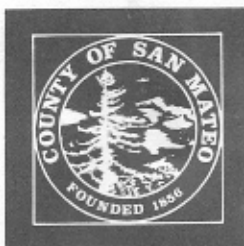


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March 15, 1995

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

Re: Proposed View and Solar Access Ordinance

Dear Mr. Fitting:

I have now had the opportunity to review the proposed view and solar access ordinance. The following comments are not intended to indicate the position of this office, or of the County, on the merits of any particular approach to the issue, but instead reflect our analysis of some of the more significant legal issues. Also, these comments are not meant to be comprehensive at this point in time. More specific involvement by this office would occur if, and when, the matter is referred to the County. Further, these comments are not meant to override any comments made by the Planning Staff in their earlier letter to you.

1. Section 1 (Title). The ordinance will have to be clarified with respect to its geographical applicability. It may be appropriate to confine the ordinance to the designated urban area and rural residential subdivisions in the MidCoast area. I also note Planning Staff's comment as to whether the ordinance should apply in commercial or industrial zones. I suspect that the ordinance, in its final form, would be adopted as an "overlay" district.

2. Section 2 (Purposes and Objectives). Subsection (b)(2), as I understand it, was intended to address the retroactivity issue. A separate section should be drafted to make it crystal clear as to the applicability of the ordinance. Also it is not clear how the retroactivity section would work. Does it, in effect, call for a "snapshot" on the effective date of the ordinance, or does it exempt any tree that was planted as of the date of the ordinance, whether it grows in the future or not? Also, this issue raises the related question of how long someone

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should have to initiate a tree claim after a tree or other vegetation has matured. In other words, if a person has allowed neighboring trees to grow over a long period of time, there is an issue as to whether the person should have right to claim the original view. *Cost Assoc. See Sec 6.1*

3. Section 3 (Definitions). While some amount of vagueness is allowed in zoning ordinances, the definitions of views in subdivision (p) may be a bit too vague. You indicate, in accompanying notes to the proposed ordinance, that a 300 foot limit has been established beyond which the burden placed on the claimant is increased. I strongly suggest that some outside limit be established beyond which this ordinance could not be invoked.

Cont
4. Section 4 (Procedures). As noted above, some consideration needs to be given to establishing a "statute of limitations" on bringing a tree claim. Unless I am mistaken, it is my understanding that a person who purchases property cannot seek restoration of a view that existed before the property was purchased. I also suggest that some protection needs to be given to property owners who have established mature trees without complaint so they are not subjected to removal of the trees to restore views that existed when the property was purchased. Further, in the event the ordinance is referred to the County, we will be looking more closely at the question of how the administrative process set forth in this section dovetails with the judicial process. One concern that I have is that the ordinance does not include a succinct standard on what constitutes a violation of the ordinance. This will be necessary because courts are not in the business of serving as mediators.

5. Section 6 (Apportionment of Costs). If and when this ordinance is referred to the County, this office will take a closer look at how the provisions related to the apportionment of costs may be affected by State law. If, in fact, there are provisions of State law which preempt the provisions set forth in the ordinance relating to costs, the State provisions will apply. I also note the comment made by Planning Staff with regard to subdivision (c)(1), which relates to the whole question of retroactivity.

6. Section 7 (Liabilities). Again, if this ordinance is ultimately referred to the County, we will be taking a closer look on how the liabilities section dovetails with State law to ensure there is no preemption of the process that is set forth in Section 7. I also note Planning Staff's comments that reflect a concern

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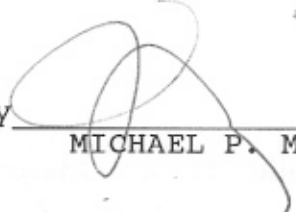
that provisions of this ordinance not conflict with provisions of the LCP or County zoning ordinances with regard to the removal of trees or landscaping requirements. As I understand it, the County Staff's position with regard to this ordinance has been that any private rights created under the ordinance would have to be subordinated to public policy requirements dictated by the Local Coastal Program and implementing zoning ordinances. In other words, regardless of the outcome of a tree claim, all necessary permits would have to be obtained from the County for any removal or modification of trees, and it is possible that a permit could not be obtained to remove the trees in the event that findings could not be made of conformance with County regulations.

Again, these comments are meant to be general, outlining some of the more significant legal issues that need to be addressed. In my mind, the most significant of these are the retroactivity issue and the issue of possible conflict with existing regulations. I hope these comments have been helpful. As I have indicated, this office would be looking at the ordinance in more detail at the time that the process of review begins before the Planning Commission.

Please contact me if you have any questions. Again, I regret the delay in getting back to you on this.

Very truly yours,

THOMAS F. CASEY, III, COUNTY COUNSEL

By 
MICHAEL P. MURPHY, DEPUTY

MPM:pp
30/fitting.ltr

cc: Bill Rozar, Planning
David Holbrook, Planning