no reason why this should be different for LFCCHs. In addition to requesting that these two provisions remain in any ordinance adopted which would allow LFCCHs in agricultural zone districts, we request that the following additional language be included in the ordinance to strengthen protecting agricultural land and neighboring uses.

Attached as Exhibit "A" to this letter is the proposed ordinance as provided by the Planning Department staff with our recommended changes underlined and in bold. To make these suggestions easier to review, the lines of the entire draft ordinance are numbered and the rationale for each proposed text addition is provided below.

1. Section 13.10.686 (c) 1. Page 3, Line 35. Add the language "and by other reviewing bodies or agencies." As proposed by Planning Department staff, it appears that only APAC is charged with making the findings required to approve an application for a permit to operate a LFCCH. The proposed text makes it clear that the required findings as detailed elsewhere in the Ordinance must be made at every step in the application process.

2. Section 13.10.686 (c) 1. B. Page 3, Lines 44-46. Add the language "and with the agricultural resources and/or uses on adjacent parcels." The proposed text ensures that the reviewing agencies consider the potential effects on agricultural resources both on site and off site. This conforms to the stated purposes of the Ordinance as described in Section 13.10.686 (a), to "minimize or prevent potential conflicts between child care and other on-site or adjacent uses."

3. Section 13.10.686 (c) 1. D. Page 4, Line 2-10. Add subsection D to say "The Large Family Child Care Home is located in an area which is zoned agriculture but which has a predominantly residential character and/or the proposed location is in the location of farmworker housing where childcare is needed which would be affordable to farmworker families. The area evaluated shall include all contiguous agriculturally zoned land." This new subsection would require that LFCCHs in agricultural zone districts would be located where the site is actually in a predominantly residential area or is near

the Large Family Child Care Home with the Required Findings as described in Section 13.10.686 c. and with any conditions of granting the permit as provided in Section 13.10.686 d." This additional language would confirm that the applicant and future operators of an approved LFCCH will remain in continued compliance with any conditions attached to the permit.

Thank you for your consideration of these matters.

Very truly yours,
WITTWER & PARKIN, LLP

Jonathan Wittwer

Encl. Ordinance Amending Section 13.10.700-D of the Santa Cruz County Code

cc: California Coastal Commission, Central Coast District
Crest Drive Neighbors

EXHIBIT J

ATTACHMENT 0485 8

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PARALEGAL
Miriam Celia Gordon

October 25, 2005
DELIVERED BY HAND

Planning Commission
County of Santa Cruz
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

Re: ***Large Family Day Care Homes Ordinance***

Honorable Commission:

This office represents the Crest Drive Neighbors. This letter will address Item 10 on the October 26, 2005, Planning Commission Agenda concerning a public hearing to consider proposed ordinance amendments to allow large family day care homes ("LFDCH") in non-residential zone districts.

The primary concerns regarding the proposed ordinance amendments are as follows:

(1) failure to follow the recommendation of the Agricultural Policy Advisory Commission ("APAC") against LFDCHs on Agriculturally zoned land as required by the County General Plan and LCP and voter-adopted Measure J;
(2) deletion of the requirement for the 200 foot agricultural buffer, recommended by APAC for an LFDCH use and previously recommended by Planning Staff; and
(3) the exemption of the proposed ordinance amendments from proper environmental review.

1. SUPPORT FOR APAC RECOMMENDATION AGAINST LFDCHs ON AGRICULTURAL LAND TO AVOID UNLAWFULLY PRIORITIZING DAY CARE USES OVER AGRICULTURAL USES

The recommendation of APAC provided "that LFDCHs are not compatible with agricultural uses and should not be allowed on agricultural land (A, CA, AP or TP) at all." The reasons for Staff not supporting the APAC recommendation are not clear. The Staff Report for this does state that:

> "It is important to remain mindful that the purpose of the ordinance is to provide for and regulate LFDCHs in order to provide needed childcare in a home setting and at the same time minimize conflicts."

CCC Exhibit 5
(page 15 of 28 pages)

Thus, the approach taken in the Staff Report prioritizes child care facility uses over agricultural uses. This is exactly the opposite of what is required by the County General Plan and Local Coastal Program Land Use Plan at Section 5.13 which provides that the County is "[t]o recognize that **agriculture is a priority land use** and to resolve policy conflicts in favor of preserving and promoting agriculture on designated commercial agricultural lands." (emphasis added). Hence current County regulations require agricultural uses to have priority over child care facility uses.

Any attempt to give child care uses priority over agricultural uses would run afoul of the voter-adopted regulations (now codified at County Code Chapter 17.01). The Courts have established a rule of law requiring any amendment or "clarification" of a voter-adopted measure to meet the strictest standard so as to avoid any evasion of the will of the People. The purposes of Chapter 17.01 include: "to state clearly various policies which should govern the future growth and development of Santa Cruz County"; and "to regulate the character, location, amount, and timing of future development so as to achieve the stated policies." Section 17.01.010. Among the stated policies adopted by the voters is "that prime agricultural lands and lands which are economically productive when used for agriculture shall be preserved for agricultural use." Section 17.01.030(a). This stated policy is based on a finding by the voters that: "These agricultural lands are being lost to development, and the continued viability of commercial agriculture in Santa Cruz County is threatened by ... **inappropriately placed development**." Section 17.01.020(d)1, emphasis added.

It is notable that in addition to requiring preservation of agricultural use, voter-adopted Chapter 17.01 also establishes a policy requiring 15% of new housing to be affordable. However, **child care is not given similar policy protection under Chapter 17.01**

An ordinance adopted by the People which contains no provision for amendment or repeal cannot be amended by the Board of Supervisors, but can only be amended by a vote of the People. 36 Ops. Atty. Gen. 236 (1960). In the case of a voter-adopted measure establishing land use policies in the County of San Mateo, the Court of Appeal repeated the holding of the California Supreme Court that:

> "**In determining whether a particular action constitutes an amendment** [of a voter-adopted measure], we [the courts] keep in mind that'[i]t is the **duty of the courts to jealously guard [the people's initiative and referendum power]**.' 'It has long been our judicial policy to apply a liberal construction to this power whenever it is challenged in order that the right [to local initiative or referendum] be not improperly annulled.'" *San Mateo County Landowners' Association v. County of San Mateo* (1995) 38 Cal.App.4th 523 (fn.7) citing *DaVita v. County of Napa* (1995) 9 Cal. 4th 763, 775-776, quoting *Associated Home Builders, etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591; See also *Proposition 103*

Enforcement Project v. Charles Quackenbush (1998) 64 Cal.App. 4th 1473.

The case of *Proposition 103 Enforcement Project v. Charles Quackenbush, supra*, distills the strict standard of review, largely from two California Supreme Court cases nearly 20 years apart, as follows:

> "**Any doubts should be resolved in favor of the initiative and referendum power**, and **amendments which may conflict with the subject matter of initiative measures must be accomplished by popular vote**, as opposed to legislatively enacted ordinances, where the original initiative does not provide otherwise. (*De Vita v. County of Napa, supra*, 9 Cal.4th at p. 7765; *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West, supra*, 35 Cal.App.4th at p. 41, 41 Cal.Rptr.2d 393.)" (Emphasis added).

Thus, it is clear from appellate precedent that all doubts must be resolved in favor of requiring a popular vote if the subject matter of voter-adopted legislation is subsequently addressed. This requirement has been held to be of constitutional dimension.

> "When a statute enacted by the initiative process is involved, the Legislature may amend it only if the voters specifically gave the Legislature that power.... (**Cal. Const., Art. II, Sec. 10, subd.(c)**; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251.) The purpose of California's **constitutional limitation** on the Legislature's power to amend initiative statues is to 'protect the people's initiative powers by **precluding the Legislature from undoing what the people have done without the electorate's consent.**' (*Huening v. Eu* (1991) 231 Cal.App.3d 766, 781 (conc. and diss. Opn. of Raye, J.)." (All as quoted in *Proposition 103 Enforcement Project v. Charles Quackenbush* (64 Cal.App.4th 1473–emphasis added).

In this context, the APAC recommendation should be followed to assure compliance with the law.

The APAC recommendation is also important to follow because the "needed childcare" will be provided under the portions of the proposed ordinance amendments allowing for LFDCHs in numerous other non-residential zone districts which do not identify their uses as being "priority" like agricultural uses. Removing Agricultural zone districts from the ordinance amendments would not significantly impact the number of LFDCHs allowed throughout the County, because they would still be allowed in all other non-residential zone districts.

Further support for the APAC recommendation is found in the

(1) Coastal Act at Public Resources Code Section 30241 which provides that "conflicts shall be minimized between agricultural and urban land uses"; and
(2) Farm Bureau letter to the Board of Supervisors dated November 15, 2004 stating that "[d]ay care facilities ... in agricultural zoned districts can cause conflict with the on-going farming operations" and requesting "that the County not support the Large Family Day Care facilities on agricultural zoned land."

2. NEED FOR 200 FOOT AGRICULTURAL BUFFER AS PREVIOUSLY RECOMMENDED BY PLANNING STAFF AND CURRENTLY RECOMMENDED BY APAC

If the Planning Commission decides to go forward with recommending the Board of Supervisors adopt an ordinance allowing LFDCHs in agricultural zone districts, it is requested that your Commission reject the recent deletion of the requirement for the 200 foot agricultural buffer for an LFDCH use. The buffer was previously recommended by Planning Staff and continues to be recommended by APAC. In addition, the Farm Bureau letter dated November 15, 2004 identified the County's "ag buffer policy as supporting the agricultural economy in Santa Cruz County."

The County General Plan and Local Coastal Program Land Use Plan require the buffer originally contained in the August 24, 2005 Staff Report, by providing as follows:

> "Section 5.13.23 – Agricultural Buffers Required – Require a 200 foot buffer area between commercial agricultural and non-agricultural land uses to prevent or minimize potential land use conflicts, between either existing or future commercial agricultural and non-agricultural land uses."

APAC recommended that if LFDCHs are to be allowed on agricultural land (which APAC recommends against), "all applications for LFDCHs within 200 feet of agricultural land be considered a change of use subject to APAC review for appropriate agricultural buffers." In accordance with this recommendation, the August 24, 2005 version of the ordinance amendments required a finding under Section 13.10.686(c)1.C that "The Large Family [Day] Child Care Home use will meet all the requirements of Section 16.50.095 pertaining to agricultural buffer setbacks." This has now been deleted so that there is no express requirement for compliance with Section 16.50.095 and there is an express provision that such Section does not apply where no structural alteration is proposed as part of the LFDCH use. **It is not the structural alteration of a building which creates the conflict between agricultural operations and child care, it is the use which includes the presence of the children (often outside the structure).** The deleted provision renders the ordinance amendments as proposed inconsistent with the General Plan and LCPLUP. This 200 foot buffer between uses must be required.

3. ENVIRONMENTAL REVIEW IS REQUIRED BY LAW FOR THE PROPOSED COUNTYWIDE ORDINANCE AMENDMENTS

For that part of the County which is outside the Coastal Zone and not under review by the California Coastal Commission, the ordinance amendments are being categorically and statutorily exempted from environmental review under CEQA. **The exemptions Staff has suggested do not apply to the ordinance amendments,**[1] but rather would apply only to specific, individual LFDCH projects. **Furthermore, the ordinance amendments are of Countywide impact and are not exempt for that reason as well, as Staff has found for similar Countywide ordinance amendments proposed under Item 7 on your Commission's October 26, 2005 Agenda.**

These ordinance amendments were triggered by one specific LFDCH illegally operating in a Commercial Agricultural Zone District. It is possible that Staff is perhaps focusing on this specific LFDCH and not the fact that the ordinance amendments will have a Countywide impact in attempting to apply the listed exemptions for:

1. "establishment or operation of **a** large family day care home, which provides in-home care for up to fourteen children" (Guideline 15274 – emphasis added) or "**A** large family day care home" (Health & Safety Code Sec. 1597.46);
2. "additions [or"alterations"] to existing structures' where [t]he key consideration is whether **the project** involves negligible or no expansion of an **existing use**." (examples listed in Guideline 15301 – emphasis added – there are no lawful LFDCH existing uses on agricultural land as the Staff Report has acknowledged); or
3. "**One** single-family residence, or **a** second dwelling unit **in a residential zone** or [**a**] store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area" (examples listed in Guideline 15303 – emphasis added – not applicable to agricultural zone as to first example and not a commercial use in second example).

Clearly, these exemptions are for specific development proposals, not ordinance amendments of Countywide impact.

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[1] The Notice of Exemption contains some factually incorrect statements under "Reasons why the project is exempt." These include the following: (1) the amendments are "to comply with State law" – County Counsel has issued a written opinion that LFDCHs are not required to be allowed in non-residential zones under State law; (2) the amendments will not authorize any actual development or cause any physical impact to the environment – the amendments are projects under Guideline 15378 as "amendment of **zoning** ordinances" which unquestionably have the potential to authorize actual development or cause a physical impact on the environment.)

In fact, Item 7 in the Agenda for the October 26, 2005, a very similar proposal involving a zoning ordinance amendment to allow recycled water facility on agricultural land requires (and in fact is) undergoing environmental review. No exemption has been suggested for this ordinance amendment. The Staff Report for Item 7 expressly provides that the ordinance amendment is of Countywide impact and therefore requires environmental review.

> "Environmental Review for the Proposed Needed County Policy Changes: Planning staff and County Counsel believe that separate environmental review is required for the proposed policy changes. Staff has prepared a new Initial Study (Exhibit C) and is proposing a Negative Declaration for the proposed General Plan/LCP amendment and zoning ordinance changes. Staff believes that a separate CEQA analysis is required for the policy changes **because they would affect agriculturally zoned lands countywide**, and the impacts of such countywide policy changes were not evaluated in the BMP EIR or its addendum. The Initial Study and proposed Negative Declaration for the proposed policy changes were presented at the Environmental Coordinator's meeting on September 26, 2005 and the 30-day review period for the Negative Declaration will end on October 28, 2005." (emphasis added)

The agenda item on LFDCHs also before the Planning Commission is likewise not exempt from environmental review.

For the part of the County which is within the Coastal Zone, the ordinance amendments are being exempted from environmental review under CEQA Guidelines Section 15265 and Public Resources Code Section 21080.9. However, under State and case law, the County is required to submit "a complete environmental review and satisfy other policies and regulations of the" California Coastal Commission. *Santa Barbara County Flower and Nursery Growers Assn v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 871 (hereinafter "*Santa Barbara*"), referring to Public Resources Code §§ 30510-30514. Case law has made it abundantly clear that the Coastal Commission does not carry the burden of preparing the environmental review for an LCP amendment, but rather that burden is on the agency proposing the LCP amendment, here the County. The type of environmental review required is based on the provisions of the Coastal Act (Public Resources Code § 30000 et seq.) which "**replace[s] the EIR process with a comparable form of environmental review.**" *Santa Barbara* 121 Cal.App.4th at 872, emphasis added.

> **The County could have fulfilled its obligation to make an environmental assessment** of greenhouse expansion in a form other than an EIR as long as it complied with the Commission's certified regulatory program.

Id. at 873 (emphasis added). Once the County fulfills its obligation to prepare an environmental assessment for the LCP amendment, the Coastal Commission then initiates its review and approval process. *Id.* at 874.

Therefore, the County cannot exempt the ordinance amendments from required environmental review, only from specified CEQA procedural provisions. State law mandates the County to perform an environmental assessment, whether it is under CEQA or another regulatory program, here the Coastal Act. In fact, pursuant to Public Resources Code Section 21080.5, the County must comply with the substantive provisions of CEQA.

> (a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation **containing environmental information** and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted **in lieu of the environmental impact report** required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section. . ..
> (c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167. . ..

Public Resources Code § 21080.5 (emphasis added). **Thus, the substantive requirements of CEQA for environmental analysis still apply.** There is no environmental analysis whatsoever for these proposed LCPLUP amendments. Under these circumstances, the proposed ordinance amendments cannot be exempted from environmental review.

Thank you for your consideration of these matters.

Very truly yours,
WITTWER & PARKIN, LLP
Jonathan Wittwer
Jonathan Wittwer

cc: California Coastal Commission, Central Coast District
Santa Cruz County Farm Bureau
County Planning Director
County Counsel
Crest Drive Neighbors

CCC Exhibit 5
(page 21 of 28 pages)

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PARALEGAL
Miriam Celia Gordon

February 6,2006
DELIVERED BY HAND

Board of Supervisors
County of Santa Cruz
701 Ocean Street, 5th Floor
Santa Cruz, CA 95060

Re: ***Large Family Day Care Homes Ordinance***

Honorable Board:

This office represents the Crest Drive Neighbors ("CDN"). This letter will address Item 63 on the February 7,2006, Board of Supervisors Agenda concerning a public hearing to consider proposed ordinance amendments to allow large family day care homes ("LFDCHs") in non-residential zone districts. CDN also incorporates herein its October 25, 2005 letter which is Attachment **8** in the Agenda Packet[1]. Despite CDN's requests for earlier receipt of the Staff Report dated January 9, 2006, CDN was not allowed to have that Staff Report until the late afternoon of February 2, 2006. We have prepared this response as soon as possible.

CDN's primary (but by no means only) concerns regarding the proposed ordinance amendments are as follows:

(1) Allowance of LFDCHs on Commercial Agriculture zoned land is unnecessary and conflicts with agriculture as a priority under the General Plan and voter-adopted regulations;

(2) The revised language regarding agricultural buffers does not clearly implement the Planning Commission's recommendation that such buffers be required for any LFDCH, and is inconsistent with both GP/LCPLUP Section 5.13.23 and County Code Section 16.50.095. The language in the proposed ordinance amendments should require that "The Large Family Day Care Home use will meet all of the requirements of Section 16.50.095 pertaining to agricultural buffer setbacks" which was the language first proposed by Planning Staff in its August 24,2005 Staff Report; and

(3) The exemption of the proposed amendments from environmental review violates CEQA.

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[1] Please include at minimum in the Administrative Record before the Board all documents attached hereto and all documents provided by residents of Crest Drive and the Farm Bureau and their attorneys or agents to the County Planning Department, County Planning Commission and Board of Supervisors regarding the Susan Gallery Art School/LFDCH and these ordinance amendments.

1. THE RECOMMENDATIONS OF APAC AND TWO PLANNING COMMISSIONERS AGAINST LFDCHs ON AGRICULTURAL LAND SHOULD BE FOLLOWED TO AVOID UNLAWFULLY PRIORITIZING DAY CARE USES OVER AGRICULTURAL USES

We continue to support and urge the Board of Supervisors to follow the very strong recommendation of the Agricultural Policy Advisory Commission ("APAC") which provided "that LFDCHs are not compatible with agricultural uses and should not be allowed on agricultural land (A, CA, AP or TP) at all." Furthermore, **two Planning Commissioners expressed their opposition to allowing LFDCHs on Commercial Agricultural land and voted against forwarding the proposed ordinance amendments to your Board on that basis**.[2] Additionally, the Farm Bureau has repeatedly expressed its strong opposition to LFDCHs on agricultural land.

The proposed ordinance amendments allow LFDCHs in three new non-residential zone districts which are not agricultural. There has been no opposition to including LFDCHs in Commercial Districts, Parks, Recreation and Open Space Districts, or Public and Community Facilities Districts. Removing Agricultural Districts from the proposed ordinance amendments would allow the proposed ordinance amendments to move forward to the Coastal Commission without opposition and further your Board's goal of encouraging child care facilities.

a. There will be a significant practical impact from allowing LFDCHs on Agricultural Land

The Staff Report states that "[i]t is anticipated that there will continue to be a **minimal number** of LFCCHs proposed that would be located in non-residential zones" (emphasis added). If in fact your Board believes the number of LFDCHs in all non-residential zones will be small, is it the wisest approach to attempt to allow them in Agricultural Districts when there is such strong opposition from APAC and the Farm Bureau?

One of the main problems with the proposed ordinance amendments as they relate to Agricultural Districts is that the approach taken in the Staff Report prioritizes child care facility uses over agricultural uses which are given priority in the General Plan and LCPLUP. The Staff Report for this Item attempts to minimize this reordering of priorities by stating that:

> "Allowing Large Family Child Care Homes merely increases the number of children at a location from 8 to 14. Therefore, it is important to be aware of the **practical effect** of allowing Large Family Child Care Homes in non-residential districts when considering whether to allow them or not." (emphasis added)

[2] Chair Bremner expressly requested that Planning Staff notify your Board of this fact in the Staff Report, but the Staff report fails to inform the Board that two Planning Commissioners opposed LFDCHs on CA land.

agriculture in Santa Cruz County is threatened by ... **inappropriately placed development.**[3]" Section 17.01.020(d)1, emphasis added.

An ordinance adopted by the People which contains no provision for amendment or repeal cannot be amended by the Board of Supervisors, but can only be amended by a vote of the People. 36 Ops. Atty. Gen. 236 (1960). The December 1, 2005, letter from County Counsel suggests that the proposed ordinance amendments do not amend Chapter 17.01, because they do not "directly address" Chapter 17.01. However, case law indicates that an indirect impact on such a voter adopted ordinance constitutes an amendment, just as a direct amendment would. "[T]he Legislature cannot indirectly accomplish, via the enactment of a statute which essentially amends any formula adopted to implement an initiative's purpose, what it cannot accomplish directly by enacting a statute which amends the initiative's statutory provisions." *Proposition 103 Enforcement Project* v. *Quackenbush* (1998) 64 Cal. App. 4th 1473, 1487.

In this context, the APAC recommendation and the position of the two Planning Commissioners who voted against allowing LFDCHs on Commercial Agricultural land should be followed to assure compliance with the law. Following the APAC recommendation will not interfere with the provision for "needed childcare," because such childcare will be provided under the portions of the proposed ordinance amendments allowing for LFDCHs in numerous other non-residential zone districts which do not identify their uses as being "priority" like agricultural uses.

2. AN AGRICULTURAL BUFFER MUST BE REQUIRED FOR ANY LFDCH AS RECOMMENDED BY THE PLANNING COMMISSION AND APAC; THE NEWLY PROPOSED LANGUAGE SHOULD BE REVISED TO ACTUALLY ACCOMPLISH THIS

If the Board of Supervisors nevertheless allows LFDCHs in Agricultural Districts, it is critical that the recommendations of APAC and the Planning Commission, requiring agricultural buffers, are upheld. Notwithstanding Staffs resistance, the Planning Coininission recommended that the proposed ordinance amendments require compliance with the Agricultural Buffer Setback Ordinance for any LFDCH. This was also recommended by APAC. However, CDN is concerned that the language presented to your Board in order to comply with the Planning Coininission recommendation will not accomplish this purpose. The newly proposed language is as follows:

> "Section 16.50.095 pertaining to agricultural buffer setbacks shall apply where a structural addition is proposed as a part of the Large Family Day Care Home use or

[3] Development includes intensification of land use and does not require new construction.

where an intensification of human use of outdoor areas will result from the Large Family Day Care use."

This language is an apparent, but unsuccessful, attempt to dovetail with County Code Section 16.50.095(b)(1) requires as follows:

> "**Provide and maintain** a two hundred (200) foot **buffer setback between** Type 1, Type 2 or Type 3 **commercial agricultural land and non-agricultural uses involving habitable spaces,** including dwellings, habitable accessory structures and additions thereto; and commercial, industrial, recreational, or institutional structures, and their outdoor areas designed for public parking and intensive human use. For the purposes of this Section, **outdoor areas designed for intensive human use shall be defined as surfaced ground areas or uncovered structures designed for a level of human use similar to that of a habitable structure. Examples are dining patios adjacent to restaurant buildings and private swimming pools.** The two hundred (200) foot agricultural buffer setback shall incorporate vegetative or other physical barriers as determined necessary to minimize potential land use conflicts." (emphasis added)

Staffs newly proposed language is inconsistent with the first portion of Section 16.50.095(b)(1) quoted above because it requires a "structural addition" in order to invoke the agricultural buffer requirements. Section 16.50.095(b)(1) requires such a buffer "between ... commercial agricultural land and non-agricultural uses [such as a LFDCH] involving habitable spaces [which a LFDCH does involve]." The buffer is between the uses and required where the non-agricultural use involves a habitable space. No structural addition or alteration is required. This provision should not be specially altered for LFDCHs and the Planning Commission gave no indication of such an intention. It is not the structural alteration of a building which creates the conflict between agricultural operations and child care; it is the use which includes the presence of the children (often outside the structure). This 200 foot buffer between uses must continue to be required.

Furthermore, the newly proposed language regarding intensification of human use of outdoor areas is susceptible of an interpretation[4] that if a single family dwelling could have a

[4] CDN is also concerned because of the earlier interpretation by County Counsel that an LFDCH would not constitute an intensification of use because that terminology only relates to subdividing land. However, it is clear an intensification of use is not limited to subdividing land. For example, County Code Section 13.10.700(I) shows that intensification of use is not limited to subdivision of land, as follows:

> "Intensification of Use, Commercial. Any change of commercial use which will result in a 10% increase in parking need or traffic generation from the prior use, or which is determined by the Planning Director likely to result in a significant new or increased

large family occupying it, then there would be no intensification of use resulting from the large family day care home use. Hence, contrary to recommendations of the Planning Commission and APAC, under the newly proposed language the County could repeatedly decline to apply the agricultural buffer by making such a finding.

The County General Plan and Local Coastal Program Land Use Plan require the buffer language originally contained in the August 24,2005 Staff Report, by providing as follows:

> "Section 5.13.23 – Agricultural Buffers Required – Require a 200 foot buffer area between commercial agricultural and non-agricultural land uses to prevent or minimize potential land use conflicts, between either existing or future commercial agricultural and non-agricultural land uses."

The newly proposed language would be inconsistent with these higher level regulations as well.

The Farm Bureau letter dated November 15,2004 identified the County's "ag buffer policy as supporting the agricultural economy in Santa Cruz County." APAC's recommendation also supported requiring agricultural buffers when it recommended that if LFDCHs are to be allowed on agricultural land (which APAC recommends against), "all applications for LFDCHs within 200 feet of agricultural land be **considered a change of use** subject to APAC review for appropriate agricultural buffers" (emphasis added).

Under these circumstances, CDN requests that the proposed ordinance amendments include the original language proposed by Planning Staff, as follows: "The Large Family Day Care Home use will meet all of the requirements of Section 16.50.095 pertaining to agricultural buffer setbacks."

3. ENVIRONMENTAL REVIEW IS REQUIRED BY LAW FOR THE PROPOSED COUNTYWIDE ORDINANCE AMENDMENTS

It continues to be important to point out the absence of environmental review for the proposed ordinance amendments. There is no question that when an individual LFDCH is proposed it will usually be exempt from review under the California Environmental Quality Act ("CEQA"), just as a single-family home would. However, it is important to consider the difference between the approval of a single LFDCH and approval of an ordinance with

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> impact due to potential noise, smoke, glare, odors, water use, and/or sewage generation shall be an "intensification of use" for purposes of this chapter."

Likewise, as quoted above, Section 16.50.095 applies the concept of "intensive human use" to situations other than new subdivisions.

countywide impact. The Board of Supervisors is being asked to decide whether LFDCHs should be allowed in non-residential districts throughout the County, not just in one location. A similar situation occurred at the October 26, 2005, Planning Commission meeting on a separate agenda item, where the Planning Commission considered a General Plan/Local Coastal Program and Zoning Ordinance Amendment to Allow Recycled Water Facility on Agricultural Land. For this agenda item the County did not exempt the General Plan and zoning ordinance amendments from CEQA, stating that:

> Planning staff and County Counsel believe that separate environmental review is required for the proposed policy changes. Staff has prepared a new initial Study (Exhibit C) and is proposing a Negative Declaration for the proposed General Plan/LCP amendment and zoning ordinance changes. Staff believes that a separate CEQA analysis is required for the policy changes because they would **affect agriculturally zoned lands countywide**, and the impacts of such countywide policy changes were not evaluated in the BMP EIR or its addendum.

See Exhibit "F" attached hereto (emphasis added). This agenda item includes countywide proposed ordinance amendments of the Local Coastal Program Land Use Plan and the County zoning ordinance, similar to the agenda item discussed above. Yet, the Local Coastal Program Land Use Plan amendments are being exempted from environmental review, even though they will also **"affect agriculturally zoned lands countywide."**

County Counsel's letter of December 1,2005, responds by stating that there is no case law provided that would indicate that the County has to provide environmental review for the proposed ordinance amendments. Nor is there any case law allowing the exemptions claimed in the Staff Report. However, the County has required environmental review where agricultural lands are affected countywide as set forth above. Nearly identical circumstances are involved here. It is unlawful and unwise to stretch an exemption beyond its meaning in the interests of a "good cause" such as childcare, because such a stretch will be referenced as precedent for not so good causes in the future.

For the part of the County which is within the Coastal Zone the type of environmental review required is based on the provisions of the Coastal Act (Public Resources Code § 30000 et seq.) which **"replace[s] the EIR process with a comparable form of environmental review."** *Santa Barbara* 121 Cal.App.4th at 872, emphasis added.

County Counsel, in response to this, states that the County will provide the Coastal Commission with information as deemed necessary by the Coastal Commission. This alone implies that environmental review is required. **A** more detailed analysis of what type of environmental review must be prepared by the County pursuant to the Coastal Act is found in the letter dated October 25, 2005 to the Planning Commission as Attachment 8 to the Staff Report.

The proposed ordinance amendments do not comply with CEQA or the Coastal Act, because no environmental review has been prepared. At a minimum, the County must perform an Initial Study or similar analysis to determine what type of environmental review is necessary.

Thank you for your consideration of these matters.

Very truly yours,
WITTWER & PARKIN, LLP

Jonathan Wittwer

cc: California Coastal,Commission, Central Coast District
Santa Cruz County Farm Bureau
Clerk of the Board
County Counsel
County Planning Director
Crest Drive Neighbors

16.50.095 Agricultural buffer setbacks.

(a) The purpose of the agricultural buffer setback requirements is to prevent or minimize potential conflicts between either existing or future commercial agricultural and habitable land uses (i.e., residential, recreational, institutional, commercial or industrial). This buffer is designed to provide a physical barrier to noise, dust, odor, and other effects which may be a result of normal commercial agricultural operations such as: plowing, discing, harvesting, spraying or the application of agricultural chemicals and animal rearing.

(b) All development for habitable uses within two hundred (200) feet of the property line of any parcel containing Type 1, Type 2, or Type 3 Commercial Agricultural land shall: (1) Provide and maintain a two hundred (200) foot buffer setback between Type 1, Type 2 or Type 3 commercial agricultural land and non-agricultural uses involving habitable spaces, including dwellings, habitable accessory structures and additions thereto; and commercial, industrial, recreational, or institutional structures, and their outdoor areas designed for public parking and intensive human use. For the purposes of this Section, outdoor areas designed for intensive human use shall be defined as surfaced ground areas or uncovered structures designed for a level of human use similar to that of a habitable structure. Examples are dining patios adjacent to restaurant buildings and private swimming pools. The two hundred (200) foot agricultural buffer setback shall incorporate vegetative or other physical barriers as determined necessary to minimize potential land use conflicts. (2) Provide and maintain a buffer setback distance of at least two hundred (200) feet where the subdivision of land results in residential development at net densities of one or more dwelling units per acre adjacent to Type 1, Type 2, Type 3 Commercial Agricultural land, with vegetative screening or other physical barriers as appropriate. (3) Comply with Sections 16.50.090(c) and/or 14.01.407.5 of the Santa Cruz County Code pertaining to recording deed notices of adjacent agricultural use. Such deed notice shall contain a statement acknowledging the required permanent provision and maintenance of the agricultural buffer setbacks and any required barriers (e.g., fencing or vegetative screening).

(c) Outside of the Coastal Zone, notwithstanding the provisions of subsection (b) of this section an agricultural buffer setback distance of less than two hundred (200) feet may be established for subdivision developments involving habitable uses on proposed parcels adjacent to lands designated as an Agricultural Resource by the County's General Plan maps, provided that, (1) The proposed land division site is: (A) Located within the Urban Services Line, (B) Suitable for development at buildout level within the carrying capacity of the area; and (2) The Agricultural Policy Advisory Commission (APAC) finds that one or more of the following special circumstances exist: (A) Significant topographic differences exist between the agricultural and non-agricultural uses which minimize or eliminate the need for a two hundred (200) foot setback; or (B) Permanent substantial vegetation (such as, a Riparian Corridor or Woodland permanently protected by the County's Riparian Corridor or Sensitive Habitat Ordinances) or other physical barriers exist between the agricultural and non-agricultural uses which minimize or eliminate the need for a two hundred (200) foot setback; or (C) The imposition of the two hundred (200) foot agricultural buffer setback would, in a definable manner, hinder: infill development or the development of a cohesive neighborhood, or otherwise, create a project incompatible with the character and setting of the existing surrounding residential development; and (3) APAC determines the need for agricultural buffering barriers based upon an analysis of the adequacy of the existing buffering barriers, the density of the proposed land division and the proposed setback reduction, in the event that APAC finds that one or more of the above special circumstances exist; and (4) The approving body finds that the proposed reduction of the agricultural buffer setback(s) will not hinder or adversely affect the agricultural use of the commercial agricultural lands located within two hundred (200) feet of the proposed development.

(d) Notwithstanding the provisions of subsection (b) of this section an agricultural setback distance of less than two hundred (200) feet may be established for developments involving habitable uses on existing parcels of record when one of the following findings are made in addition to the required finding in subsection (e) of this section: (1) Significant topographic differences exist between the agricultural and non-agricultural uses which eliminates or minimizes the need for a two hundred (200) foot agricultural buffer setback; or (2) Permanent substantial vegetation (such as, a Riparian Corridor or Woodland protected by the County's Riparian Corridor or Sensitive Habitat Ordinances) or other physical barriers exist between the agricultural and non-agricultural uses which eliminate or minimize the need for a two hundred (200) foot agricultural buffer setback; or (3) A lesser setback distance is found to be adequate to

prevent conflicts between the non-agricultural development and the adjacent agricultural development and the adjacent agricultural land, based on the establishment of a physical barrier (unless it is determined that the installation of a barrier will hinder the affected agricultural use more than it would help it, or would create a serious traffic hazard on a public or private right-of-way) or the existence of some other factor which effectively supplants the need for a two hundred (200) foot agricultural buffer setback. (4) The imposition of a two hundred (200) foot agricultural buffer setback would preclude building on a parcel of record as of the effective date of this chapter, in which case a lesser buffer setback distance may be permitted, provided that the maximum possible setback distance is required, coupled with a requirement for a physical barrier (e.g., solid fencing and/or vegetative screening) to provide the maximum buffering possible, consistent with the objective of permitting building on a parcel of record.

(e) In the event that an agricultural buffer setback reduction is proposed and the proposed non-agricultural development is located on Type 1, Type 2 or Type 3 commercial agricultural land, the non-agricultural development shall be sited so as to minimize possible conflicts between the agricultural land use located on the subject parcel; and the non-agricultural development shall be located so as to remove as little land as possible from production or potential production.

(f) Notwithstanding the provisions of Section 16:50.095(b), farm worker housing developments located on Type 1, Type 2, or Type 3 commercial agricultural land shall provide a buffer between habitable structures and outdoor areas designed for human use and areas engaged in agricultural production located on the same parcel. Said buffer shall be two hundred (200) feet if feasible; and if a two hundred (200) foot buffer is not feasible, then the maximum buffering possible shall be provided, utilizing physical barriers, vegetative screening and other techniques as appropriate.

(g) Proposals to reduce the required two hundred (200) foot agricultural buffer setback for additions to existing residential construction (dwellings, habitable accessory structures and private recreational facilities) and for the placement of agricultural caretakers' mobile homes on agricultural parcels shall be processed as a Level 4 application by Planning Department staff as specified in Chapter 18.10 of the County Code with the exception that: (1) A notice that an application to reduce the buffer setback has been made shall be given to all members of the Agricultural Policy Advisory Commission at least ten (10) calendar days prior to the issuance of a pending action on an Agricultural Buffer Determination; and (2) Where a reduction in the buffer setback is proposed, the required notice of pending action shall be provided to the applicant, to all members of the Agricultural Policy Advisory Commission, to owners of commercial agricultural land within three hundred (300) feet of the project location, and to members of the Board of Supervisors, not less than ten (10) days prior to the issuance of the permit. There shall not be a minimum number of property owners required to be noticed; and (3) Buffer Determinations made by Planning Department staff are appealable by any party directly to the Agricultural Policy Advisory Commission. Such appeals shall include a letter from the appellant explaining the reason for the appeal and the current administrative appeal processing fee.

(h) All other proposals to reduce the agricultural buffer setback shall be processed as a Level 5 application as specified in Chapter 18.10 of the County Code with the exception that: (1) The required notice that an application has been made to reduce the agricultural buffer setback shall be provided only to owners of commercial agricultural land within three hundred (300) feet of the proposed project, not less than ten (10) days prior to the public hearing scheduled to consider the project. There shall not be a minimum number of property owners required to be noticed; and (2) All determinations shall be made by the Agricultural Policy Advisory Commission at a scheduled public hearing.

(i) An agricultural buffer setback shall not be required for repair or reconstruction of a structure damaged or destroyed as the result of a natural disaster for which a local emergency has been declared by the Board of Supervisors, when: (1) The structure, after repair or reconstruction, will not exceed the floor area, height or bulk of the damaged or destroyed structure by ten (10) percent, and (2) The new structure will be located in substantially the same location, but no closer to the agricultural land than was the original structure. (Ord. 4753 § 3 (part), 12/9/03)