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September 20, 2007

Penny Rappa, Chairman
County Planning Commission
County of San Luis Obispo
976 Osos Street, Room 300
San Luis Obispo, CA 93408

RE: Cayucos Viewshed—September 27, 2007, Agenda Item 3

Dear Chairman Rappa and Commissioners:

I urge your Commission to reject the privately drafted ordinance referred by the Board of Supervisors. It is truly a viewshed protection ordinance in name only. Instead, please recommend the latest staff revised ordinance (See, P/C staff report page 3-40 and staff discussion at page 3-36) modified instead to include views from all public roads (including Highway 46 and the top of Old Creek Road), with no mileage limits.

The Board referred this matter to your Commission on August 21, 2007 as required by Government Code Section 65857. The reason for the referral is that there are changes proposed by the Board from that which the Planning Commission recommended for approval back in July 2005.

The ordinance recommended by your Commission in 2005 was also recommended by staff, the Cayucos Citizens Advisory Council (CCAC) and the Agricultural Liaison Committee. It provided meaningful viewshed protections, similar to those already in place in many other areas of the County. It also protected views from all public roads in the Cayucos rural area with no mileage limits.

What has occurred since that time, in my opinion, has been a hijacking of the public land use planning process in this County that sets a dangerous precedent. Land use planning is now done by private groups with secret ordinance drafting and review and acceptance of these private ordinances without the benefit of review by staff, legal counsel or your Planning Commission. A summary chronology of the tortured path POPR and the Board majority has taken is included with this letter as an attachment. The latest (and by far the weakest) POPR ordinance is now referred back to your Commission as a *fait accompli* with strong Board direction to staff and your Commission to not complicate the issue with any comments or suggested changes.

Please don't cede your professional and legal responsibility to provide sound professional land use recommendations by the narrow constraints the Board attempts to impose. If you agree with the latest POPR ordinance, you owe the public an explanation of what has caused you to make such a dramatic change in recommendation from 2005. If you disagree with the POPR ordinance, you owe it to the public to articulate why you reject the POPR proposal and make specific recommendations as to what ordinance you do recommend.

If staff and your Commission were allowed adequate time to fully review the latest POPR ordinance, the only objective conclusion that can be reached is that it provides NO viewshed protection. Each POPR generation of so called viewshed protection ordinance gets weaker. (See the timeline attachment to this letter.) Following are some of the most blatant flaws and exceptions that, when stacked on one another, crush the concept of legitimate viewshed protection. I challenge POPR and the Board majority to come up with a single potential building site in the entire Cayucos rural area that would be subject to the ridgetop siting criteria in the POPR ordinance referred to your Commission. Also included as an attachment to this letter is a copy of the POPR ordinance with my handwritten margin notes keyed to the following outline of flaws and loopholes in the POPR ordinance.

FLAWS AND LOOPHOLES IN THE POPR ORDINANCE

- 1. The prominent ridgeline methodology is fatally flawed.** In response to POPR suggestions in the 2006 committee meetings to map the "prominent ridgelines" that would be subject to regulation, staff made a valiant effort to change from the tried and proven methodology in the SLO and other area plans. Unfortunately, when staff went out in the field to test the new methodology, they discovered it didn't work and was flawed beyond repair. Staff presented to the Lenthall committee and subsequently to the Board on August 21, 2007, a compelling multi-media presentation showing the many very prominent sites that aren't included in the draft ordinance that staff had prepared using the prominent ridgeline mapping methodology. As an example, the castle site on Old Creek Road (which precipitated the request for the viewshed ordinance over five years ago) was not included in the staff prepared mapping, although staff fully intended to include it. The latest POPR ordinance, prepared after staff's presentation to the Lenthall committee, continues to use the flawed methodology. (See Figure 92-2; page 3-16 of your staff report.) Without explanation, the Board majority accepted the POPR ordinance despite this glaring flaw.

Unfortunately, because the Board won't allow more time to consider this issue, staff is indicating that they don't plan to present to your Commission their detailed multi-media presentation. Your Commission is urged to request that the staff spend the approximately ten minutes necessary to make this presentation to you. Staff's written description of the flaws is included in the Board's August 21, 2007 staff report, at page 3-36 of your staff report. The

staff prepared revised ordinance using the San Luis Area Plan methodology is found at page 3-40 of your staff report.

2. **The POPR definition of “Visible” is convoluted and drastically reduces prominent sites that otherwise would be subject to viewshed protection.** Under the latest POPR ordinance, limited viewshed screening requirements are triggered only if the site is BOTH on a mapped “prominent ridgeline” AND is “Visible”, which POPR defines as “...*the ability to see 50% or more of the entire Structure when viewed from a line of sight that is directly perpendicular from Highway 1 to the Structure at the shortest distance from Highway 1.*” (See, POPR ordinance, section 3 a. found at page 3-14 of your staff report.) Using the castle site on Old Creek (assuming for the moment that the POPR version applied to views from Old Creek), the castle site is not visible from this convoluted right angle point, but is prominently visible in a direct line of sight as one drives both up and down Old Creek.
3. **Unless “Development” (which is undefined) is a super-sized mansion, encroaching on more than 15% of the prominent ridgeline (as both mapped and defined by POPR), the minimal POPR screening requirements don’t apply.** Another major loophole buried into the POPR viewshed ordinance is an exemption if the “Development” encroaches on less than 15% of the mapped prominent ridgeline. (See Sections 5 a and 6 b of the POPR ordinance, pages 3-15 and 3-19 of your staff report and the map of prominent ridgelines on page 3-16.) While it is difficult to measure the length of the mapped prominent ridgelines on Figure 92-2, they appear to be approximately half a mile long. Using 2600 feet for the length of the ridgeline, a home would need to be more than a football field long (390 feet) to encroach on more than 15% of the mapped ridgeline and be subject to any viewshed regulation. Even if the mapped ridgeline was only a quarter mile long, the home would need to be close to 200’ long to be subject to the minimal screening requirements in the POPR ordinance. I’m not aware of a home in the entire County that would meet this threshold.
4. **The POPR ordinance would apply only to a narrow strip between the Coastal Zone boundary and within one mile of Highway 1.** Of the approximately 47,000 acres subject to the viewshed ordinance recommended by your Commission in 2005, the current POPR version now covers a maximum of 3930 acres in a narrow strip of less than a mile between the Coastal Zone boundary and one mile inland of Highway 1. Of this 3930 acres, when one applies the other exceptions in the POPR ordinance, the coverage comes down to about zero acres!

Compare this to coverage in the existing San Luis Area Plan viewshed ordinance of about 41,400 acres, comparable to 47,000 acres covered by your original Commission recommended ordinance for the Cayucos rural area. (See the comparison table in your staff report, pages 3-7 to 3-9). This leaves

over 40,000 acres of the now relatively pristine Cayucos rural area with no viewshed protections. Attached are photos of homes built in the Cayucos rural area recently that will continue to be allowed as non-discretionary, straight ministerial building permits with no siting or screening standards.

The Cayucos rural area is the donut hole in District Two with no viewshed standards. North of the Cayucos rural area, from Villa Creek to the Monterey County line, the North Coast Area Plan has stringent viewshed standards in place from the coast to five miles inland. Likewise, the Estero Area Plan has far more stringent standards in place and the plan approved by the Board (including Supervisors Ovitt and Achadjian) in 2004 for the Estero Plan update has even more stringent viewshed standards. However, through Cayucos the Estero Plan boundary is a narrow strip extending inland only 1000 yards. Everything in Cayucos inland more than 1000 yards has no viewshed protection. To the south of Cayucos, in the Morro Bay and Los Osos area, the Estero Plan boundary extends back inland to five miles. Inland more than five miles from Morro Bay and Los Osos, the San Luis Obispo Area Plan applies and provides most of the balance of District two with effective viewshed protection.

Staff estimates that there are approximately 600 existing legal parcels in the Cayucos rural area each of which ordinarily allow two principal residences to be built, making the future buildout of the area approximately 1200 homes, assuming no further subdivisions or up zoning. (See staff comparison chart, page 3-8). No reduction in the number of homes allowed to be built in this area is proposed, only reasonable standards for siting and screening of homes comparable to what is in place in other areas. While a few homes without these standards may not change the character of this area, imagine fifty, or a hundred or more similar to the attached photos, built on top of prominent ridges with no discretion to apply siting and screening requirements.

5. **In the highly unlikely event that none of the above described loopholes exempt a project from viewshed regulation, the POPR ordinance allows the project to be built as a ministerial building permit with flawed screening requirements.** The other area plans with viewshed protections in place all require MUP discretionary review if the structure silhouettes, as does the ordinance recommended by your Commission in 2005. This allows application of reasonable siting and screening conditions. The POPR ordinance allows the structure to be placed, as a matter of right, on the top of the most prominent ridgeline in direct line of sight with no discretion to require adjustment of the location. In the unlikely event that the above described exceptions to screening standards in the POPR ordinance are not triggered, the POPR screening standards are inadequate. Only 50% screening is required as opposed to 80% in other area plans. This can be accomplished

by screening OR “backdrop vegetation”, i.e., put the screening behind the structure. There is no time period for the screening to reach maturity to achieve the 50% screening requirement. Finally, the screening only appears to be required from the single point from Highway 1 at right angles and the shortest distance from the road. (See POPR ordinance, sections 3 a (page 3-14) and 5 e (page 3-17.)

6. **Other Provisions of the POPR ordinance are incomprehensible, incomplete, and/or ambiguous.** See for example, the definition of Prominent Ridgeline in section 5 a (page 3-15). How does this definition mesh with the mapped prominent ridgelines in Figure 92-2 (page 3-16)? Who will determine if a “Hilltop”, as that term is subjectively defined in section 5a, is exempt from the mapped “Prominent Ridgeline” or the Prominent Ridgeline defined in section 5 a? When will the modifications be made to Figure 92-2 called for in the hand written notes on the ordinance the Board introduced on August 21, 2007, and who will make them? The same questions need to be asked concerning the modifications that are called for in the notes on Figure 92-3 (page 3-18). Will these modifications to what was introduced on August 21, 2007 be reintroduced for first reading before final adoption?

CONCLUSION

The attached timeline evidences the regression in what POPR has proposed and the group’s lack of good faith in the process. The defects in the drafting of the ordinance demonstrate one of the dangers involved in the Board majority’s trend toward ceding the crafting of land use ordinances to private groups while refusing to allow meaningful review by staff, legal counsel or this Commission prior to adoption. The bottom line is that this is a brazen attempt by POPR and the Board majority to dupe the general public into believing that the Board is implementing effective viewshed protection for the Cayucos rural area. What they are pushing through provides none.

Your Commission and staff have been placed in a very awkward position by the Board. You are being asked to rubber stamp what the Board has already rubber stamped. Please don’t fall into this trap. Take the time to fully understand what is before you; ask staff to confirm whether the deficiencies in the POPR ordinance described in this letter are accurate. Ask staff for their professional recommendation and have them make the multi-media presentation concerning the defects in the prominent ridgeline methodology. As much as the Board majority doesn’t want it, the public deserves your recommendation on the adequacy of POPR ordinance, a recommendation on an alternative to the POPR ordinance if you reject what has been referred to you, and an explanation for your recommendation.

In 2005, your Commission recommended broad viewshed protections for the entire Cayucos rural area. Please continue to recommend that broad coverage. There have been some refinements recommended by staff to what your Commission initially

recommended to bring the ordinance closer to what is in place in other area plans. The staff recommended revised ordinance is found at page 3-40. I agree with the basic format of the staff revised ordinance, except for the narrowing of coverage. I urge rejection of the latest POPR ordinance and recommendation of the staff revised ordinance, but modified to be made applicable to all roads recommended by your Commission in 2005 and without mileage limitations.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Roger Lyon

Attachments:

TIMELINE OF POPR/BOARD OF SUPERVISORS VIEWSHED REGRESSION

POPR ordinance with margin notes keyed to comments in this letter

Photos of examples of why viewshed protection is needed

SLO Chamber of Commerce newsletter

Tribune editorials and viewpoints