

February 24, 2015

VIA HAND DELIVERY

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

Re: Recommendation to Board of Supervisors Regarding Amendment of County General Plan/Local Coastal Program and the County Code Regarding Safety and Noise; Commission's September 25, 2015 Agenda; Agenda Item # 7

Dear Commissioners:

This law firm represents The Aptos Council with respect to the above referenced agenda item. For the reasons stated below, the Planning Commission cannot forward recommendations to the Board of Supervisors at this time because of monumental procedural missteps. The proper procedures for the amendment to the General Plan must follow state law. While the County desires to hurry the approval of these amendments to meet grant funding deadlines, this deadline does not trump procedural requirements mandated by state law. The County's management of grant deadlines cannot be used as an excuse to short circuit public review and process for substantial amendments to the County's General Plan, Local Coastal Program and County Code. The County has done so little outreach to the community and the public is unaware of these sweeping changes.

- A) The Failure to Follow All Legally Mandated Procedure is Fatal to the Planning Commission's Ability to Make a Recommendation and the Matter Must be Continued Until These Procedural Infirmities are Remedied**
- 1) The Passage of New Groundwater Laws in California Requires the County to Engage in Groundwater Planning as Part of ANY Substantial Amendment to the County's General Plan**

In 2014, Governor Brown signed a package of groundwater laws that change the legal landscape. Effective on January 1, 2015, AB 1739 mandates cities and counties to engage in groundwater planning. The County's requirement to engage in such planning is triggered by ANY substantial amendment to the County General Plan. The Legislature clearly thought that when the County engages in substantial amendment of its General Plan, that is an opportune

moment to also engage in groundwater planning. Thus, Government Code § 65350.5 requires the following:

Before the adoption or **any substantial amendment** of a city's or county's general plan, the planning agency shall review and consider all of the following:

- (a) An adoption of, or update to, a groundwater sustainability plan or groundwater management plan pursuant to Part 2.74 (commencing with Section 10720) or Part 2.75 (commencing with *Section 10750*) of *Division 6 of the Water Code* or groundwater management court order, judgment, or decree.
- (b) An adjudication of water rights.
- (c) An order or interim plan by the State Water Resources Control Board pursuant to Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6 of the Water Code.

(Emphasis added). The County has not complied with this section. Thus, the County cannot adopt the proposed General Plan amendments until it completes the required groundwater planning. This is crucial in Santa Cruz County since groundwater basins in the Mid-County and South County are in a state of severe overdraft in the midst of a serious drought.

2) The County Did not Circulate the Negative Declaration for 30 Days as Required by CEQA

The County is proposing major revisions to its General Plan, Local Coastal Program and County Code. These substantial and major revisions did not receive adequate public review. First and foremost, given the gravity of the changes proposed, the Negative Declaration should not have been released for public review in the midst of the holiday season (December 23, 2014 through January 21, 2015). Second, the review period was not for the required 30-day comment period; the comment period was only 29 days.

State statute mandates that days are “computed by excluding the first day and including the last... .” Code of Civ. Pro. § 12. Thus, the Negative Declaration was not circulated for the requisite number of days, and the comment period should not have ended until January 22, 2015. Given that the Negative Declaration was released during the holidays, not only is this error noncompliant with law, but it also deprived the public of necessary time to review and respond to such massive revisions.

3) It is Unclear Whether the County Complied with Other Legally Mandated Notice and Consultation Requirements

The Staff Report enumerates the County's outreach and consultation efforts. However, it does not mention other required notices and consultations and it is unclear from the documents available to the public whether these other requirements were met. The absence of their mention leaves the public with the impression that these items have not been followed. These requirements are as follows:

- Government Code §§ 65353, 65090 and 65091 require the County to provide notice of the Planning Commission's public hearing on this matter via newspaper publication and posting in *three locations* in the County 10 days prior to the hearing.
- Government Code § 65302.5 requires that at least 45 days prior to the amendment of the Safety Element (in this case by the Board of Supervisors), the County was required to submit for review a draft of the Safety Element, and any technical studies relied on for the amendment, to the California Geological Survey of the Department of Conservation. If this has not been done, the Board of Supervisors cannot approve the amendments prior to March 31, 2015. Even though the statute does not require that the Planning Commission consider the state's comments in this regard, it would seem appropriate that before any recommendation is given to the Board, the Commission may want to review any comments received.
- Pursuant to Government Code § 65352.3, prior to the adoption of any amendment of the General Plan, the County is required to contact California Native American tribes and the tribes have 90 days in which to request a consultation.

If any of these notice and consultation provisions have not been followed, the Planning Commission cannot move forward with a recommendation at this time and the matter must be continued.

B) A Negative Declaration is Inappropriate for Sweeping Changes to the General Plan, Local Coastal Program and County Code

It is beyond doubt that sweeping changes to the Safety Element, the Noise Element and

related County Code implementing ordinances require an Environmental Impact Report (EIR) instead of a Negative Declaration. The County seeks to ignore the mandate of the California Environmental Quality Act (CEQA) that EIRs are the preferred vehicle for environmental review. The County seems to believe that because the amendments do not yet result in actual development that it is immune from attack. However, under CEQA such amendments have regularly been held to rigorous standards for environmental review because of their effect on future development. The Safety and Noise Elements are amended so radically that it is impossible to tell the true nature of the amendments without an EIR to walk the public and decisionmakers through the analysis.

Furthermore, as the County knows, The Aptos Council has pending litigation regarding piecemeal zoning code reform efforts and seeks to enjoin future zoning code reform efforts unless and until the County prepares environmental review for the reform effort in one document. *The Aptos Council v. County of Santa Cruz, et al.* (Santa Cruz Superior Case No. CV178868). The Aptos Council renews its objection here that the continued piecemeal amendment of the County Code as part of the County's overall zoning code reform effort violates CEQA.

1) The County Cannot Ignore the Coastal Commission's Draft Guidance in Adopting the Safety Element

The County exhibits a degree of arrogance when it dismisses the California Coastal Commission's recommendations regarding coastal retreat policies. Such an approach will only lead to a dispute between the County and the Coastal Commission and result in this matter simply returning to the County for further consideration at a later date when the Commission rejects the County's approach. This is on full display in the Staff Report to the Commission.

On page 5 of the Staff Report, the Staff admits that the County is proposing to diverge from the Coastal Commission's draft guidance on Sea-Level Rise. The County also defers geologic analysis "on a site specific basis," rather than on a comprehensive basis, "pending completion of regional scientific studies that are underway on this topic." (Staff Report, p. 4). Indeed, the County's deferral of geotechnical analyses violates CEQA. CEQA calls for such analysis to be done before the adoption of a General Plan or Local Coastal Program amendment. Moreover, because the Coastal Commission's Sea-Level Rise Guidance is in draft form, and regional scientific studies are underway, the County's amendments at this time are premature and "put the cart before the horse." The County should await completion of the guidance and the regional scientific studies before adopting the amendments to avoid cataclysmic land use planning mistakes.

Furthermore, it is absurd to argue that “homes themselves, are protecting or have the potential to protect the street and the critical utilities under the street from damage from sea level rise and coastal erosion.” (Staff Report, p. 2). The County’s approach to protecting infrastructure cannot simply put beach and bluff top residents in harm’s way.

2) The County is Incorrect that the Sensitive Habitats Ordinance Must be Revised to Allow for Defensible Space

The proposal also creates an exception to the Sensitive Habitat Ordinance in the Safety Element. (Policy 6.5.3). First, the County is incorrect that an exception must be granted in these instances. State law continues to require compliance with local ordinances. The Staff Report admits as much on page 8. Moreover, removing riparian vegetation, which is a sensitive habitat, can also increase fire risks because riparian vegetation retains moisture and removal of vegetation can actually “dry out areas around streams and wetlands.” *See*, County of Santa Cruz and Defensible Space, Frequently Asked Questions (attached hereto). The Negative Declaration fails to address the impact of creating an exception from the Sensitive Habitats Ordinance and the failure to provide such analysis, and prepare an EIR, violates CEQA.

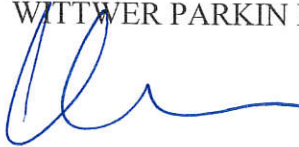
C) The Citation of the County Code in the General Plan is Not a Best Practice

Finally, we would like to note that citations to the County Code in the General Plan and Local Coastal Program Amendments is a poor practice. Indeed, the County is in the midst of zoning code reform, albeit on a piecemeal basis, and Code sections can be renumbered and change over time. This can lead to confusion and the Staff and the public may be unaware of changes in the County Code that also require amendments to the General Plan. This can also lead to misinterpretation. The County should delete all specific references to the County Code in the General Plan and Local Coastal Program.

Thank you for your consideration of these comments.

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Very truly yours,
WITTWER PARKIN LLP



William P. Parkin

Encl.

cc: Board of Supervisors
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County of Santa Cruz and Defensible Space

With the recent fires in Santa Cruz County and across California, the state mandated defensible space guidelines have become increasingly important to implement. The County supports the State Guidelines for Defensible Space, but also recognizes that in some cases care must be taken to avoid unnecessary impacts to sensitive habitat.

Frequently Asked Questions

1. Do I need a permit to cut down trees or remove vegetation as I create defensible space?

Generally, no. In most cases, as long as you follow the Defensible Space Guidelines provided in either “Living with Fire in Santa Cruz County” or the “General Guidelines for Creating Defensible Space” you will not need a permit (links to these documents can be found at the bottom of this document). The cases where a permit may be required are listed below:

- A. If you are in the Coastal Zone and you want to remove a mature tree(s), you may need a Significant Tree Removal permit from the County of Santa Cruz. The Coastal Zone is generally located on the ocean side of Highway 1 south of Santa Cruz and, on the ocean side of Empire Grade north of Santa Cruz.
- B. Clearing for defensible space in the Salamander Protection Zone requires a Biotic Approval from the County of Santa Cruz. The Salamander Protection Zone is located in Aptos, on the north-facing slope between Vista Del Mar and Bonita Drive.
- C. If you plan to sell the timber from the trees, either as lumber or firewood, you may need a permit from the California Department of Forestry and Fire Protection (CAL FIRE).

2. Will I violate any laws by creating defensible space?

According to the State Guidelines regarding defensible space, homeowners who do fuel reduction activities that remove or dispose of vegetation are required to comply with all federal, state and local environmental protection laws and obtain permits when necessary. To ensure compliance with federal and state environmental laws, individuals should contact the appropriate federal and state agencies. To avoid violating County rules, homeowners should not employ the following practices:

- A. Clearing to bare soil. This can cause erosion and hillside destabilization. Retain some vegetative cover and apply an appropriate mulch (such as rice straw) ~~mulch~~ as necessary (Erosion Control Ordinance 16.22).
- B. Clearing mature vegetation, or clearing to bare soil, around a wetland or riparian (stream) corridor. In addition to the potential for erosion, riparian vegetation retains moisture, which minimizes combustion. Removing this vegetation can dry out the areas around streams and wetlands, increasing the potential for fire (Riparian Ordinance 16.30, Sensitive Habitat Ordinance 16.32). If vegetation must be removed at stream crossings to maintain access, remove only those branches that impinge upon the access way and leave at least 2/3 of the foliage of any mature tree.
- C. Removing Santa Cruz cypress trees. This won't affect most homeowners because native cypress trees are rare and occur in only a few locations. However, because they are so rare, it is important to preserve them (Sensitive Habitat Ordinance 16.32).
- D. You may need to address other sensitive habitat issues on your property (see #3 below).

3. I know there are some sensitive habitats in Santa Cruz County. How do I know if I'm in a sensitive habitat, and how do I clear without violating the County's Sensitive Habitat Ordinance?

- A. Sandhills Habitat - If you are in Bonny Doon, Ben Lomond, or anywhere in the hills west of Soquel-San Jose Road and the soil looks like beach sand, you could be in sandhills habitat. With a wide variety of protected plants and insects, you should avoid clearing, burying, or trampling the herbs and flowers, avoid soil disturbance, and leave the roots of whatever vegetation you remove in place. You should also avoid clearing around dusk during the summer months (May 15 through August 15) to avoid impacts to the local sensitive insects, and if you are clearing manzanita, leave the first few branches if there is no burl at the ground level of the stem.
- B. Santa Cruz Long-toed Salamander Habitat - If you are within one mile to the ocean side or three miles to the mountain side of Highway 1, between Rio Del Mar and Buena Vista, you are probably in salamander habitat. In this area you should try and keep a low (12-18 inches tall) under story of native vegetation, and separate it from the canopy by limbing up trees 10 to 15 feet. Make sure everything within 30 feet of your home is green and moist, and leave damp logs with plenty of soil contact in place in the area between 30 and 100 feet of your home.
- C. Oak Woodland - If most of the trees in your neighborhood are oak trees, you are probably in oak woodland. As in salamander habitat, separate the canopy from the under story by limbing up branches, and retain as much native shrub as you can. To reduce the under story within 100 feet of a structure, leave islands of shrubs where it won't form a fuel ladder to the canopy.
- D. Riparian Corridors and Wetlands - If your property has a stream, pond or lake on it, leave all the mature vegetation within 100 feet of standing water, 50 feet of a year-round stream, and 20-30 feet of a stream that goes dry regularly.

4. The State Defensible Space Guidelines encourage the removal of all dead vegetation, but I have several dead oaks. The guidelines for dealing with sudden oak death encourage oaks to be left on site. What should I do?

Once the oak trees have been cut down, keep them on site, beyond 100 feet from your structure, if at all possible. Mulch the smaller pieces and cut up the larger ones for firewood. If you have a clearing, you can make a small pile of limbs that will attract a wide variety of wildlife. If a single tree is isolated, leave the trunk and a branch or two standing for wildlife, otherwise cut the trees into pieces and leave them there. Soil contact and moisture will speed the decomposition without spreading disease. If you must remove oaks from the property, make sure that they go to the landfill and not to a property that may not have the disease.

5. We have a lot of eucalyptus on our property. Can I remove some or all of them to protect my house from fire?

This is a complex question and there is no easy answer. Depending upon where you are located in the County, the size of the trees and the area to be cleared, you may need a Significant Tree Removal Permit, a Land Clearing Permit, or a Coastal Development Permit. In some cases a stand of eucalyptus trees may be removed without a permit at all. If you want to remove a stand of trees, it's best to check with the County Planning Department first. Be sure to provide the parcel number where the stand is located, and the area, in acres, that you want to clear.

6. My house is 50 feet from the property line. Do I have to clear on my neighbor's property?

Not without their explicit permission. The state law requires defensible space to up to 100-feet from a structure OR the property line, whichever is closer. Clearing vegetation on your neighbors' property without permission is illegal and may cause conflict. It is in your and your neighbors' best interest to work together to create and maintain defensible space.

The County encourages residents to carefully review the State Guidelines prior to any clearing. **Defensible space IS NOT clearing of all vegetation.**

Defensible space IS separating and reducing fuel within 100 feet of a structure.

If you have any further questions, please call the Planning Department at (831) 454-3201.

Links to Defensible Space Guidelines

- **Living with Fire in Santa Cruz County**
[http://www.rcdsantacruz.org/media/tabular_download_gallery/Living with Fire 2009.pdf](http://www.rcdsantacruz.org/media/tabular_download_gallery/Living_with_Fire_2009.pdf)
- **General Guidelines for Creating Defensible Space**
http://www.fire.ca.gov/cdfbofdb/PDFS/4291finalguidelines2_23_06.pdf
- **Cal Fire Defensible Space Information**
http://www.fire.ca.gov/communications/communications_firesafety_100feet.php