



PACIFIC LEGAL FOUNDATION

July 3, 2014

Dr. Charles Lester
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Re: City of Ventura Local Coastal Program Amendment No. SBV-MAJ-2-12

Dear Executive Director Lester:

Pacific Legal Foundation submits these comments on the City of Ventura Local Coastal Program Amendment No. SBV-MAJ-2-12, scheduled to be heard at the Commission's July 10, 2014, meeting. The Foundation is concerned about your staff's Suggested Modification Number 7 to the City of Ventura's proposed amendments to the City's local coastal program. *See* Cal. Coastal Comm'n Staff Report Th15b, at 12-13 (June 26, 2014). The proposed modification requires that a developer who wishes to build residential housing at the Promenade Parcels site must pay an in-lieu fee of \$1.8 million. The Staff Report explains that this mitigation fee will be used to provide lower cost overnight visitor serving accommodations in the area. *Id.* at 12. The rationale for the mitigation fee is that the construction of residential housing prevents the construction of overnight accommodations on the same parcels. *Id.* at 20-21.

The proposed mitigation fee violates the United States and California Constitutions, as well as California statutory law. A mitigation fee, whether assessed by the Commission or by a local government, is illegal unless the fee bears an essential nexus to the effects of the proposed development. *See Koontz v. St. Johns River Water Management Dist.*, 133 S. Ct. 2586, 2596 (2013); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 837 (1987); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 860 (1996); Gov't Code § 66001(a)(3)-(4).

The proposed mitigation fee, however, bears no nexus to the effects of any proposed residential development on the site. The Promenade Parcels do not currently afford overnight accommodation, such that residential construction would end that use. *See* Staff Report at 20 ("[L]ow-cost overnight facilities are not currently developed on the subject site . . ."). Nor is there, as far as the Foundation

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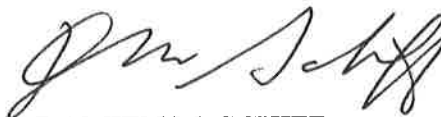
is aware, a pending proposal to develop overnight accommodation on the site that would compete with a residential housing proposal. Thus, the construction of residential housing does not create any need for overnight accommodation.

If the contrary were true, then the absurd result would follow that *every* development would be subject to a myriad of mitigation fees to account for the fact that one development necessarily precludes other development. For example, a permit for a community town hall would require a fee to help build playgrounds that otherwise could have been constructed on the site; a permit for public restroom facilities at the beach would require a fee to help provide public parking spaces that otherwise could have been provided on the site; and even a permit for lower cost overnight facilities would require a fee to provide for open space that otherwise could have been preserved on the site. The Commission does not require mitigation fees in these circumstances; it should not require them for residential home construction either.

If a real need for low cost overnight accommodation exists in the Ventura area, *cf.* Staff Report at 20, then that need is the result of local governments' zoning policies, independent market decisions that make other uses of land in the coastal zone more profitable, or a combination of these factors. But whatever the precise reason for that need, the decision to build family homes on the Promenade Parcels site neither creates nor contributes to it.

The Foundation therefore urges you to direct your staff to withdraw the Suggested Modification Number 7. The Foundation also respectfully requests that, once this letter has been added to the Commission's official record, you provide copies of the letter to the Commissioners prior to their consideration of the matter.

Yours sincerely,



DAMIEN M. SCHIFF
Principal Attorney

cc: Mr. Jack Ainsworth, Senior Deputy Director
Mr. Steve Hudson, District Manager
Ms. Barbara Carey, Supervisor, Planning and Regulation
Ms. Jacqueline Blaugrund, Coastal Program Analyst