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April 7, 2009

Board of Supervisors
800 S. Victoria Ave.
Ventura, CA 93009

SUBJECT: Adoption of an Urgency Ordinance and Interim Moratorium on Any and All New Assembly Uses in the Open Space Zone, and Direction to Study and Develop Amendments to the Open Space Zone Regulations of the Ventura County Non-Coastal Zoning Ordinance (4/5 Vote Required)

RECOMMENDATIONS:

1. **ADOPT** the attached Interim Ordinance as an urgency measure, pursuant to the Government Code §25123(d), §25131, and §65858.

2. **DIRECT** the Resource Management Agency, Planning Division, to: (a) conduct a study of the adopted *Ventura County Non-Coastal Zoning Ordinance* (2008) Open Space zone in order to determine how to protect the Open Space zone and the Open Space goals, policies, and programs of the Ventura County General Plan from any and all new assembly uses; and, (b) report back to the Board of Supervisors within 35 days of the adoption of the Interim Ordinance to report the findings and recommendations of the study and status of measures to protect open space, and/or to request additional time and funding to complete the study and Ordinance Amendments, pursuant to the Government Code §65858.

DISCUSSION:

State law, the Ventura County General Plan, and the *Ventura County Non-Coastal Zoning Ordinance* (2008) all prescribe the preservation of open space.

The Government Code, in requiring that all jurisdictions adopt a plan for preserving open space declares " [t]hat the preservation of open-space land…is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources" (§65561(a)).

The Ventura County General Plan (*Goals, Policies and Programs*, 2005, §3.2, §3.2.1, and §3.2.2.5) defines the Open Space land use designation and articulates the goals and policies for lands that are designated as Open Space, as set forth in the Government Code §65560 et seq. The Open Space designation is intended to apply to any parcel or area of land or water which is essentially unimproved, devoted to an open-space use, and designated on a local, regional, or State open space plan as any of the following:

- Open space for the preservation of natural resources including, but not limited to: areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and, coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

- Open space used for the managed production of resources, including but not limited to: forest lands, rangeland, and agricultural lands not designated agricultural; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and, areas containing major mineral deposits, including those in short supply.

- Open space for outdoor recreation, including but not limited to: areas of outstanding scenic, historic, and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and, areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

- Open space for public health and safety, including, but not limited to: areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

- Open space to promote the formation and continuation of cohesive communities by defining the boundaries and by helping to prevent urban sprawl.

- Open space to promote efficient municipal services and facilities by confining urban development to defined development areas (Ventura County General Plan *Goals, Policies and Programs*, 2005, 57-58).

These goals were augmented and further protected by the County electorate when they voted to pass the Save Open-Space and Agricultural Resources (S.O.A.R.) Ordinance in November 1998. The *Ventura County Non-Coastal Zoning Ordinance* (2008; "NCZO") states:

> *The purpose of* [the Open Space] *zone is to provide for the conservation of renewable and nonrenewable natural resources, to preserve and enhance environmental quality and to provide for the retention of the maximum number of future land use options while allowing reasonable and compatible uses on open lands in the County which have not been altered to any great extent by human activities.* (§8104-1.1)

In short, the purpose of Open Space-designated areas is to preserve natural or agricultural resources, allow for recreational uses and development that are dependent on open space resources, limit development within areas that are subject to natural disasters, and ensure that urban development is confined to existing developed areas. Uses must meet at least one of these criteria in order to be allowed in Open Space-designated areas.

Recent events involving the use of the Religious Land Use and Institutionalized Persons Act (42 U.S.C. §2000cc et seq; "RLUIPA") to justify the County's processing of a conditional use permit ("CUP") application for a new church campus to be located in the Open Space zone, even though not allowed in the Open Space zone, has led to a heightened awareness that the operation of the preemption clause in the NCZO with other federal and state laws creates more opportunities for land use developments in the open space which may be inconsistent with the County's OS goals, policies and programs. The same CUP application also proposed the development of a new college campus and a hunger relief distribution warehouse in the OS zone. The college campus is currently a conditionally permitted assembly use in the OS zone, but such new uses may well be incompatible with the goals and policies of our General Plan and the purposes of the OS zone.

Serious concerns have arisen with the way that the NCZO currently regulates the Open Space zone such that it may now require immediate legislative attention. Any and all new assembly uses in the Open Space zone have the potential to exacerbate the County's current challenges in preserving Open Space, including (but not limited to) the removal of wildlife habitat, the introduction of incompatible uses into wildlife movement corridors, the degradation of groundwater quality, the elimination of scenic resources, urban sprawl and inefficient extension of municipal services, increased traffic congestion, loss of agricultural land, development of uses incompatible with adjoining agriculture, and the lack of outdoor recreational resources. Moreover, the potential for additional new assembly uses in the Open Space zone creates the potential for zoning inconsistency with the General Plan goals and purposes of Open Space-designated areas, and thus potential violation of Government Code §65860(a). Therefore, there exists an urgent need to:

(1) Study the NCZO Open Space zone in order to determine how to preserve and protect the goals and purposes of Open Space-designated areas, as articulated in the Ventura County General Plan (*Goals, Policies and Programs*, 2005, §3.2, §3.2.1, and §3.2.2.5) and Government Code §65560 et seq from any and all new assembly uses; and,

(2) Develop and propose amendments to the NCZO for the Board's consideration in order to preserve and protect the goals, policies and programs of the Open Space zone from any and all new assembly uses.

The analysis of, and the preparation of amendments to, the NCZO likely would require a substantial amount of time and effort by the Planning Division in consultation with County Counsel. Indeed, although incompatible assembly uses will be the primary focus of the study, the study might reveal the existence of other incompatible uses that are allowed in the Open Space zone that warrant further consideration, thus resulting in a broader, more complex, and time consuming study. During the preparation of the study, it is possible that the County could receive new applications for assembly uses that are incompatible with the goals and purposes of the Open Space zone. This is of particular concern given that there are many hundreds of churches in Ventura County and, therefore, there could be many that seek to assert RLUIPA privileges to develop churches in Open Space zones. Therefore, pursuant to the authority granted by the Government Code §25123(d), §25131, and §65858, the Board of Supervisors should adopt an urgency ordinance in order to implement an interim moratorium on all new assembly uses that currently are allowed in the Open Space zone.

A draft ordinance to implement such a moratorium is included as Exhibit 1 to this letter. The ordinance would require a 4/5 vote for adoption. The interim moratorium should remain in effect until the Planning Division completes the study and the Board of Supervisors has the opportunity to consider and act on the Planning Division's recommendations resulting from the study. The urgency ordinance and attendant interim moratorium on assembly uses would take effect immediately upon adoption, and would remain in effect for a period of 45 days (Government Code §65858(a)). The ordinance would not apply to any new assembly use for which a land use entitlement application has been filed with the County prior to March 25, 2009, or to modifications of existing CUPs for existing uses.

In short, there exists an urgent, critical need to adopt both a short- and long-term solution to the problems associated with the current potential of incompatible uses locating in designated Open Space-zoned areas. The adoption of an interim ordinance and moratorium on new assembly uses in the Open Space zone would serve as a short-term solution, while the comprehensive study and potential future amendments to the NCZO would serve as a long-term solution to these problems.

This letter and attachment have been reviewed by the RMA-Planning Division and the County Counsel's Office.

Cordially,

Steve Bennett

Linda Parks

Steve Bennett
Supervisor, First District

Linda Parks
Supervisor, Second District

Attachment: Exhibit 1 - Proposed Interim Ordinance