



November 8, 2010

Janet Wolf, Chair  
Santa Barbara County  
Board of Supervisors  
105 E. Anapamu Street  
Santa Barbara, CA 93101

**Re: California Coastal Commission Suggested Modifications to County  
Land Use Development Code**

Dear Honorable Chair Wolf and Supervisors:

The Environmental Defense Center (EDC) is a non-profit public interest environmental law firm which protects and enhances the environment through education, advocacy and legal action. EDC and Urban Creeks Council urge the Board to accept the California Coastal Commission's (CCC) suggested modifications to the County's Land Use Development Code (LUDC). Accepting the modifications will enable the CCC to certify the County's newly reformatted LUDC as consistent with the Coastal Act and will protect the County's unique and irreplaceable coastline from permanent pollution, erosion, habitat loss, loss of ag lands and visual damage. The November 9 Board meeting should be used to clarify the implications of the proposed LUDC changes for the public, since there has been a large degree of misinformation among various interested parties. This will be a critical step towards moving the LUDC closer to acceptance. It is entirely appropriate that your Board not make any specific recommendations to the CCC for acceptance or denial of the modifications until such time the CCC completes their deliberations and final recommendations on the LUDC package. However, introducing certain requests to clarify and address concerns expressed by the public on the suggested modifications is appropriate. The CCC was clearly receptive to receiving public input from the Santa Barbara County Community (as expressed during the August 2010 hearing), and has compromised on many important points to try to reach common ground with the County while still upholding the Coastal Act. The November 18 CCC hearing will provide the community and the CCC with an opportunity to further consider the implications and requested clarifications on certain modifications as put forth by the County. The suggested modifications as described in this letter are briefly summarized and explained below:

- New or expanded agricultural operations may require permits in certain situations, but **there is nothing in the Suggested Modifications that creates any new appealable CDPs**. In fact, if the grading trigger is removed, the Suggested Modification provides more exemptions than the existing County LCP.
- House size permit triggers on Agriculturally-zoned land are proposed for an increase from 3,000 sq ft to 5,000 sq ft, per the new Suggested Modifications.
- Animal keeping in Residential Zone Districts would now be allowed with a non-appealable CDP.
- Private bluff staircases can be repaired and maintained. Stairs and rails can be repaired, maintained and replaced for the life of the structure. Structural underpinnings can be replaced up to 50% of the structure, and up to 100% if they are damaged by a natural disaster.
- The CCC has compromised on accessory uses and has agreed to include guest houses and artist studios as part of the PPU in residential, resource protection and ag zones.
- The Suggested Modifications do not increase permitting requirements for lot mergers or habitat restoration projects. The Coastal Act already requires permits for such projects; to the extent such projects are beneficial in nature, they will not likely be appealed.
- The Montecito Zoning Ordinance (ZO) is part of the LCP Amendment; thus, if the LUDC is not certified, the Montecito ZO will also not be certified.
- The proposed standards for determining sea level rise represent a starting point for analysis, and will provide more state-wide consistency, better planning, and scientific support for project review. The standards do not inhibit the County's ability to adopt new standards as science develops.
- In a new compromise, the CCC has agreed that school expansions in ag zones will be allowed onto adjacent parcels owned by the school, even if divided by a road, and even if the old school site is not currently operated as a school.
- Perhaps most important, **if the LUDC is not certified and the County opts to revert to its existing zoning ordinance, all CDPs will be appealable**. This requirement will apply because the County's existing LCP does not include PPUs.

In an effort to help clarify some of the misconceptions regarding the proposed modifications, we have prepared a table that clearly outlines the legal basis and level of discretion the County has in accepting or suggesting changes to these modifications

(Exhibit 1).<sup>1</sup> Part of the opposition to the suggested modifications stems from a misunderstanding of the Coastal Act's requirements and of the implications of the suggested modifications. Most of the suggested modifications still under discussion are simply required by the Coastal Act as described in the appended table. If the County desires to implement the LUDC, it must accept these modifications. Other modifications may be negotiable as described in EDC's appended table.

## **Background**

Santa Barbara County's Local Coastal Plan (LCP) has long been outdated. In 2000, the CCC analyzed LCPs throughout the state to determine which LCPs needed updating to comply with the Coastal Act and to minimize unnecessary appeals. The CCC's analysis determined that Santa Barbara County's LCP was one of three most outdated coastal plans in the state.

In response to Process Improvement Team (PIT) recommendations in 2003, the County decided to reformat its ordinances to be more user-friendly. The Zoning Ordinance Reformatting Project (ZORP) resulted in the County combining its various ordinances into the LUDC.

Before the LUDC can take effect in the coastal zone, the CCC must certify that it complies with the County's LCP and the Coastal Act. The LUDC was first submitted to the CCC for certification in October 2006. Commission staff undertook a lengthy review process that entailed County withdrawal and resubmission of the LUDC amendment packet. The CCC staff then identified "suggested modifications" to the LUDC which it believes are necessary to ensure LUDC compliance with the LCP and Coastal Act. County and CCC staff agreed to a majority of suggested modifications before release of the CCC staff report in April 2010.

Between April and August 2010, the County Planning Commission, Montecito Planning Commission, Board of Supervisors and various advisory committees held several public hearings on the suggested modifications. EDC and eighteen other community groups sent a letter to the Board generally supporting the CCC's suggested modifications as necessary to protect the coast and comply with the Coastal Act.

At its fourth hearing on the subject on August 3, the Board voted to send a letter to the CCC identifying remaining issues of concern to the County. The Board also voted to send Supervisors Wolf and Farr to the CCC hearing on August 12, 2010.

Four public workshops were held in various areas by County staff on the LUDC modifications since the August CCC hearing, and further input was received. However, a substantial amount of misinformation regarding the suggested modifications remains. The following selected items are provided to assist the BOS in further negotiating and

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<sup>1</sup> The attached table was prepared on October 15, 2010, and updated on November 8, 2010 in response to the CCC's most recent version of the Suggested Modifications.

explaining some of the remaining modifications to the public to help reach an acceptable compromise. County staff has made considerable progress in consulting with the CCC on various modifications to address public concerns, and this should be clearly relayed to the public.

### **1. Ag Intensification and Expansion (Mod 9)**

In order to ensure compliance with the Coastal Act (PRC §30106), the CCC suggested modifications require CDPs for some new, expanded or intensified agricultural activities. These permits are non-appealable, however, because they represent a Principal Permitted Use in ag zones (unless they are otherwise already appealable). Moreover, the suggested modifications also increase the number and scope of exemptions for such permits. The only exception is for new or expanded agricultural activities that require grading (cut and fill) of more than 50 cubic yards. We recommend that the County request an increase in this permit trigger to 100 cubic yards, particularly if such grading is located a minimum of 100 feet away from watercourses, and would not otherwise cause a significant environmental effect. This increase in grading would make the new LUDC more permissive (i.e., require fewer permits) than the existing LCP, which contains a 50 cubic yard threshold trigger for a CDP.

### **2. Ag Land House and Development Envelope Size Thresholds for Permitting (Mod 9)**

To protect ag land and uses, CCC staff originally suggested that any new home proposed on ag-zoned land would require an appealable CDP. Issues addressed by this Suggested Modification include:

- Loss of Ag Land: Larger homes and development envelopes can directly displace agricultural lands.
- Loss of Farming: Estate development on agricultural lands can diminish agriculture because home and room rental income can supplant agricultural income. In addition, facilitating large estates can attract buyers who do not have an interest in farming or ranching, such as the Ballentyne residence, which was recently approved on the Gaviota coast.
- Lack of Public Process: There is no public process for homes and development that may impact agriculture unless an appealable CDP is required.

In response to local concerns, the CCC staff compromised and instead recommended that only homes over 3,000 square feet, and development envelopes over 10,000 square feet, on ag zoned properties should trigger appealable CDPs. Many in the community misunderstood this issue and believed the square footage thresholds prohibited homes over 3,000 sq. ft., when in fact they only constituted thresholds for triggering permits. The County consulted with CCC staff to increase the size of homes to 5,000 square feet before triggering an appealable CDP, and the CCC staff compromised again and yielded to this request. While the County also requested that development

envelopes should be as large as two acres on larger parcels before triggering appealable CDPs, the CCC has retained the limitation of the development envelope size to 10,000 square feet.

EDC supports the 10,000 square foot envelope size threshold, but believes 5,000 square foot homes are larger than needed to support agricultural uses. We support the requirement for an appealable CDP for homes larger than 3,000 square feet on ag-zoned properties.

### **3. Animal Keeping in Agricultural and Residential Zones (Mod 9)**

One important issue for the public has been potential restrictions on animal keeping in residential zone districts. The County and CCC staff have negotiated this issue and reached an acceptable compromise. Previously, animal keeping in residential zone districts would have required an appealable CDP, according to the proposed modifications. However, the County has now reached a compromise with CCC staff to permit by *non-appealable* CDP the new keeping of horses (up to 2 horses per acre, with a maximum of 5) on residential lots over 20,000 sq ft. This concession on behalf of the CCC staff addresses public concerns with regard to this issue. However, the County is now requesting this allowance in all zone districts, including resource protection zones. If this request is considered, certain criteria should be applied, such as requiring a minimum distance away from ESHA areas and waterways, requiring an animal waste management plan, and providing for a cap such as in residential zone districts.

### **4. Stairways and Coastal Bluff access points (Mod 21)**

There has been much public concern regarding the ability of property owners to repair existing private bluff staircases. As noted in the attached table, the Suggested Modification does allow repairs for up to 50% of the underlying structural components of these staircases (which can be replaced up to 100% if damaged by a natural disaster). Stairs and rails can be fully repaired, maintained and replaced for the life of the structure. This issue has been largely misunderstood by the public and should be further clarified during the BOS hearing.

EDC supports the idea that existing bluff staircases could be treated similarly to existing school facilities in ag zones, whereby the CCC staff has proposed exempting these school facilities from the provisions of 35.101, Nonconforming Uses and Structures, such that they would not have to be phased out over time (unless the use is abandoned). If existing private bluff staircases could potentially receive similar treatment by the CCC, and existing structures could be exempted from becoming a non-conforming use, this change would alleviate the landowners' concerns.

### **5. Accessory Uses to PPU's (Mod 10)**

The Coastal Act requires coastal counties to designate one principal permitted use (PPU) per zone district. As noted previously by the CCC, the County's current LCP does

not designate a principal permitted use for each zone district. If PPUs are not designated as part of the LUDC update, the Coastal Act would render all projects in the Coastal Zone potentially appealable to the CCC [Pub.Res.Code §30603(a)(4)].

Currently, all accessory uses are designated Principal Permitted if they:

- Are customarily incidental and secondary to the primary Principal Permitted use
- Do not change the character of the primary Principal Permitted use.

CCC staff has negotiated with County staff and agreed to allow artist studios and guest houses to be considered as accessory uses in residential, resource protection and ag zones; this change is consistent with the existing LCP requirements.

## **6. Habitat Restoration**

As stated above, the Coastal Act only allows one PPU per zone district. Habitat restoration is not a PPU in any zone district. Therefore habitat restoration projects which rise to the level of “development” (e.g. entailing grading) *already* trigger appealable CDPs, under the County’s current LCP. Based on conversations with CCC staff, eradication of non-native weeds and revegetation with native plants would not likely be considered “development” and therefore would not likely require any permit.

It should also be noted that currently, the County already requires appealable CDPs for restoration projects meeting the definition of development if located in the appeals jurisdiction (which includes all creeks, wetlands and buffers and much of the coastal zone). Because habitat restoration projects often (1) do not rise to the level of “development” and thus do not require any permits, and (2) are typically located in creeks, wetlands and other habitats in the appeals jurisdiction, it appears unlikely that the clarification set forth in the Suggested Modification will increase the permitting requirements for restoration projects in the coastal zone.

Therefore, as your Planning Director correctly summarized at the Goleta LUDC Workshop on October 12, the Suggested Modification does not really make habitat restoration projects any more difficult.

In addition, EDC continues to recommend that the County incentivize habitat restoration in the following ways:

1. Give priority processing to expedite genuine habitat restoration project permits;
2. Assign an in-house restoration planner (much like the ag planner) to process restoration project permits;
3. Actively work with groups and landowners to apply for permits to undertake habitat restoration; and when resources permit
4. Waive permit fees to apply for habitat restoration permits.

## **7. Montecito Zoning Code (Mod 37)**

Suggested Modification #37 is specific to the Montecito ZO, and only applies if the LUDC is certified by the CCC. Thus, if the LUDC is not certified, the Montecito ZO will not be certified, and will have no force or effect in the coastal zone.

## **8. Sea Level Rise (Mod 34)**

In an effort to address the projected impacts of Sea Level Rise when considering proposed development projects in the Coastal Zone, the CCC Suggested Modification #34 requires new development to be reviewed in accordance with the most recent scientific data. The benchmarks recommended by CCC staff (16 inches of sea level rise by 2050 and 55 inches by 2100) are the *minimum* scenarios used to provide a scientifically based, consistent standard, and may be updated as warranted by new scientific information. These standards are intended to create a consistent measure of how new developments are reviewed in the Coastal Zone and can be amended as necessary to reflect new scientific standards.

### **Implications of Rejecting the LUDC Suggested Modifications**

If the County rejects the CCC's suggested modifications, the LUDC will not be certified and will have no effect in the coastal zone. The County would be forced to go back to Article II and all CDPs would be appealable to the CCC. Recently approved amendments to the LUDC that would affect the coastal zone would have to be reprocessed in the Article II format and resubmitted to the CCC for certification, further delaying implementation. If this were the case, the County would lose the Montecito Zoning Ordinance, updates to the IV Master Plan, Eastern Goleta Valley Residential Design Guidelines, Santa Barbara Ranch, process improvements regarding permit applications for sign plans, road naming, septic systems within Special Problems Areas, Solar Energy Systems, Special Care Facilities, and time extensions (for economic hardship). The County may also fall out of compliance with state housing mandates (RHNA) numbers. The level of effort and financial costs the County has expended on these programs would be largely wasted and new, costly, time-consuming public processes would have to be redone, diverting County staff attention and funding from other important programs.

### **Conclusion and Recommendations**

EDC recommends that the Board accept the suggested modifications to ensure LUDC compliance with the Coastal Act. While there is much to be said for local control - especially when local decision-makers are concerned about protecting the coast - the Coastal Act provides guidance and a necessary check and balance system, and provides for sound coastal planning throughout the state. In the past we have seen local governments propose and approve projects that would violate the Coastal Act, destroy sensitive habitats, and farmland, and pollute coastal waters. Only the Coastal Act has

prevented destruction of places including Carpinteria Bluffs, Douglas Preserve, Ellwood Mesa, the Devereux Slough, and Gaviota Creek.

The County has agreed to the majority of the CCC suggested modifications, and the CCC has yielded on many of the outstanding issues based on negotiations with County staff, as noted above. The Board should continue to work with stakeholders and the CCC regarding the items that could benefit from further clarification. Taking such action will facilitate final certification of the LUDC by the CCC in November 2010, and allow the County to move forward with programs and projects in the coastal zone.

Sincerely,



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cc: California Coastal Commission  
Glenn Russell  
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environmental  
DEFENSE CENTER

November 8, 2010

SANTA BARBARA COUNTY LUDC:  
COASTAL COMMISSION SUGGESTED MODIFICATIONS

LUDC ISSUE	CCC SUGGESTED MODIFICATION	LEGAL BASIS	SBC DISCRETION	NOTES
<i>Permitted uses per zone district</i>	County must designate one principal permitted use (PPU) per zone district.	Pub.Res.Code §30603(a)(4): for coastal counties, any development that is not designated as the principal permitted use under the zoning ordinance requires an appealable coastal development permit (CDP). This requirement does not apply to development that is accessory, incidental, appropriate and subordinate to the PPU (see "Notes").	N/A.	Accessory development that is specifically identified in the LUDC as exempt and that meets certain structural/operational standards as set forth in Suggested Modification #11 does not require a permit. Other development may be allowed with a non-appealable CDP if it is incidental, appropriate, and subordinate to the PPU. <b>If County rejects, all CDPs become appealable.</b>
<i>Lot Mergers</i>	County must issue an appealable CDP for lot mergers.	Pub.Res.Code §30106: Definition of "development" (which requires a CDP) includes any "change in the density or intensity of use of land" and any "division of land".	N/A.	Lot mergers, such as in the case of Naples, can actually increase development potential. The County's suggestion that the Director of Planning & Development

				could make a determination regarding the potential for a lot merger to increase development potential, and that this determination could be appealable to the Coastal, is not viable because there is no legal mechanism under the Coastal Act to appeal such a determination.
<i>Ag intensification</i>	Ag intensification may require a CDP if it meets the definition of “development,” but the CDP is only appealable to the Coastal Commission if other factors already provide for an appeal.	Pub.Res.Code §30106: Definition of “development” includes uses that cause a change in the density or intensity of use of land, alter landforms, require grading, and/or change the intensity of use of water.	N/A for intensification that meets the definition of “development.” SBC and CCC are negotiating triggers to determine which activities meet this definition and thus require a CDP; thus practices that do not meet the trigger would fall outside the definition of “intensification” and would not require a CDP.	SBC can identify thresholds that do not require a CDP. Requiring a CDP for activities that exceed the thresholds will ensure that ag intensification activities are consistent with LCP and Coastal Act policies protecting important coastal resources.
<i>Restoration projects</i>	County must issue an appealable CDP for restoration projects which involve “development.”	Pub.Res.Code §30106: restoration projects may constitute development (e.g., if they involve grading, alter landforms, etc.) If they do not constitute	N/A.	Requiring a CDP will provide oversight to ensure that projects use appropriate materials and actually restore, protect or enhance sensitive habitat. It is very unlikely that a genuine restoration

		<p>“development,” no permit is required.</p> <p>Pub.Res.Code §30603(a)(4): restoration projects are not a principal permitted use and are not normally considered incidental, appropriate, and subordinate to agriculture, residential or commercial PPUs.</p>		<p>project permit would be appealed. No CDP for a restoration project has ever been appealed in this area. Under the Coastal Act Section 30603(a)(4), habitat restoration projects entailing development already require appealable CDPs because they are not a PPU.</p>
<p><i>Repairing existing private bluff staircases</i></p>	<p>Limitations on repairing/replacing damaged private staircases which are legal nonconforming structures (i.e., legal at the time of construction, but no longer allowed under the County’s LCP and Coastal Act). Rails and steps can be repaired, replaced and maintained for the life of the structure. Also, a total of 50% of the structural underpinnings may be repaired or replaced over the life of the structure. However, 100% of the structural underpinnings can be repaired or replaced if</p>	<p>CCC interprets SBC LCP Policy 3-7 as limiting development of bluff staircases to those that provide public beach access, therefore other staircases are nonconforming structures. In addition, other LCP and Coastal Act policies protect visual resources, geological stability, and coastal bluff habitat, and prevent activities that contribute to coastal erosion. Most specific is Pub.Res.Code §30253, which prohibits development that creates or contributes to</p>	<p>N/A. The law applicable to legal nonconforming structures is very clear. An exception to the prohibition against rebuilding nonconforming structures applies if necessary to protect the public health, safety or welfare; however, because this provision applies only to private staircases, this exception generally does not apply. If existing private bluff staircases can be treated as the CCC proposes to treat existing public schools in ag zone districts, they would not have to be treated</p>	<p>Rails and steps can be repaired, replaced, and maintained for the life of the staircase. If a landowner properly maintains the structural underpinnings of her/his staircase, it will not exceed the cumulative 50% threshold. Also, if a natural disaster such as a storm damages the staircase, it can be fully rebuilt.</p>

	damaged by a natural disaster.	erosion, geologic stability, or in any way requires construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.	as nonconforming uses and could be maintained as legal structures.	
<i>Residential development in Ag zones</i>	An appealable CDP is required for development that exceeds a certain size and scale, in order to maintain the primary use of the land as agriculture.	Pub.Res.Code §30603(a)(4): because residential development is not the principal permitted use in the ag zone district, a permit is required unless the development is an accessory to the existing primary ag use.	The County can work with the CCC to define the triggers which require an appealable CDP. The current disputes relate to the threshold size to trigger an appealable CDP for an individual structure (Coastal Commission recommends 3,000 sq. ft, but may be willing to go higher; County recommends 5,000 sq. ft.) and development envelope (Commission recommends 10,000 sq. ft.; County recommends up to 2 acres, depending upon the size of the parcel).	Some people have interpreted these size restrictions as prohibitions on development, when in fact they are simply thresholds that trigger whether the development is appealable to the Coastal Commission. Initially the CCC intended that all homes on ag lands would trigger CDPs but has since compromised. The Commission staff have also agreed to increase the trigger to 5,000 sq. ft. for a principal residence. This requirement is necessary to ensure that large-scale residential development does not detract from the primary use of the land, which is for agriculture.
<i>Schools in ag zones</i>	The expansion of an existing school onto an adjacent lot	Pub.Res.Code §30603(a)(4): schools are not the	CCC appears willing to consider some limited	Schools that are constructed next to ag land create land

	<p>that is owned by the school and zoned ag, even if located across a street (but not a highway or freeway) may be allowed with a conditional use permit and appealable CDP. Re-utilization of former schools sites (i.e. Vista del Mar) would also be allowed with an appealable CDP.</p>	<p>principal permitted use in ag zones. School expansion or construction would also convert ag-zoned land in violation of Pub.Res.Code §§30241 and 30242, which require protection of ag lands in the coastal zone.</p>	<p>exceptions which would allow a school to expand onto adjacent school district-owned parcel(s) – even if located across a street (but not a highway or freeway) - in areas that will not impact adjacent ag operations (e.g. Vista Del Mar School, Cate School). The CCC also pointed out that a school district can apply to rezone land from ag to a designation that would be compatible with school use.</p>	<p>use conflicts and potential nuisances that may jeopardize the health of students and teachers and the ability to continue ag operations (e.g., pesticide use, noise, odors).</p>
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