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VIA ELECTRONIC MAIL

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Re: Comment Letter to Habitat Connectivity and Wildlife Corridor Ordinance

Honorable Members of the Board:

This office is counsel to the Ventura County Coalition of Labor, Agriculture, and Business ("CoLAB"), a non-profit membership organization formed in 2010 to support land-based and industrial businesses including farming, ranching, oil, mining, and service, and to promote sensible and rational local government. CoLAB identifies and researches issues that impact businesses, and works with regulatory agencies, organizes stakeholders and proposes solutions to problems that impact Ventura County ("County"). CoLAB advocates for businesses through local regulation, providing expertise, research and educational campaigns to inform the public.

I. INTRODUCTION

CoLAB supports reasonable efforts to minimize impacts to wildlife movement within the County. However, many of the regulations in the proposed Amendments to the Ventura County General Plan and Articles 2, 3, 4, 5, 9, and 18 of the Ventura County Non-Coastal Zoning Ordinance, PL 16-0127 ("Ordinance") are legally flawed and scientifically unsupported, unwarranted, and unnecessary. CoLAB provided the Planning Commission with extensive comments regarding the legal and public policy defects of the Ordinance, which we attach as Exhibit 1 and incorporate by reference. We will not repeat them here, except to briefly note the following key points:

- **CEQA requires review of the Ordinance, but the County failed to comply:**
  - None of the three exemptions cited by the staff report apply to the Ordinance.
  - The potentially significant impacts regarding fire hazards, mineral resources, agricultural resources, air quality, greenhouse gases, community character, and traffic and circulation impacts render inapplicable the exemptions for "Common Sense" and actions by regulatory agencies for protection of natural resources and the environment.
  - Separating the Ordinance from the General Plan Update to avoid CEQA review constitutes classic—and impermissible—piecemealing, particularly given the County's prior acknowledgment of the requirement for CEQA review when the General Plan encompassed the Ordinance, and CEQA review of other wildlife corridor projects.
- **The County has failed to acknowledge the potentially significant environmental impacts of the Ordinance, listed above.** These impacts are discussed in detail in our Planning Commission comment letter.
- **The Ordinance is legally flawed and violates the U.S. Constitution.**
  - The Ordinance violates equal protection and substantive due process requirements guaranteed by the U.S. Constitution. The Ordinance lacks any administrative appeal provisions, placing undue cost burdens on property owners seeking to challenge specific designations or determinations.
  - The Ordinance constitutes a regulatory taking of property without just compensation, and does not provide for an adequate amortization period.
- **Scientific modeling errors render the Ordinance unsupported and unsupportable.**
  - The evidence for the Ordinance comprises studies over 13 years old, with no updates, rendering the resulting regulations questionable at best. As the older studies relate both to roads and biological resources their inaccuracy is necessarily fatal.
  - Numerous errors mar the mapping and require substantial correction: these include water features, vegetation classifications, and general overlay zone boundaries.
  - No evidence even purports to support requiring a 200 foot buffer around water features, rather than the current County-wide 100 foot buffer.
  - The compact development standards in the Critical Wildlife Passage Areas ("CWPAs") provide minimal to no conservation value due to adjacent already-developed lots preventing functional corridors from being created.

Although CoLAB insists that CEQA review is necessary in this case, and that the County address the remaining issues raised in its Planning Commission comment letter (Exhibit 1), we write to emphasize the following three points:

First, we urge the Board of Supervisors (the "Board") to adopt the recommendations made by the Planning Commission, addressed below. Although these do not address—let alone solve—all of the legal flaws of the Ordinance, they could go a long way to addressing many of them, such as mapping errors, security concerns, conservation easements, and fire hazards. Of course this would require Board action to direct Planning staff to implement the Planning Commission's recommendations with particularity. We address the Planning Commission's recommendations, and the legal reasons compelling their adoption, in **Section II** below.

Second, beyond the Planning Commission recommendations described above, some problems with the Ordinance are important enough to bear particular emphasis here. Chief among them is the compact development standards in the CWPA overlay zones. These compact development siting standards do nothing to assist wildlife movement, and also represent a severe overreach of the County's regulatory authority. The restrictions in the CWPA zones, although the most egregious example of poor planning and execution of the Ordinance, are not unique. Indeed, the entire concept of the proposed overlay zones and restrictions have little or no factual or scientific basis. Rather, recently discovered emails obtained by CoLAB through the Public Records Act demonstrate the opposite: ***County consultants and staff working on the Ordinance held certain preconceived and apparently immutable ideas of corridor locations and widths, and only sought evidentiary support for the proposed regulations after completion of the drafting and just prior to the public hearings***. Rather than gathering the scientific evidence first, and developing the overlay zones on that basis, the County did the precise opposite. Staff identified the protection zones first, and then only later tried to find scientific evidence to fit those zones retroactively. This is anathema to any scientifically or factually rigorous method, to the planning process, and to sound public policy, and highlights the need and importance of conducting the appropriate CEQA review in this case, when the planning effort can respond to and incorporate environmental concerns. The issues with the CWPA overlay zone, and the additional issues with the Ordinance that bear further emphasis, are the subject of **Section III** below.

Third, CoLAB requests that the March 12, 2019 hearing date be continued at least 1 month. A Public Records Act request was submitted on CoLAB's behalf in September 2018 to obtain documents that would better explain the process by which the County arrived at the seemingly unsupported regulations contained in the Ordinance. ***The County delayed its response by more than 5 months***, providing a very sparse and incomplete response on February 15, 2019—after the Planning Commission hearing on the Ordinance.

Because the responsive documents were provided after the Planning Commission hearing and less than 1 month before the Board hearing, CoLAB has not had enough time to review and analyze the documents it has received. Importantly, the Public Records Act documents contain critical evidence relating to the lack of scientific support for the overlay zones and proposed regulations

in the Ordinance, some of which are discussed below. The County's failure to continue the hearing will deprive CoLAB, and the broader public, of the ability to review the documents provided to date—as well as those the County has not yet provided but must—and provide meaningful comment.

Prudent, informed, and effective regulations improving wildlife corridor connectivity is a shared goal among CoLAB members and the County. The current Ordinance is none of those things; however, the County still has time to create and adopt effective, legally defensible regulations. To do so, the Board must: 1) conduct thorough CEQA review (the subject of Exhibit 1); 2) implement the recommendations from the Planning Commission into the Ordinance (Section II below); and 3) make additional, crucial modifications beyond the Planning Commission's recommendations (Section III below). In addition, the March 12, 2019 hearing date should be continued at least one month.

II. THE BOARD SHOULD ADOPT THE PLANNING COMMISSION RECOMMENDATIONS IN FULL.

During the administrative hearing process before the Planning Commission, hundreds of interested parties and stakeholders expressed their concerns with the Ordinance, both in written and oral comments. Many of these comments (such as the comment letter submitted by CoLAB attached as Exhibit 1) included constructive criticism and concrete recommendations regarding how to improve the Ordinance. These included ensuring the accuracy of the mapping process and data; guaranteeing an appeals process to address remaining inaccuracies in the mapping and any lack of fit of the regulations to a specific property or area; and clarifying and correcting certain problems in the Ordinance relating to fire hazards, security lighting, and water features.

The Planning Commission, to its credit, took its advisory role in this process very seriously, and upon review and analysis of the Ordinance, its flaws, and the substantial public comments, the Planning Commission adopted 11 concrete recommendations for improvements. CoLAB is in favor of these recommendations[1], and urges the Board to adopt them. While these recommendations do not completely cure the Ordinance of its multiple legal flaws, they do improve the Ordinance considerably. Furthermore, if the Board ***does not*** adopt these recommendations, the Ordinance will be in even greater legal jeopardy, as discussed below.

Each of the Planning Commission's recommendations are set forth verbatim in the headings below, followed by a brief legal and practical analysis of their importance. Some related recommendations have been combined for expediency and brevity.

[1] Of the 11 recommendations made by the Planning Commission, there is one recommendation that CoLAB does not opine on: "Consider including the entire Boeing, Santa Susanna Field Lab land in the HCWC overlay zone and adding exemptions for temporary cleanup actions." Thus, CoLAB actively supports 10 of the 11 recommendations, and has no opinion on this 11th recommendation.

A. The program needs to have a clearly communicated appeals process for resolving the inevitable complications of individual properties and also have mechanisms for revisions to the program.

The Planning Commission recognized, due to overwhelming evidence presented to it in public comment, that there are flaws with the ways that the Ordinance identifies many water features, vegetation, and overlay zone boundaries. Yet, the Ordinance does not provide an administrative appeal process that feasibly allows a property owner to address errors or circumstances specific to that property.

As to surface water features, for example, property owners seeking reconsideration of those designations are responsible for all costs. Also, the decision is made by "the Planning Director or designee without a public hearing. The decision shall be final and not subject to administrative appeal." In addition to shifting the burden and cost to the property owner to have improperly designated features to be properly designated, the lack of administrative appeals deprives property owners of due process. It also fails to provide a route for recurring policy or regulatory problems to achieve adequate exposure to elected decisionmakers.

CoLAB provided two concrete suggestions to alleviate this fundamental due process problem: 1) make the Planning Director decision appealable to the Planning Commission; and 2) lower the cost-burden on property owners seeking re-designation.

The Planning Commission's recommendation is sound, as it addresses both the appeals process, and having some sort of mechanism to simplify revisions to the program that will inevitably arise when this is implemented on a property-by-property basis. CoLAB emphasizes that the burden of bearing the cost to hire a biologist to convince the County that its designations are wrong (or that they need modification) will be prohibitive for many property owners, and recommends that this cost-burden should be replaced by a low fixed fee. County Planning staff acknowledged this issue of high costs at the Planning Commission hearing, in response to public comment. Staff stated that the Planning Director would be able to correct certain designations using photographic evidence (and without the need to hire a biologist). The Ordinance must be modified to reflect this ability to change designations without involvement of a biologist.

B. Request the Ventura County Sheriff to review security issues regarding the program's lighting standards.

The security of County residents and their properties is, and should be, of utmost importance to the Board. This recommendation for the Sheriff to review the security lighting is not controversial, and corresponds with the County's duty to protect the safety and welfare of its residents. The Board should give due consideration to recommendations from the Sheriff regarding how to improve the security lighting issues.

Sheriff input is important because records received in response to CoLAB's Public Records Act request showed no reports from a lighting consultant to validate the lighting regulations in the Ordinance. Rather, County Planning staff just visited a Lowe's home improvement store to view lighting options (see slide 25 from staff presentation at Planning Commission), and did not consult any experts or hire a professional lighting consultant to review the lighting regulations. The Planning staff did not seek input from the County Sheriff prior to submitting the Ordinance to the Planning Commission.

Rather, per testimony from former Resident Deputy Sheriff Matthew Caezza from the Lockwood Valley, "when your home gets burglarized, put up lights, more lights"… "Motion lighting is a great idea… How often does it really work? You have to get that sensor set just right so it doesn't pick up every critter that runs around through your yard."

The Planning Commission's recommendation relating to security lighting should be adopted, and input from the County Sheriff should be implemented.

C. Clarify the effect of the program on properties that have granted conservation easements; Modify vegetation modification exemption to include all bona fide conservation efforts.

Properties throughout the County already have recorded conservation easements, restrictive covenants, or other property-specific, conservation-related restrictions. To add additional regulatory restrictions from these overlay zones, without taking into consideration the existing conservation easements on site could present several legal issues. For example, if properties are left with little or no economically usable space, then the regulations would constitute a compensable regulatory taking. Also, property owners effected in this way would have serious equal protection and substantive due process claims, as they end up being effected much differently than similarly situated properties within the overlay zones. From a practical and public policy perspective, the Ordinance will ruin the prospects for conservation easements currently in negotiation at many properties, and would discourage future conservation easements as well.

As such, properties that have existing conservation easements or other similar designations should be exempted from the zones and/or should be given a streamlined mechanism by which to appeal and modify the designations on their properties. Without such a safety valve, the Ordinance risks imposing doubly burdensome overlay requirements on top of existing conservation easement restrictions, and multiple lawsuits from multiple property owners effected by both an existing conservation easement/designation and the Ordinance.

D. Clarify what effect the vegetation modification regulations have on the Fire Department brush clearance requirements and fire risk; Revise vegetation modification exemption to state "as allowed by" instead of "as required by" the Fire Department.

The Planning Commission recommendations relating to fire risks go to the heart of why the Ordinance should have undergone CEQA review. Such a review would have considered the recent tragic fires, and analyzed how best to account for those areas.

Over 135,000 acres of the proposed corridors are within High and Very High Fire Hazard Areas/Fire Hazard Severity Zones or Hazardous Watershed Fire Areas. Also, over 115,000 acres of the corridor burned in the Thomas, Hill and Woolsey fires. To allow for vast areas of high fire hazard areas to be regulated without environmental review, would not only be irresponsible, it would be outright dangerous. The entire region has been devastated by recent fires that have effected homes, businesses, communities, and even the very wildlife that the Ordinance is designed to protect. Yet, the Ordinance itself does not account for the fact that its provisions can lead to even more severe fires in the future, and tragically, prevent homeowners and first responders to protect their homes and properties.

While there is no substitute for CEQA review as to this issue, the Planning Commission recommendations could lead to steps in the right direction to alleviate some of the fire hazard risks.

E. Clarify stream bed mapping where it may be incorrect; Reduce set back of waterways from 200 to 100 feet in order to assist ranchers and farmers.

The Planning Commission was presented with overwhelming evidence during the public comment period (including CoLAB's comment letter, attaching a biology report from ECorp) that showed that the stream bed mapping and water features shown in the Ordinance were inaccurate, and identified several features it should not have (e.g., surface water features that no longer exist or man-made water features). The recommendation to correct the stream bed mapping should be entirely uncontroversial, and the need to do so is further proof that the project should have undergone CEQA review, during which such errors could be identified and corrected as part of the process.

Furthermore, the Ordinance imposes a 200' buffer onto a flawed and outdated Fish and Wildlife map with no biological studies to support the need for restrictions on brush clearance, structures, fencing, and uses. No evidence has been presented that a 200' buffer is necessary, or better than a 100' buffer. There is no evidence supporting the need for a 200' buffer. The County General Plan currently recognizes the need for a general 100' setback to streams. Blueline and redline streams are within the jurisdiction of California Department Fish and Wildlife, which has been the state-wide standard for the approval of structures. Now thousands of existing legally permitted structures will become non-conforming uses with their future uncertain. The Planning Commission's recommendation to change the buffer back to 100', is a start, but to reconcile it with

the County General Plan, it would need to substitute the redline and blueline stream mapping for the National Wetlands Inventory maps. This would be logical, and the only buffer that is currently supported by any evidence. It should be adopted by the Board.

These recommendations would significantly lessen the number of appeals, thereby saving costs for the County and property owners. They also go hand in hand with the recommendation for the ability to appeal, and the cost-shifting proposals recommended in Section II.A above, as they would provide affected property owners a viable and cost-effective remedy.

F. Remove Tierra Rejada from CWPA overlay zone; Remove Lockwood Valley from the entire ordinance.

The County went about drafting the Ordinance in the exact opposite way that it should have, which resulted in several inaccuracies and problems with how the boundaries of the overlay zones were drawn. The way the County staff came up with the overlay zones was to first designate areas that it wanted to protect, based on no evidence that appears in the record. Then, staff attempted to locate evidence to support the decisions that it had already made. Finally, regardless of whether or not the science supported the original decisions, those original designations were adopted into the Ordinance.

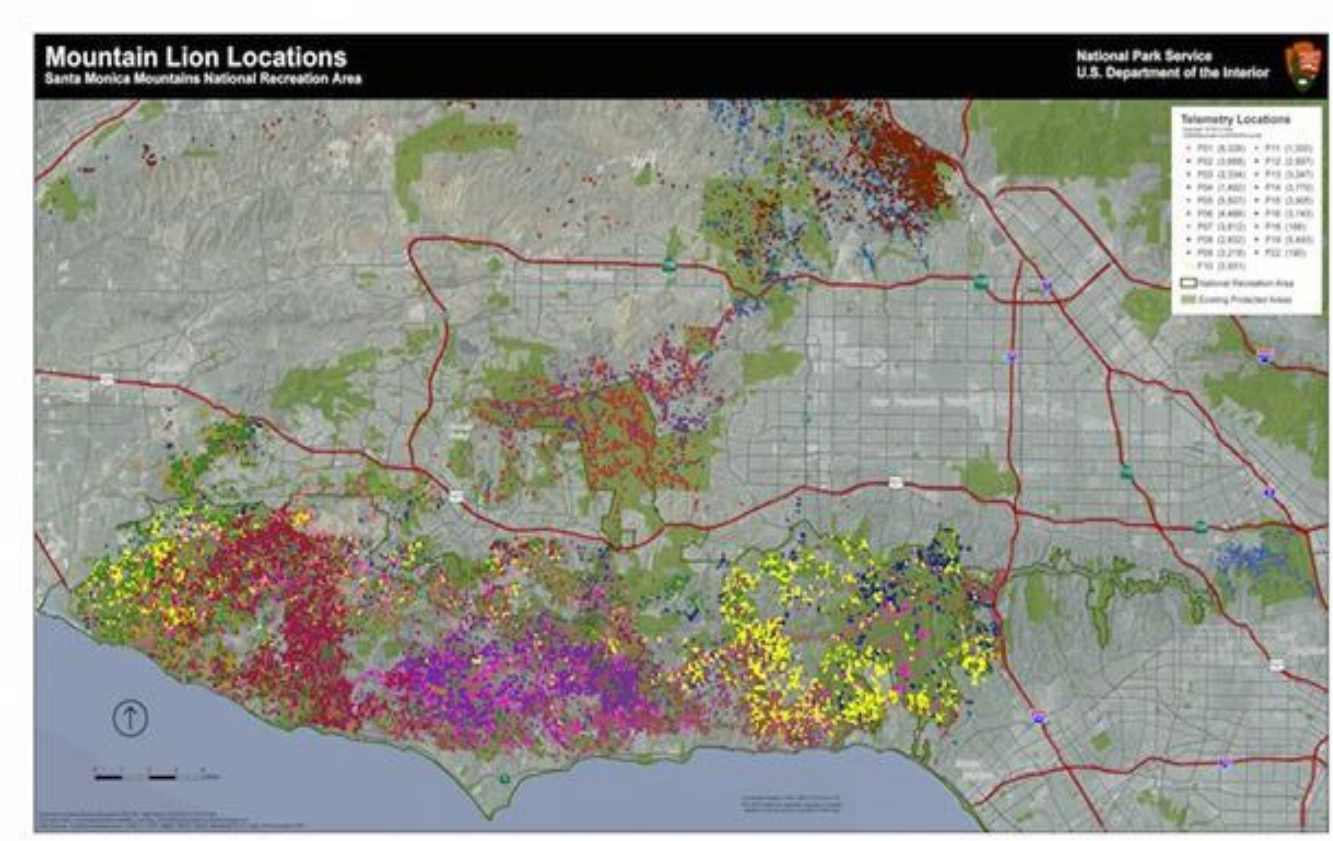
Sadly, this is not merely speculation on CoLAB's part. This methodology has been confirmed by emails recently uncovered through a Public Records Act request submitted on CoLAB's behalf.[2]

One such email from County staff to a Wildlife Ecologist at the National Park Service provides, in relevant part:

> …I am still working on the Ventura County Wildlife Corridor Project as a consultant (yay!). I am writing the Staff Report for the Planning Commission Hearing that I believe is scheduled for May. In reading the research available online, **it's obvious the biggest obstacle to movement are the freeways which the County has no control over**. But, **I'm hopeful that by showing that animal movement is happening in VC that we can convince the Board that small increases in regulations on fencing, lighting, buffers from streams and roadway crossings and the clustering of development in certain critical areas are justified**. We are still trying to finalize the ordinance—but I am hoping you can help me with some info/data needs for the report. NPS has great info online on the mountain lions moving mostly through LA County. I seemed to remember that in your presentation to the Planning Division, you had animal movement data specific to Ventura County.

[2] It is worth noting that it took over 5 months for CoLAB to obtain a response to its Public Records Act Request, and even then, the County's response was sparse and incomplete, depriving CoLAB of the ability to properly analyze the County-provided documents. CoLAB will likely pursue litigation to ensure the production of all relevant documents requested.

> Can we discuss using some of your data? Ideally if we could use your spatial data to make our own maps, this would be easiest and best. But if you don't feel comfortable sharing your GPS data, maybe you can share images/figures of maps with animal point observations you/NPS has made? **I'd like to reference or even show this data as a justification for the regulations in the ordinance. I'd like to show the animal movement that is happening in Ventura County—specifically in the Tierra Rejada Valley, Bell Canyon, Box Canyon, and the Santa Susana Knolls if possible. Do you know of animal movement data in the Oak View area?** These are the areas we have pinpointed as being critical to movement within the County unincorporated areas.
>
> …This figure mainly shows movement in LA County and eastern VC. Do you have data that shows north-south movement through the Tierra Rejada Valley for any wildlife?



(Emphasis supplied; full email string attached as Exhibit 2).

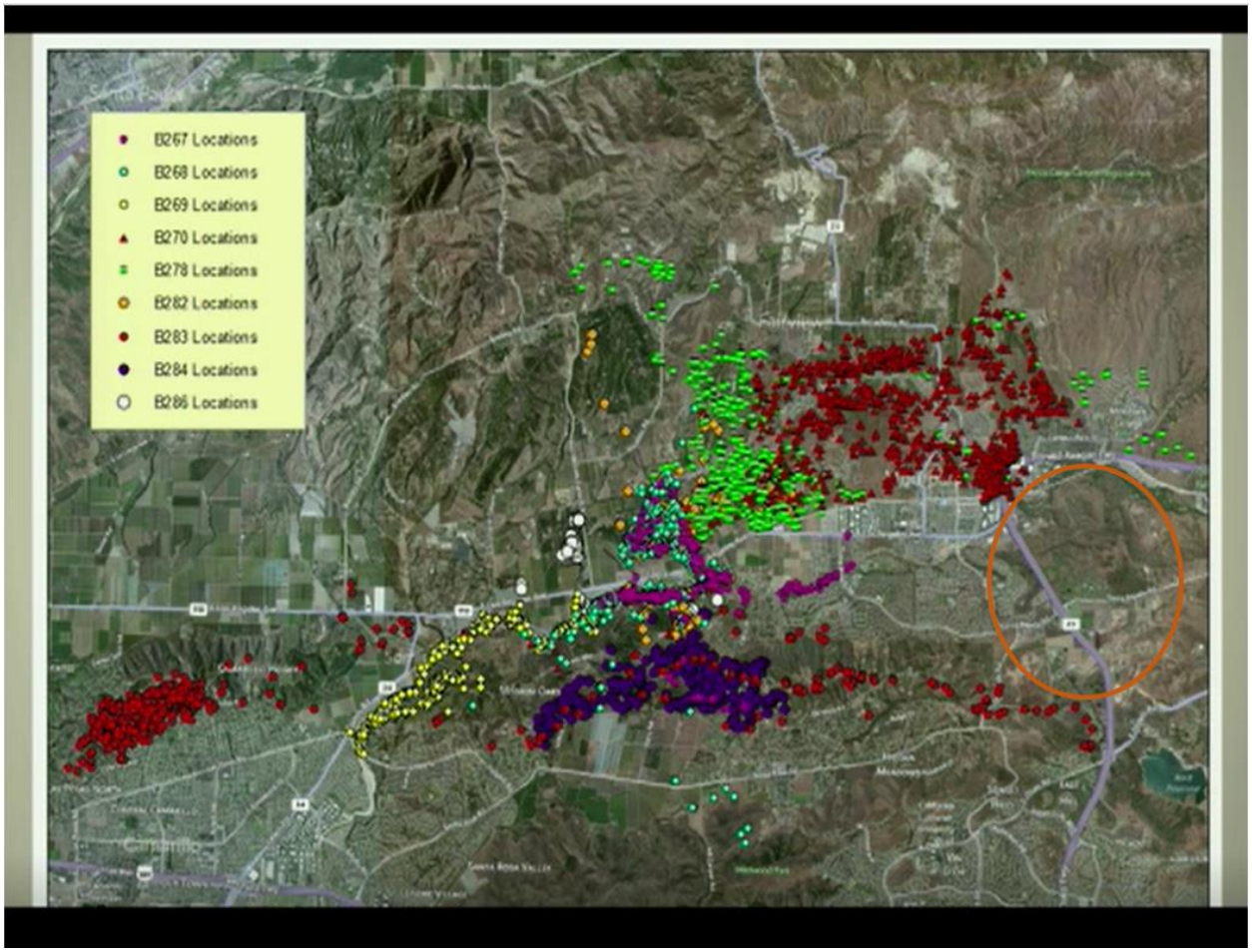
This email is remarkable for three reasons.

First, it is a blatant admission that County consultants and/or staff (the same person who drafted the staff report) drafted the Ordinance—including the boundaries of the overlay zones—first, and then tried to provide a **post-hoc rationalization**.

Second, it acknowledges that development of individual properties does not constitute a primary barrier to animal movement: "**it's obvious the biggest obstacle to movement are the freeways which the County has no control over**." The email admits that the measures that are the heart of the current Ordinance do nothing to address the real problem; rather, they are just secondary or tertiary considerations that they hope to "convince" the Board are "justified." This email makes clear that the measures are not "justified" on the basis of any evidence in the record, which confirm the "obvious" fact that the freeways (which the County cannot control) are the real barrier to wildlife movement. Rather, the staff was forced to propose measures that are both more restrictive on property owners, and less effective to promote wildlife movement.

Third, it is evident from the map attached to the email that the Tierra Rejada valley does not contain mountain lions. It is also obvious that the County staff had no evidence regarding Tierra Rejada, and was hoping that this outside consultant from the National Park Service would be able to help provide something staff could use as a justification after the fact. ***That evidentiary support either did not exist or was never provided***, and the Tierra Rejada area must be removed from the CWPA, as the Planning Commission recommends.

Indeed, at the Planning Commission hearing, the County showed another map that confirms that there are no mountain lions crossing through the Tierra Rejada Valley – shown in the orange circle on the right side of the image below:



Regarding Lockwood Valley, it is surrounded by the Los Padres National Forest, and as was confirmed by numerous speakers at the Planning Commission hearing, safety and security issues raised by the Ordinance preclude the ability to live safely in these areas with the proposed regulations on lighting, fencing, stream buffers and vegetation management for fire safety. Indeed, all private property in the Los Padres National Forest (even beyond Lockwood Valley) should be exempted from the Ordinance.

Failure to remove these areas from the overlay zones opens up the County to serious legal claims regarding the legitimacy of the scientific methodology, failure of the Ordinance to be supported by substantial evidence. Further, this exposes the County to substantial risk of equal protection, due process, and takings claims from property owners within those areas.

III. EVEN IF ALL OF THE PLANNING COMMISSION'S RECOMMENDATIONS ARE ADOPTED, THE ORDINANCE IS STILL LEGALLY AND SCIENTIFICALLY FLAWED, AND REQUIRES FURTHER REVISIONS

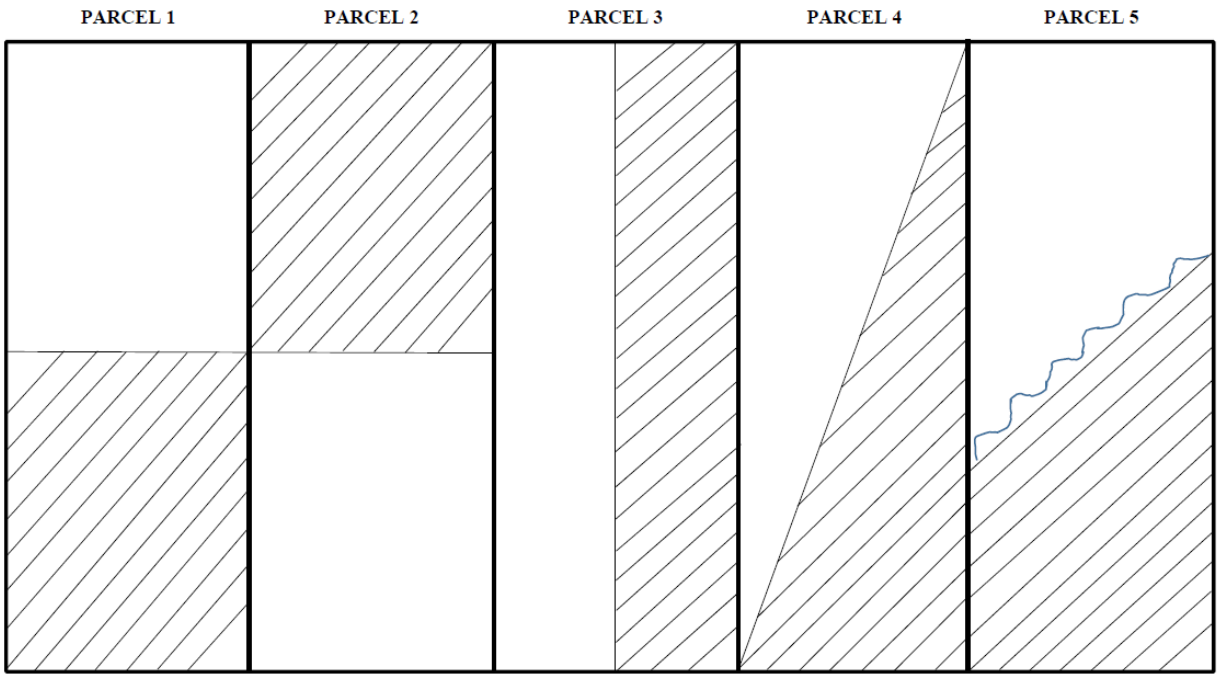
In the words of the County staff/consultants who drafted the Ordinance: "**it's obvious the biggest obstacle to movement are the freeways which the County has no control over**. But, **I'm hopeful that by showing that animal movement is happening in VC that we can convince the Board that small increases in regulations on fencing, lighting, buffers from streams and roadway crossings and the clustering of development in certain critical areas are justified**." (Exhibit 2.)

Note that the Ordinance's biggest proponents are the same ones who acknowledge that its regulations relating to fencing, lighting, buffers, and clustered development are ineffective in solving the real problem of animal movement, which would necessarily involve doing something about the freeways. But to make matters worse, the way that the Ordinance has been drafted, even those measures have been formulated in an evidentiary vacuum and, as drafted, will not achieve their purported primary purpose, and will not assist wildlife movement as effectively as they could, with even fewer (but better) regulations.

A. The Compact Development Siting Standards Within the CWPA are Too Restrictive, and More Wildlife Movement Could be Promoted through Fewer, but Smarter Regulations.

The compact development standards, as written, allow property owners to simply designate 50% of their property for use, without any regard or consideration for how the neighboring parcels have divided their properties. A simple illustration shows that the regulations do nothing to promote wildlife movement:

COMPACT DEVELOPMENT PROBLEM



The above 5 parcels all comply with the Ordinance's compact development restrictions. However, if a terrestrial animal desired to move from the west side of the above 5 parcels to the east side, it could not do so. In other words, the Ordinance's regulations do nothing to promote wildlife movement. This is because the Ordinance emphasizes big (and convenient) round numbers rather than intelligent and effective rules.

If the Ordinance instead was actually aimed at helping animals move through these 5 representative parcels, this could be accomplished through minimal regulations that were cohesive in nature. For example, if organized in a cohesive, smart way, a simple strip of property no more than 2-3% in width across the top or bottom of the parcels would be a much more effective animal movement regulation than an ad-hoc 50% rule that does no such thing, and only serves to restrict property rights.

Furthermore, the way that these CWPA overlay zones have been drawn ignore the overall scheme of the mountain reserves that the corridors are trying to connect. It is unnecessary to have parcels that are in the middle of these overlay zones (i.e. surrounded entirely by other parcels in the zone) to be included, or restricted in any way. The safe passage of animals should hew to the zones that need to be protected and connected, and inclusion of properties that are several parcels deep into the zone would do nothing to promote that safe passage.

Finally, the compact development regulations, as written, may also be interpreted to apply to commercial agricultural uses (i.e., preventing famers from growing on more than 50% of their land). If the County intends to permit agriculture to continue, exemptions for agriculture within the Ordinance must be clear and unmistakable.

The compact development regulations within the CWPA zones, as written, are nonsensical, and will not accomplish anything. They have no scientific basis, have not been shown to be effective in promoting wildlife movement and, according to the staff who drafted the Ordinance, would not meaningfully address the primary barrier to wildlife movement. Therefore, the compact development regulations should be stricken from the Ordinance.

B. The Ordinance's Exacerbation of Fire Risks is Dangerous, and Puts Lives and Structures at Greater Risk

The Planning Commission's recommendations regarding fire safety are important and should be implemented. However, they do not go far enough.

The lack of any analysis regarding fire hazards is the one area of analysis that screams for CEQA review more than any other. The Governor's Office of Planning and Research adopted, in 2018, comprehensive updates to the CEQA Guidelines and Appendices. This update included adding new impact categories to the checklist in Appendix G of CEQA. Notably, the most significant change to Appendix G is the addition of Wildfire as an environmental impact category. The new Wildfire section includes four questions pertaining to new development in Very High Fire Hazard Severity Zones. These questions focus on whether a project would exacerbate wildfire risk, impair emergency response or evacuation plans, or risk exposing people or structures to floods and landslides. The Ordinance has the potential to do ***all of these things***. And without the benefit of substantive CEQA analysis, the County, through the adoption of this untested Ordinance, will place lives and structures at greater risk.

In order to adequately address the fire risks, CEQA review of the Ordinance is absolutely necessary. There is no other lesser-scale recommendation or proposal that would be able to analyze or mitigate the fire hazards that are posed by the Ordinance. Each of the questions posed in the CEQA Guidelines (and the County's own Initial Study Guidelines) is there for a reason. Those questions must be posed, reviewed, analyzed, and addressed by a qualified professional so that the fire hazards are properly mitigated, as necessary. Failure to do so squarely places the blame for the Ordinance's exacerbation of any future wildfire in, around, or near the overlay zones on the County's shoulders.

C. Agricultural Exemptions Must be Applied in both the HCWC and CWPA Overlay Zones, and the Ordinance Must be Clarified to Reconcile the Differences Between the Two Overlay Zones

The HCWC overlay zone contains important exemptions for agriculture relating to "Surface Water Features, Vegetation Modification, Wildlife Crossing Structures, and Wildlife Impermeable Fencing." (Section 8109-4.8.3; 8109-4.8.3.2.) Specifically, Section 8109-4.8.3.2, "General Exemptions," contains the following exemption: "Planting or harvesting of crops or orchards that will be commercially sold, including vegetation modification necessary to construct or maintain a driveway or road internal to a lot that is utilized for such a commercial agricultural activity." (Section 8109-4.8.3.2.f.)

Furthermore, Wildlife Impermeable Fencing enclosing commercially grown agricultural crops for commercial sale are exempt from the fencing regulations in the Ordinance in the HCWC zones:

> Sec. 8109-4.8.3.6 does not apply to wildlife impermeable fencing that forms an enclosed area when: … It is used to enclose commercially grown agricultural crops or products. For purposes of this Section 8109-4.8.3.6.1 the phrase "commercially grown agricultural crops or products" means any crop or plant product (including orchard, food, plant fiber, feed, ornamentals, or forest), that will be commercially sold.

(Section 8109-4.8.3.7.b.)

Yet, these exemptions for agricultural uses (either by design, or by mistake) are missing from the CWPA zone, both in terms of the agricultural use in general, and the Wildlife Impermeable Fencing Requirements. (See Section 8109-4.9.1-2.) This cannot be allowed to stand.

Failure to exempt agricultural uses from Wildlife Impermeable Fencing and compact development standards in the CWPA zone means that farmers cannot put a fence around their crops for commercial sale. This effectively bans farming in the CWPA zone, because fencing commercial crops is absolutely necessary to prevent substantial contamination or other damage to crops and to the County's agricultural industry as a whole. Wildlife Impermeable Fencing is essential for the survival of crops and the farmers who raise them. Suppliers may refuse to buy from farms who cannot fence their farms, and whose crops are susceptible to animal feces, animal-borne bacteria, etc.

The CWPA zone must be modified to specifically and unambiguously exempt all agricultural uses and/or agricultural zones (similar to how commercial and residential zones were exempted in Section 8109-4.9.2.a-b). It is unclear whether the failure to exempt agricultural uses was by design, or by mistake, but in any event, the language of Sections 8109-4.9.1-2 should be clarified to ensure that commercial agricultural uses are clearly exempt in the CWPA zones.

D. The Ordinance Must Implement Non-Discretionary Exemptions to the 10% Restriction for Wildlife Impermeable Fencing Enclosures.

Currently, the Ordinance requires property owners seeking to enclose more than 10% of their properties with wildlife impermeable fencing to seek a costly, discretionary, and time-consuming Planned Development Permit. The exemptions to this rule are limited, and do not account for properties that are located near public access (trails and parks), natural hazards such as rock slides, busy roads or other legitimate safety concerns. Such properties need a fencing exemption to protect their properties and families from intrusion and harm.

This is supported by language from the joint letter by The Nature Conservancy and CoLAB submitted to the County on 5-26-17: "Chain link and other types of fencing along public roads and recreational trails is often desired by farmers and landowners to prevent trespassing, vandalism and theft. A notable example of agricultural lands along a major highway is Highway 126. Public trespassing onto cultivated agricultural lands can conflict with federal food safety laws. In addition, public trails that allow access to private property may need fencing for protection. This fencing could avert wildlife from crossing roads at grade and divert them to safer passage under road crossings, such as bridges and culverts."

The Ordinance should therefore be modified to add an exemption for safety-related fencing. Also, the Ordinance should institute an administrative, ministerial process for fencing exemptions (as opposed to the discretionary Planned Development Permit), so that property owners with such safety-related conditions on their properties can quickly and cheaply establish their need for wildlife impermeable fencing, and get it approved efficiently. This would lower the burden on both the County and the property owners seeking the exemption to this stringent requirement.

This can be achieved by two methods, which are not mutually exclusive:

1. Specifically drafting an exemption for safety-related issues that would necessitate wildlife impermeable fencing, to be added to Section 8109–4.8.3.7. This would be the easiest mechanism to implement, because once such safety-related fences are exempted, there would be no need for any application process whatsoever (ministerial or discretionary). This would be most effective fix for the County, as it would eliminate the need to process such applications entirely.
2. Replacing the Planned Development Permit mechanism with an administrative ministerial application process akin to a building permit. This would be a simple modification to the Ordinance, which would apply to any property owner seeking an exemption. Again, this lowers the administrative costs and timing for both the County and the property owners seeking exemptions.

CoLAB requests that the Board adopt a modification to the Ordinance that would implement both options 1 and 2, as this would do the most to promote public health and safety. However, adoption of either of these options would be a significant improvement to the Ordinance, and in addition to

the public health and safety benefits, would also save the County money and resources by replacing costly discretionary permits with simpler ministerial processes.

IV. CONCLUSION

For the foregoing reasons, the County should, at a minimum, conduct the mandated CEQA analysis prior to taking any further action on the Ordinance. To the extent that County decides to move forward with the Ordinance in spite of its lack of CEQA review and evidentiary support, the County should adopt the modifications to the Ordinance listed in CoLAB's letter to the Planning Commission, as well as those described in Sections II and III above. However, even if the Board adopts these modifications, the County's legal obligations or responsibilities under CEQA or the principles of common law would remain, and CoLAB reserves all rights in that regard.

Finally, CoLAB requests that the March 12, 2019 hearing on this matter be postponed at least one month, to allow time for the County to provide—and CoLAB to examine—additional responsive documents that were the subject of its September 13, 2018 Public Records Act request, and for CoLAB and others to submit additional comments accordingly.

Very truly yours,

BENJAMIN M. REZNIK
SEENA M. SAMIMI of
Jeffer Mangels Butler & Mitchell LLP

cc: Kim Prillhart (via e-mail; kim.prillhart@ventura.org)

Exhibits:

Exhibit 1: 1/28/19 Comment Letter from CoLAB to Planning Commission (without exhibits)
Exhibit 2: 3/14/18 Email from County Consultant, Whitney Wilkinson