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December 13, 2004

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

RE: Rancho San Juan Specific Plan / Butterfly Village Subdivision

Dear Members of the Board of Supervisors:

LandWatch Monterey County has previously written to you about the proposed Rancho San Juan Specific Plan, and the proposed Butterfly Village Subdivision. As noted in our earlier letter, we believe that you should follow the unanimous recommendations of the Planning Commission. Among other things, the Planning Commission unanimously recommended that the Board:

- Decline to adopt the General Plan Amendments that the staff has proposed. Such action would necessitate the preparation of a Specific Plan for the Rancho San Juan Area of Development Concentration that complies with the existing General Plan.
- Revise and recirculate the Environmental Impact Report, to comply with the mandates of the California Environmental Quality Act (CEQA).
- Decline to enter into the proposed Development Agreement between the HYH Corporation and Monterey County.

We have the following additional comments, which we hope you will consider:

1. As members of the Planning Commission and the public have repeatedly stated, the staff's "rush to approval" treatment of the proposed Rancho San Juan Specific Plan and the proposed Butterfly Village Subdivision application have deprived the public (including LandWatch Monterey County) of a full and fair opportunity to participate in the administrative process.

This is the largest development project ever proposed in Monterey County, and the materials relating to it (including an incomplete "Final" EIR) comprise a stack of paper about two feet in height, weighing about seventeen pounds. Staff demanded that Planning Commission deliberations on these materials take place during the Thanksgiving holiday period, and on a schedule that made it impossible for anyone to do a thorough job of review and comment.

This “rush to approval” schedule promoted by the staff has continued before the Board of Supervisors. For instance, the Planning Commission’s deliberations were completed on the afternoon of Thursday, December 2, 2004, and the Board of Supervisors called a special meeting on the very next morning, Friday, December 3rd, to begin its consideration of the project. This is totally unprecedented, and essentially unfair to members of the public. As another example, the “decision documents” that the staff is requesting the Board to approve on December 14th were made available to members of the public only on Monday morning, December 13, 2004, less than 24 hours before what is expected to be the Board’s final hearing on this project. No member of the public (including LandWatch) can give these proposed “decision documents” the close review they deserve, because of the unfair way that the County has structured the process. The procedural history of this project, in fact, demonstrates a commitment by the County staff to gain Board approval of the project no matter what, rather than a commitment (required by law) to provide an adequate opportunity for the Board, and members of the public, to review and comment on the proposals in a thoughtful way.

It is absolutely certain that the County staff (and the Board) have been motivated to cut short the rights of the public because of a threat by the H-Y-H Corporation to “sue” the County if the County does not approve its project by December 31, 2004. Whatever merits there may be to any such lawsuit, this threat of litigation by a developer does not provide an adequate justification for the Board of Supervisors to curtail the rights of the public. Every resident of Monterey County will be affected by this development, if it goes forward. Due process requires that members of the public have an opportunity adequately to review the proposed actions of the Board, and to comment on them, prior to a decision by the Board that will affect the public so profoundly.

We urge the Board, after it has deliberated, to outline its proposed actions without making a final decision, and then to allow members of the public at least two weeks to study the proposed actions, and to provide them with the kind of detailed review they deserve, so that the Board can have the benefit of fully informed public comment prior to taking its final action on the proposed project. Failure to adopt this, or some similar procedure, will deprive the public of its due process right to participate meaningfully in a set of decisions that may profoundly affect the future of Monterey County.

Please note that the due process concerns we express are echoed by the League of Women Voters of the Monterey Peninsula, in a letter dated December 3, 2004, attached and previously delivered to the Board.

2. The “threat of litigation” mentioned earlier has caused the County to accelerate the administrative process in these matters to such an extent that the public has been deprived of its rights. In addition, that “threat of litigation” claim has prejudiced the due process rights of the public in another way. Acting under the “pending litigation” exception to the Brown Act, the Board of Supervisors has met repeatedly with the County’s planning staff in closed, non-public meetings, and in this way has quite literally “shut out” public participation from informational and other presentations relating to the Rancho San Juan Specific Plan and the proposed Butterfly Village Subdivision. The Brown Act provides a few very narrow exceptions to the open meeting requirement that governs deliberations of the Board of Supervisors. One of them is an exception that allows the Board to consult with its legal advisors about pending litigation. There is no exemption that allows the Board to receive presentations by planning staff in a closed session, and yet the Board’s

decision making process in this case appears to be founded on just such closed meetings. LandWatch urges the Board to cure this violation of the Brown Act, prior to its final decision on the proposed Rancho San Juan Specific Plan and the proposed Butterfly Village Subdivision, by fully disclosing the content of all of these non-privileged presentations and communications, and by then allowing members of the public a sufficient opportunity to review and then comment on these presentations and communications, prior to the Board's decision.

3. LandWatch has another comment on the "threat of litigation" status of these planning items. Since County representatives, including individual members of the Board of Supervisors, have made repeated public statements that the County "has to" approve the proposed Rancho San Juan Specific Plan and the proposed Butterfly Village Subdivision (and that this is a "legal" requirement), or that if the Board doesn't approve the proposed Rancho San Juan Specific Plan and the proposed Butterfly Village Subdivision the County will be liable for extensive damages (variously estimated between \$50 and \$100 million dollars), LandWatch urges the Board to require a full public presentation on any and all legal theories that would "require" the Board to approve the proposed Specific Plan or the proposed Subdivision, or that would "make the County liable" for damages should it not approve them. LandWatch has reviewed the legal materials in the case of H&Y-H Corporation vs. County of Monterey, and finds that there is both a Court Order and a Stipulation requiring the County to "consider" and "process" a Specific Plan and project application, but the documents that LandWatch has examined specifically reserves to the County the right to exercise its full discretion as it does "consider" and "process" both the Specific Plan and the project.
4. The "Final" EIR prepared for this project is neither "Final" nor "adequate." CEQA requires that the Final EIR respond substantively to comments submitted on the Draft EIR. In this case, a number of responses are either inadequate or incomplete. Attached to this letter is a "summary" of the testimony of William Theyskens, prepared by him, relating to the "water balance" calculations utilized in the analysis of the Rancho San Juan Specific Plan. Mr. Theyskens is an expert, and as his comments indicate, the analysis being relied upon by the County is, in his words, simply "wrong." The "Final" EIR does not adequately deal with these extremely important groundwater issues.

In addition, when new and significant information is included in the responses to comments made on a Draft EIR, those responses to comments must be "recirculated." This has not been done. Despite the claims that no such recirculation is needed, new information has been provided indicating increased impacts. See, for example, the December 10, 2004 letter from Keith Higgins, relating to traffic impacts, and noting that the new information he has provided indicates levels of service on Highway 101 which are "worse than what were reported in the previous incorrect version."

We believe that Monterey County has routinely shortchanged the CEQA process. Often, this is done through the inappropriate use of a "Negative Declaration," or "Mitigated Negative Declaration." Here, it has occurred in the context of an inadequate Final EIR. We urge the Board fully to comply with CEQA, prior to making its final decisions on the proposed Rancho San Juan Specific Plan and the proposed Butterfly Village Subdivision.

5. Government Code Section 65300 requires that the County have a legally adequate general plan, and requires that individual projects be consistent with the general plan. *See Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531 (1990).

Any project approval that is inconsistent with the general plan, or that is made in the absence of a legally adequate general plan, where the project implicates an inadequacy of the general plan, is invalid at the time it is made. See *Neighborhood Action Group v. County of Calaveras*, 156 Cal.App.3d 1176 (1984).

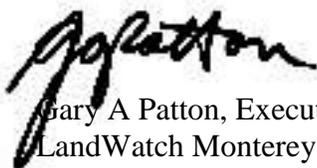
The current Monterey County general plan is not adequate, and the amendments proposed to you do not “correct” this inadequacy. Attached is a letter sent to the County by Attorney General Bill Lockyer in August 2000. The Attorney General warned the Board at that time (more than four years ago) that your planning actions might be challenged for lack of a sufficient general plan, if you didn’t take action to update and revise the outmoded document that continues to be the “general plan” for Monterey County. To its credit, the County did begin an extensive general plan update process. However, as the Board knows, the Board then abandoned that process in June of this year, and voted to “start over” on its general plan. Because you do not have an adequate general plan at this time, the proposed decisions on Rancho San Juan are not legally sustainable.

As your own staff has noted, in reports presented to you in connection with the County’s general plan update effort, the Monterey County general plan is plagued with legal inadequacies and inconsistencies. The general plan fails to set forth consistent standards for building density and intensity, and contains inconsistencies between the land use map and the circulation element, as well as between land use designations and resource protection policies. The proposed Rancho San Juan Specific Plan implicates legal inadequacies in the general plan, and cannot serve as a legal basis for approval of the Specific Plan and the proposed Butterfly Village Subdivision. As a result of the inadequacies in the general plan policies that are relevant to the proposed Specific Plan, and the proposed Butterfly Village Subdivision, their approval would be invalid at the time it is made. See *Neighborhood Action Group v. County of Calaveras*, 156 Cal.App.3d 1176 (1984).

LandWatch believes that approval of the Rancho San Juan Specific Plan, the Butterfly Village Subdivision, and the associated actions before you at your hearing on December 14th would be contrary to the public interest, and to the requirements of state law. We again urge the Board to adopt the unanimous recommendations of the Planning Commission.

Thank you for taking our views into account.

Very truly yours,



Gary A Patton, Executive Director
LandWatch Monterey County

cc: Members, Monterey County Planning Commission
County Planning Staff
Attorney General Bill Lockyer
Interested Persons

