LandWatch monterey county

Post Office Box 1876, Salinas, CA 93902
Email: LandWatch@mclw.org
Website: www.landwatch.org
Telephone: 831-759-2824
FAX: 831-759-2825

December 12, 2000

Supervisor Lou Calcagno, Chair
Monterey County Board of Supervisors
County Courthouse
240 Church Street
Salinas, CA 93901

RE: South County Parcelization and Development Issues

Dear Chairperson Calcagno and Board Members:

This letter is to expand slightly and to put into writing (and thus, I hope, to make easier to follow) the comments I made at your meeting today. I want to provide a specific reference to some things you can do, in a positive way, to deal with the parcelization and development issues that were so effectively dramatized at the Board meeting.

I think the parcelization and development issues in South County are very serious, with respect to the long-term future of the county. The Chair's comparison of South County to Yosemite is not far from the mark. There is spectacular country there, and absent a change in the existing policies and current administrative approaches, the ranching, wildlife, and scenic resources of the area are likely to be progressively undermined and diminished, and ultimately lost. Here are the points I hope your Board will consider, and the actions I hope you will take:

- The Williamson Act, however beneficial, is not, to my mind, the place you should put your main focus. You should not be relying on the Williamson Act to set land use policy for you. After all, every Williamson Act contractor can, if he or she desires, simply withdraw from the contract on a unilateral basis, which means that ten years later the restrictions of the Williamson Act will not be a factor in governing land use. That makes the Williamson Act relatively ineffective as the basis for setting long term land use policy. This said, it is obviously very important actually to enforce the provisions of the Williamson Act, and provisions of Williamson Act contracts, as the Farm Bureau has urged you to do. We definitely concur with the Farm Bureau on that.

- I am not fully informed on the details of the so-called "Exxon" lot line adjustment, as apparently approved by county staff in 1999. This is the matter that will be back before your Board in January, as I understand it. From what I know, the approval of this lot line adjustment was arguably inconsistent with Government Code Section 51257, at the time the lot line adjustment was made. The lot line adjustment also apparently created parcels that violate the 160-acre minimum requirement of the current General Plan and Zoning Code. While your inclination, I am sure, will be to "back up" the county staff that gave

the approval, I urge a different, three-step approach. First, I hope you will find out from County Counsel whether the action by county staff did comply with your current understanding of what the land demands, and what the Zoning Ordinance and General Plan require. If County Counsel tells you that the approval of the lot line adjustment in 1999 was not, in fact, consistent with what you now hold to be the applicable law and regulations, then I urge you to inquire, as a second step, if the County can legally reverse the inappropriate staff decision at this time&emdash;again, this is a legal question for County Counsel. Finally, if the staff decision was erroneous, and the County is legally able to reverse that erroneous decision at this time, then I urge you to do so. While the landowner has of course "relied" on the 1999 approval, the public's reliance ought to come first in your mind. The public relies on the County, which is supposed to represent its interests first and foremost, actually to follow its own policies and state law. If the county staff didn't do that, and the decision can be "undone," then I hope the Board will take that step.

- I believe that the point made at your Board meeting is legally correct, and is correct as a matter of policy—no residential unit should be approved on any parcel in the Permanent Grazing (PG) zone district unless the applicant for a permit to build the residence can demonstrate that the residence would be accessory to a genuine agricultural use. The burden of proof should be on the applicant to demonstrate this. It might well be appropriate for the Board to adopt specific guidelines as to how such a legally sufficient accessory use could be proved, and a specific procedure for such permit requests. Normally, a residential building permit is handled as a "ministerial" permit, but because of the zoning code requirements, judgment must actually be exercised, to insure that the code is being complied with. As I and others stated at the meeting, your planning staff needs to know immediately that no such permits should be issued on PG properties, unless and until an adequate showing is made that the residential structure will truly be accessory to a genuine agricultural use.

- As was made clear at your meeting, PG parcels are being marketed without reference to the code requirement that no residence can be constructed on such parcel unless that residence is "accessory" to a bona fide agricultural use. The only way to avoid problems for the purchasers of such lots is to find a way effectively to place a notice of this legal requirement on the titles of all PG zoned properties. I do not think current state law allows the Board directly to put a notice of zoning restrictions into the chain of title of each PG zoned property—but you could have County Counsel check that to be sure. You could also seek state legislation to allow you to accomplish that. Finally, (and this was my suggestion from this morning) you could ask County Counsel to file a suit for Declaratory Judgment as to the meaning of the zoning restrictions, naming and providing notice to all persons holding PG zoned properties. Once a judgment is obtained, establishing that the zoning regulation is in fact a binding restriction on constructing a residential unit on PG properties, you could record it against the titles of all PG properties, and provide actual notice. That would probably undermine marketing schemes like those discussed at your meeting this morning. If this step seems unusual, perhaps it is that; however, I urge you to take effective action to prevent the continued development of agricultural parcels in South County for what are essentially suburban "ranchette" developments. That kind of development absolutely violates your current zoning code, and everyone should know that, and act accordingly.

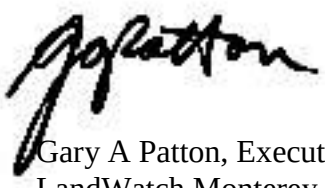
- One of the most significant long-term problems in South County is how to eliminate (to the greatest degree possible), or to prevent the development of, preexisting

nonconforming parcels, sometimes called "paper subdivisions." Current state law gives the owners of such parcels certain development rights, but these rights are not for the most part constitutionally based, but based on statute. I hope the Board will urge Senator McPherson, and Assembly Members Keeley and Salinas, to seek to rectify this situation with appropriate state legislation. In addition, the Packard Foundation is reportedly funding a special look at this problem, with work being undertaken by Jonathan Wittwer, the former Assistant County Counsel of Santa Cruz County, and a person extremely knowledgeable in this area of the law. I urge your Board to have your County Counsel contact Mr. Wittwer, and to work with him and others interested in this issue, to build as strong an approach as is possible. There may well be some things the County can do, if it's willing to take a proactive role, to make such "paper subdivision" parcels unbuildable. The police powers of the County, for instance, could prevent any development or construction on parcels where access is not adequate, or where other reasonable conditions are not met. Absent a positive program by the County, individual lot owners will proceed to build, and the long-term integrity of South County will be undermined. I hope the Board will direct County Counsel to help the Board develop an effective program to achieve its policy objectives, faced with the "paper subdivision" problem.

- Finally, as I indicated at your meeting, strengthening the land use policies for South County should be a major effort as part of the General Plan Update. Naturally, LandWatch will seek to present positive alternatives for your consideration.

Thank you for taking these views into account&emdash;and thank you for taking a proactive approach to the land use policy challenges that can undermine the long-term economic and environmental health of South County, absent a vigorous effort by the County Board of Supervisors to forestall that result.

Very truly yours,



Gary A Patton, Executive Director
LandWatch Monterey County

cc: Each Board Member
County Administrative Officer
County Counsel
Anthony Lombardo
Common Ground Monterey County