

Environmental Services Agency
Planning and Building Division



Planning Division • 415/363-4161 • FAX 363-4849

Building Inspection Section • 415/363-4601 • FAX 363-4849

County of San Mateo

Mail Drop 55RC1-00 • 590 Hamilton Street, 2nd Floor • Redwood City • California 94063

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**Director of
Environmental Services**
Paul M. Koenig

Planning Administrator
Terry L. Burnes

February 8, 1995

Joe Fitting
P.O. Box 370796
Montara, CA 94037

Dear Mr. Fitting:

**SUBJECT: Planning Staff Review and Comments on View and
Solar Access Ordinance**

Planning staff has reviewed the latest draft of the View and Solar Access Ordinance. We want to acknowledge the vast improvement made since our last review of the ordinance in November 1993.

We have the following comments regarding the cited ordinance sections:

Section 1

Are you sure you want the ordinance to be applicable to all Mid-Coast area non-residential zoning districts, including "C-1" (Neighborhood Commercial), "W" (Waterfront), "CCR" (Coastside Commercial Recreation), etc.?

The applicable area description includes: ". . . west of the coastal mountain ranges." That is too vague and should read: ". . . west of the *Urban/Rural Boundary line*."

Section 2(b)(2)

The issue of the ordinance not being applied retroactively needs to be stated more succinctly and in a separate section, so that it is quite clear.

Also see comment regarding Section 6(c)(1).

Section 3(p)

The definition of "view" seems very subjective and interpretive; this could create some very contentious debates over what constitutes "view," depending upon whose perspective one is taking.

Section 5(c)(9)

After five years, in the event of a new owner, an entire new claim could be initiated. Hopefully, the new owner will be notified of past claims against his/her property and any restorative actions. Otherwise, this could get very contentious.

Section 5(c)(10)

Add second sentence:

In the event of a conflict, the provisions of any existing ordinance shall prevail.

Section 6(c)(1)

This either contradicts the section that states the ordinance shall not apply retroactively or appears to contradict it. Section 2(b)(2) states (it seems too vague; it needs to be made more clear) that the ordinance (or any part of it) shall not apply retroactively; but this section appears to contradict that, i.e., "As to trees planted prior to the effective date of this ordinance . . ." If this is a misunderstanding, it must be clarified.

Section 7(a)

1. Tree cutting, in certain situations, could require a Coastal Development Permit (CDP). If any of those actions cited above contradicts LCP Policies 8.7(b), 8.9(e), or 8.16(b) (see attached for LCP policy text), the CDP could not be approved, thus the subject restorative action *could not* proceed. As the ordinance is currently written, certain instances of tree cutting (as part of any restorative action) *could* contradict the LCP. Amending the LCP to accommodate the proposed ordinance (where, how, and under what circumstances tree cutting/removal would be allowed) is not recommended, due to: (1) the long process involved (Planning Commission and Board of Supervisors approval and Coastal Commission certification), and (2) the potentially contentious and complicated nature of such an amendment.

To ensure that the ordinance does not conflict with current LCP policies, the following needs to be added (as a separate sub-section):

No mediation agreement, arbitration report, or court decision shall contravene any ordinance or Local Coastal Program policy in effect at the time a claim pursuant to this ordinance is decided.

2. Planning Division staff, the Zoning Hearing Officer, Planning Commission, and/or the Board of Supervisors may require landscaping (including tree

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planting) as a condition of approval in conjunction with various planning permits (e.g., a CDP, variance, use permit) in cases where screening is necessary to mitigate project-related impacts. The proposed ordinance creates situations whereby required tree planting associated with such conditional permit approvals could possibly be subject to future claims and restorative action.

This situation could limit the County's ability to require tree planting as a condition of approval unless all surrounding neighbors (within 300 feet or farther) agree that the placement of such trees will not hinder their future view and/or solar access; such agreement concerning future scenarios is unlikely. In such situations where trees are planted (as a condition of permit approval) and a future claim-related restorative action occurs (resulting in the tree's trimming, removal, or replacement), the County could be held liable by the affected property owner for the cost of the original trees (if removed), their trimming or removal, or replacement trees.

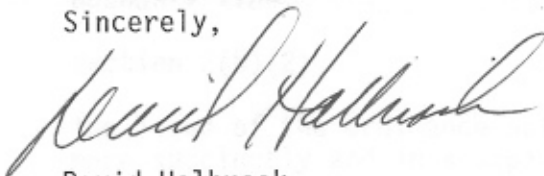
We suggest that the following section be added:

Where the County conditions the approval of any planning permit with the requirement to plant trees to comply with a Local Coastal Program policy, those trees shall not be subject to any provisions of this ordinance.

General Comment

While it may not be appropriate or necessary to acknowledge this in the ordinance, it is important to stipulate how the existence, contents, and implications of this ordinance will be disclosed to all current and future property owners and all area realtors.

Sincerely,



David Holbrook
Planner III

DH:fc - DJHF0268.AFN

Attachment

cc: Mike Murphy, County Counsel
Matt Greenberg, Aide to Supervisor Lempert
Bill Rozar, Development Review Manager
Paul Koenig, Director of Environmental Services