



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: 1/18/2011
Placement: Departmental
Estimated Tme: 2.5 hours
Continued Item: Yes
If Yes, date from: 4/6/10, 7/6/10, 7/13/10, 7/27/10,
8/3/10, 9/7/10, 11/9/10
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director Glenn Russell, Ph.D. (805.568.2085)
Contact Info: Dianne Black, Development Services Director (805.568.2086)
SUBJECT: Coastal Commission Action on the County and Montecito Land Use and
Development Codes

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- A. Receive this report on the Coastal Commission's action on the County and Montecito Land Use and Development Codes; and,
- B. Direct the Planning and Development Department to prepare the necessary documents to either:
1) accept or 2) reject the Coastal Commission's certification of the County and Montecito Land Use and Development Codes with suggested modifications.

1.0 BACKGROUND

Your Board previously discussed the Coastal Commission staff's suggested modifications to the County and Montecito Land Use and Development Code at several hearings including July 6, July 13, July 27, August 3, and September 7, and November 9, 2010.

At the November 9th hearing, your Board received a summary of the Coastal Commission staff report, including the status of the suggested modifications. Your Board authorized sending a letter to the Coastal Commission (Attachment A), with review by Supervisor Farr, and selected Supervisor Farr to represent the Board of Supervisors at the Coastal Commission's November 18, 2010 hearing. Your Board also continued the hearing to allow Planning and Development to report back on the results of the Coastal Commission hearing and to direct staff to prepare documents that would either accept or reject the certification of the County and Montecito Land Use and Development Code with the Coastal Commission's suggested modifications.

2.0 DISCUSSION

Timeline for Decision

The Board has six months from the November 18, 2010 Coastal Commission action (May 17, 2011) to evaluate the modifications as certified by the Coastal Commission and decide whether or not to accept the suggested modifications. The Coastal Commission at a noticed hearing may for good cause extend the six month time limit for a period not to exceed one year, after consultation with the County, to complete the certification process. Either option will require a significant amount of staff time to either (1) prepare the necessary documents required to complete the certification process, should your Board decide to accept the modifications as certified by the Coastal Commission; or, if your Board decides to not accept the suggested modifications, (2) amend the County and Montecito LUDCs to remove the Coastal Zone specific regulations and reprocess the following recently approved amendments to the County and Montecito LUDCs as amendments to Article II, including re-submittal to the Coastal Commission for certification:

- Eastern Goleta Valley Residential Design Guidelines
- Isla Vista Master Plan
- Santa Barbara Ranch Naples Townsite Zone and Transfer of Development Rights Program
- Process improvements regarding permit applications for noticing, appeals, overall sign plans, road naming, septic systems within Special Problem Area, solar energy systems, special care facilities, and time extensions
- Time extensions due to economic hardship considerations

Option 1 would require the Planning and Development staff to prepare revised County and Montecito Land Use and Development Codes incorporating the Coastal Commission's suggested modifications and conduct hearings at the Planning Commissions and Board of Supervisors to adopt these revised codes through ordinance amendments and submit them to the Coastal Commission. Upon submittal, the Executive Director of the Coastal Commission would determine, in writing, whether the County's actions are legally adequate to satisfy the specific requirements set for in the Commission's certification order. The Executive Director would then report the determination to the Commission at its next regularly scheduled public meeting, at which point the determination becomes final unless the Commission objects. If a majority of the commissioner's present object to the Executive Director's determination and find that the County's action does not conform to the provisions of the Commission's action to certify the LUDC, the Commission would review the County's action as if it were a resubmittal. Should your Board choose to accept certification, staff recommends that you direct staff to immediately request a one year extension of the time to formally accept the certification with the suggested modifications. Staff would need additional time beyond May 17, 2011 to incorporate the suggested modifications into the Land Use and Development Codes and to bring those codes through the County approval process.

Option 2 could be implemented in two alternative ways. The Board could direct staff to send a letter to the Coastal Commission indicating that the County rejects the certification of the Land Use and Development Codes with the suggested modifications and will continue to implement the Coastal Land Use Plan through Article II. Alternatively, the Board could simply decline to accept the suggested modifications within the six month statutory time frame and allow the Coastal Commission's certification with suggested modifications to expire.

Coastal Commission Action

At its hearing on November 18, 2010, the Coastal Commission, on a 10-2 vote, approved the County and Montecito Land Use Development Code with suggested modifications. Below is the status of the significant suggested modifications and the Commission’s action on those modifications.

1. Modification 9 - Requirement for Coastal Development Permit for Cultivated Agriculture

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (7/28)
Exempt if any associated grading does not require a CDP.	All new cultivated agricultural, orchards & vineyards require a CDP in agricultural zones and an appealable CDP in non-agricultural zones.	<p>Historic use: Exempt from CDP in agricultural zones if constitutes historic use (occurs within existing areas of cultivated agriculture, orchards, and vineyards).</p> <p>New or expanded areas: Exempt from CDP if complies with development standards:</p> <ul style="list-style-type: none"> • Does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance or require grading over 50 cubic yards. • Is not located within 100 feet of the top of bank of any creek, stream or watercourse. • Is not located within 100 feet of environmentally sensitive habitat areas, riparian areas, or wetlands. • Does not result in the removal of native or non-native protected trees. <p>County issues exemption.</p>

The Coastal Commission accepted their staff’s recommendation, with one change. The 50 cubic yard threshold was increased to 100 cubic yards. The adopted suggested modification partially addresses the concerns of the agricultural community by increasing the amount of grading triggering a permit. However, many agriculturalists are concerned with any increase in permit requirements for cultivated agriculture, including conversion of agricultural grazing to cultivated agriculture. The requirements contained in the suggested modification are for the most part more stringent than the requirements originally certified by the Coastal Commission in 1982 which established a 50 cubic yard threshold for requiring a grading permit, and the standards contained in the adopted grading ordinance. The grading ordinance also limits the exemption for agricultural grading to areas which do not exceed 30 percent slopes, which are 50 feet or further from the top of bank of a creek, and to grading with cut and fill slopes of less than three feet. Further, the exemption was not required to be confirmed and issued by the County.

2. Modification 9 - Requirement for Coastal Development Permit for Grazing

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (11/5)
Exempt if any associated grading does not require a CDP.	All new grazing or intensification of grazing requires a CDP.	<p>Historic use: Exempt from CDP if located in existing grazing areas including the normal rotation of livestock from one pasture to another. The conversion of grazing area to cultivated agriculture, orchard, or vineyard shall be interpreted as an increase in the intensity of use.</p> <p>New or expanded areas: Exempt from CDP if complies with development standards:</p> <ul style="list-style-type: none"> • Does not occur on slopes of 30 percent or greater or require any cut or fill that exceeds three feet in vertical distance or require grading over 50 cubic yards. • Is not located within 100 feet of the top of bank of any creek, stream or watercourse. • Is not located within 100 feet of environmentally sensitive habitat areas, riparian areas, or wetlands. • Does not result in the removal of native or non-native protected trees. <p>County issues exemption.</p>

The Coastal Commission accepted their staff’s recommendations without any changes. The action of the Coastal Commission did not address the concerns of agriculturalists that the expansion of grazing onto previously un-grazed property should remain exempt from a Coastal Development Permit.

3. Modification 9: Requirement for Coastal Development Permit for keeping of animals

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (11/5)
Exempt.	<p>Exempt only if designated exempt in the Animal Keeping Tables (e.g., household pets, small, non-hoofed animals, wildlife care rehabilitation).</p> <p>Keeping of livestock and small animals (e.g., poultry) designated as:</p> <ul style="list-style-type: none"> • A Principal Permitted Use in Agricultural zones; new animal keeping requires a CDP 	<p>Exempt only if designated exempt in the Animal Keeping Tables (e.g., household pets, small, non-hoofed animals, wildlife care rehabilitation).</p> <p>Keeping of livestock and small animals (e.g., poultry) designated as:</p> <ul style="list-style-type: none"> • A Principal Permitted Use in Agricultural zones; new animal keeping requires a CDP

	<p>without hearing unless constitutes appealable development</p> <ul style="list-style-type: none"> • A Permitted Use in Resource Management and Residential zones; new animal keeping constitutes appealable development; requires a CDP with hearing. 	<p>without hearing unless constitutes appealable development</p> <ul style="list-style-type: none"> • A Permitted Use in Resource Management and Residential zones; new animal keeping constitutes appealable development; requires a CDP with hearing. <ul style="list-style-type: none"> • Exception: Keeping of horses for personal use in residential zones designated as a Principal Permitted Use (requires a CDP w/o hearing).
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The Coastal Commission staff issued an Addendum dated November 17, 2010 to their staff report clarifying the animal keeping provisions in the suggested modification. The changes include clarifying that if a property has legally established facilities for animal keeping (e.g., barns, paddocks), then a Coastal Development Permit is not required for keeping additional animals, including new foals, up to the maximum animals allowed in the zone district within the legally established facilities. Constructing new animal keeping facilities, or adding animals to a property where animal keeping does not presently occur and keeping them outside of legally established facilities, would constitute new animal keeping that would require either an appealable or non-appealable coastal development permit, depending on the type of animal and zone district in which new animal keeping is proposed. Further, the suggested modification was amended to specify that the keeping of horses for private use in the larger lot residential zone districts is a principal permitted use. See the Addendum staff report in Attachment B. This revision to the suggested modification was accepted by the Coastal Commission. This suggested modification fully addresses concerns expressed by the public about permitting requirements for existing horse facilities. However, large animal keeping, other than for horses, is not included as a principal permitted use in residential zones. Under the suggested modifications, a coastal development permit with a hearing would be required to establish new large animal keeping, other than for horses, in conjunction with a residential use. Additionally, new horse keeping outside of legally established facilities in conjunction with residential uses, would now require a coastal development permit, a use that is currently exempt from permit requirements unless facilities requiring a permit are proposed to be constructed.

4. Modification 9: Restrictions on school facilities allowed by Conditional Use Permit in agricultural zones.

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (11/5)
Schools allowed by CUP in Agricultural zones.	Schools not allowed by CUP.	<p>New schools not allowed by CUP. Existing, lawful schools may be expanded and/or reconstructed, including expansion of facilities on adjacent lots owned by the school.</p> <ul style="list-style-type: none"> • Adjacent includes land separated by a street or road, not including a highway.

		<ul style="list-style-type: none"> Schools may reoccupy former facilities, sites or adjacent sites owned by the district.
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At the Coastal Commission hearing in November, the Coastal Commission staff clarified that the suggested modification language would allow replacement of the Vista Del Mar school on a site owned by the District and adjacent to the former school location on the Gaviota Coast. The Coastal Commission adopted the staff’s recommended suggested modification with the change to specify that the Vista Del Mar School District could build new school facilities on property that the District owned as of November 18, 2010 that are adjacent to the former school. This revision to the suggested modification addresses all of the concerns expressed regarding school permitting on agricultural lands.

5. Modifications 9 & 13: Coastal Development Permit required for subdivision, lot line adjustments, and voluntary mergers of existing, separate legal lots

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (7/28)
CDP only required by subdivisions involving vesting maps; CDP not required for lot line adjustments and voluntary mergers. <ul style="list-style-type: none"> Voluntary mergers approved by County Surveyor; not subject to planning approval. 	Appealable CDP required for all subdivision, lot line adjustments and voluntary mergers.	No change.

The Coastal Commission adopted their staff’s suggested modification language with no changes. This does not address the concerns expressed by some members of the public that voluntary mergers that do not increase the development potential of the affected parcels remain exempt from a coastal development permit with a hearing.

6. Modification 10: Restrictions on primary residences located in agricultural zones in order to qualify as a Principal Permitted Use

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (7/28)
Primary agricultural dwelling allowed with a CDP; not subject to public hearing unless constitutes appealable development (e.g., located in the Appeals Jurisdiction).	Appealable CDP required for all residences.	Primary residence may be permitted as a Principal Permitted Use (non-appealable CDP) if: <ul style="list-style-type: none"> the residence is occupied by the operator of the agricultural use of the property or property owner. the residence does not exceed a floor area of 5,000 square feet. the area devoted to residence and all structures and landscaping associated with the residence is limited to 10,000 square feet. A residence that does not comply

		with these standards may still be allowed as a Permitted Use subject to the approval of an appealable CDP.
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The Coastal Commission accepted their staff’s recommendations without any changes. This action does not address the concerns of agriculturalists to retain flexibility on the occupancy and in the size and numbers of residences and residential development areas on agricultural properties without triggering a coastal development permit with a hearing and a potential appeal to the Coastal Commission.

7. Modification 10: Restrictions on accessory uses designated as Principal Permitted Uses in all zones

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (11/5)
All accessory uses have the same permit requirement, are not subject to public hearing unless constitutes appealable development (e.g., located in the Appeals Jurisdiction). <u>Exception:</u> residential second units (RSUs) are considered appealable development; may be appealed to the Coastal Commission	Very limited number of accessory uses are designated as a Principal Permitted Use; all remaining accessory uses are designated as a Permitted Use and require an appealable CDP.	All accessory uses are designated as a Principal Permitted Use if the use: <ul style="list-style-type: none"> • is customarily incidental and secondary to the primary Principal Permitted Use. • use does not change the character of the primary Principal Permitted Use. Exception: residential second units (which remain appealable to the Coastal Commission).

The Coastal Commission accepted their staff’s recommended suggested modification without any changes. This action addresses all of the public concerns expressed with regard to permitting of accessory uses to a residence.

8. Modification 21: Restrictions on private bluff staircases and access ways

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (11/5)
Engineered staircases & access ways allowed on bluff face; private versus public use not specified.	Engineered staircases & access ways permitted on bluff faces that are not available for public use are considered nonconforming structures that may not be structurally repaired.	Lawful, existing private staircases & access ways considered nonconforming; however: <ul style="list-style-type: none"> • may be structurally repaired provided any structural replacement (not including steps, handrails) is limited to 50 % (cumulative). • may be rebuilt in the same location if destroyed by a natural disaster.

The Coastal Commission accepted their staff’s recommended suggested modification without any changes. During the Board hearings on this issue, members of the public were also concerned that this

suggested modification is intended to expand public access by allowing only public stairways. However, the Coastal Commission’s staff report made it clear that the intended result was fewer stairways rather than more public stairways. The action does not address the concerns that members of the public expressed regarding their ability to repair stairways beyond the 50% structural limit or their ability to propose a new geologically appropriate private stairway.

9. Modification 34: Sea level rise

LUDCs as submitted by County	Original CC staff proposal (3/30)	As revised by CC staff (11/5)
No standards addressing potential sea level rise.	Projects located near the shore must submit coastal hazards analysis. Must use prescribed sea level rise scenarios based on type of project: <ul style="list-style-type: none"> • minimum 4.6 feet per century for energy-related facilities, critical facilities, or infrastructure. • three to six feet per century for residential and commercial development. 	Projects located near the shore must submit coastal hazards analysis. <ul style="list-style-type: none"> • 4.6 feet per century for critical facilities and infrastructure. • 16 inches of sea level rise by the year 2050, and 4.6 feet by 2100.

The Coastal Commission accepted their staff’s recommended suggested modification without any changes. The public expressed concern regarding the lack of definition of “projects located near the shore” and the implications on future development. Those concerns are not addressed in the adopted suggested modifications.

3.0 ANALYSIS OF ISSUES:

The decision regarding whether to accept or reject certification of the Land Use and Development Codes is a policy decision for your Board to make. The following analysis of issues is provided to assist your Board in weighing the consequences of the two options.

Principal Permitted Use Requirement

One of the central issues addressed in the Coastal Commission’s suggested modifications is the identification of the principal permitted use in the zoning ordinance. In coastal counties, coastal development permits for uses that are not designated under the zoning ordinance or zoning map as the principal permitted use are appealable to the Coastal Commission. Appealable coastal development permits are considered discretionary permits subject to CEQA and require a public hearing.

Article II, the County’s existing Coastal Zoning Ordinance, includes permitted uses and conditionally permitted uses in each zone district. The permitted uses specified in each zone district have been treated as principal permitted uses by both the County and the Coastal Commission staff since Article II was first certified by the Coastal Commission in 1982. Principal permitted uses are also identified in the County’s Coastal Land Use Plan in Appendix B, Land Use Definitions. Appealable development includes: 1) development within the geographic appeals area; 2) development within or adjacent to certain ESHAs; 3) development of uses that are conditionally permitted (not identified as a permitted uses); or 4) development that is a major public works or energy project. The geographic appeals area

is the area between the mean high tide line of the ocean and the first public road, typically at least 300 feet from the ocean. In some areas, such as Bixby, Cojo and Hollister Ranch, the geographic appeals jurisdiction extends throughout the coastal zone. In amendments to Article II certified in 2008, which were submitted by the County to address changes to noticing and appeals procedures, the Coastal Commission included a suggested modification to amend the definition of appealable development to include any development that is not designated as the principal permitted use under the zoning ordinance or zoning district map, consistent with Public Resources Code Section 30603(a). Procedures for both appealable and non-appealable coastal development permits were included in the original coastal zoning ordinance and have been maintained through amendments which have occurred since the original certification of Article II, most recently in the amendments certified by the Coastal Commission in 2008.

The significance of a development being appealable to the Coastal Commission includes cost, time and jurisdictional concerns. 1,562 applications for non-appealable coastal development permits, and 484 applications for appealable coastal development permits, were submitted to the County between January 1, 2000 and December 31, 2010. The average cost of a non-appealable coastal development permit is \$1,697, while the average cost of an appealable coastal development permit is \$7,181. The average processing time for a non-appealable coastal development permit is 151 days, while the average processing time for an appealable coastal development permit is 273 days. These latter figures are based on 365 non-appealable coastal development permits and 118 appealable coastal development permits acted on from 2007 to present. While the number of appeals to the Coastal Commission is low (only three appealable coastal development permits were appealed to the Coastal Commission in the last three years), the potential for an appeal is considered significant by most permit applicants. As a practical matter, if the suggested modifications are accepted, Coastal Commission jurisdiction on appeals would extend throughout the coastal zone for non-principal permitted uses.

The permitted use and conditionally permitted use structure of the existing certified Article II zoning ordinance was maintained in the Land Use and Development Code as it was submitted to the Coastal Commission for certification. In its staff report dated November 2, 2010, the Coastal Commission staff indicates (at page 17) that "Because the proposed LUDC does not include a specific use that is identified as the 'principal permitted use' for each zone pursuant to Section 30603(a)(4), Commission staff must interpret that all of the 'permitted uses' are appealable to the Coastal Commission because none of the potential uses meets the special exception outlined in 30603(a)(4)." Given this, it is possible that a third party would claim that a specific development processed under Article II as non-appealable is appealable to the Coastal Commission.

A number of the suggested modifications to the Land Use and Development Codes address identification of the principal permitted use in each zone district. County staff and the Coastal Commission staff were able to work through the majority of the concerns with designation of the principal permitted use in each zone district. The remaining area of significant concern is in regards to agriculturally zoned properties and residential uses on those properties. Under Article II and the submitted LUDC, the County treats residences on agricultural properties as non-appealable permitted uses. The only residences that are currently appealable to the Coastal Commission are those located in the geographic appeals area or within or adjacent to certain ESHAs. Suggested modification 10 would expand the appeals of residences on agriculturally zoned lands to those residences that exceed 5,000 square feet, exceed 10,000 square feet of residential development area, or are not occupied by the operator of the agricultural use of the property or the property owner. This change in appeal authority has been of significant concern in the agricultural community and should be weighed against the potential for a third party appeal of currently non-appealable development in the future.

A second area of concern expressed by some members of the public is with respect to permitting habitat restoration projects. Under Article II, most habitat restoration projects currently require an

appealable coastal development permit due to their location in the geographic appeals area or their location within or adjacent to an ESHA. A relatively few restoration projects are located outside of these areas. Regardless, some members of the public remain concerned that restoration projects are not considered principal permitted use in any zone district under the LUDC and would always be appealable development.

Permitting for Cultivated Agriculture/Grading

Article II currently provides an exemption from a coastal development permit for grading, excavation or fill that does not require a grading permit (Section 35-169.2(1) c and g). Chapter 14, the County's Grading Ordinance provides an exemption for agricultural grading (with an exception to the exemption for grading which would result in a significant environmental impact). However, when the Coastal Commission originally certified the County's Local Coastal Program, including Article II, the Commission required an amendment to the grading ordinance to require a grading permit for agricultural grading in excess of 50 cubic yards. Since the County has not submitted any amendments to the Grading Ordinance to the Coastal Commission which modified these original provisions, the requirement for grading permit and coastal development permit for grading in excess of 50 cubic yards is still in effect in the coastal zone. The adopted grading ordinance limits exemptions for agricultural grading to slopes of 30 percent or less, to grading at least 50 feet from the top of bank of creeks, and grading on cut and fill slopes of 3 feet or less. The grading ordinance does not include standards addressing setbacks from environmentally sensitive habitat areas or regarding the protection of native and non-native trees. Further, an exemption for agricultural grading is not required to be confirmed and issued by the County. Therefore, in weighing whether or not to accept certification of the LUDC, the Board should compare the effect of the suggested modification language with regard to cultivated agriculture against the certified grading ordinance. The requirements contained in the suggested modification are, with the exception of the 100 cubic yard exemption, more stringent than the requirements originally certified by the Coastal Commission in 1982 and contained in the adopted grading ordinance.

Except in the unusual case where grazing operations entail grading, grazing operations do not trigger a coastal development permit under existing Article II provisions. However, under the Coastal Commission's suggested modifications, expanded grazing operations would require a coastal development permit unless the operation complies with specific development standards.

Permit Requirements for the Keeping of Animals

The Coastal Commission, in its suggested modifications, addressed many of the public's concerns about animal keeping by designating animal keeping accessory to a principal permitted residential use, by exempting from a coastal development permit the keeping of animals up to the maximum allowed in the ordinance when animal keeping is already established on a property, and by clarifying that a new foal does not require a permit. The remaining issues with animal keeping relate to keeping of animals on agriculturally zoned land and accessory to residential uses where animal keeping has not already been legally established. In those cases, a coastal development permit would be required. Under Article II, the keeping of animals is exempt from permits, while certain structures to house animals would require a coastal development permit.

Private Bluff Stairways

The Coastal Commission's suggested modifications would prohibit permitting of new private bluff

staircases, and limit the repairs of existing private staircases to 50 percent of its structural members cumulatively, except where the private staircase is entirely destroyed by natural forces, in which case it can be rebuilt. Currently, under Article II, permits for all bluff stairways, whether public or private, are appealable to the Coastal Commission due to their necessary location in the geographic appeals jurisdiction. The policy decision for your Board is whether or not applications should be accepted and considered for private bluff staircases, and whether or not the Board can accept the restrictions regarding rebuilding of existing, permitted private bluff staircases.

Appealable Coastal Development Permit requirement for Mergers and Lot Line Adjustments

Currently, Article II does not per se require a coastal development permit for mergers and lot line adjustments. The 2008 LCP amendment cited lot line adjustments as a reason to amend the definition of appealable development, but did not specifically address lot mergers. Coastal Commission's position is that mergers and lot line adjustments are considered development under the Coastal Act and require a coastal development permit. The County argued at the Coastal Commission hearing that mergers that do not result in increased development potential should be exempt from a coastal development permit requirement in order to provide a process that encourages voluntary lot mergers. Based upon the Coastal Commission staff's action on the Santa Barbara Ranch project, whether or not the County accepts the suggested modifications, the Coastal Commission is likely to continue to assert appeal authority over lot line adjustments and mergers throughout the coastal zone.

Sea Level Rise Standards

Currently, Article II contains standards for bluff development and the Coastal Land Use Plan includes policies addressing geologic constraints on a project site. The proposed Sea Level Rise standards could be incorporated into existing studies and analysis required for coastal properties. If the Board accepts the Coastal Commission's certification of the Land Use and Development Codes, a definition of "near shore" would be useful in implementing this new standard.

Future Local Coastal Program Amendments

As the County develops and updates community plans that affect areas within the coastal zone, these amendments will be subject to review and certification by the Coastal Commission. If the County rejects the certification of the Land Use and Development Codes with the suggested modifications, it is likely that the Coastal Commission staff will propose similar modifications in the future in the context of comprehensive amendments proposed by the County.

CEQA Review

Some have argued that should your Board choose to accept the suggested modifications and certification of the Land Use and Development Codes, additional CEQA review would be required. However, local government's activities and approvals related to preparation and adoption of an LCP are exempt from CEQA. (Pub. Res. Code sec. 21080.9.) Rather, it is the Commission's certification of LCPs that is expressly subject to CEQA. (*Ibid.*) The Commission is not required to prepare an EIR or ND when it acts on an LCP because the Secretary of the Resources Agency has certified that the Commission's regulatory program relating to its review of LCPs is equivalent to the EIR process. CEQA authorizes state agencies with environmental responsibilities, including the Commission, to operate under their own regulatory programs that replace the EIR process with a comparable form of

environmental review. The Commission's staff reports for its actions to certify a public agency's LCP are the functional equivalent of an EIR. Any issues regarding CEQA must be and should have been raised and argued before the Commission.

The County's acceptance of the Commission's certification, including County's final adoption of the changes suggested by the Commission as a condition of certification, is therefore statutorily exempt from CEQA.

Should the County reject the Commission's certification with suggested modifications, no further CEQA review would be required, because under CEQA, the Board's decision not to change the zoning ordinance would be considered no action.

Fiscal and Facilities Impacts:

Budgeted: Yes.

Fiscal Analysis:

Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Administration Division on page D-324 of the adopted Planning and Development Department's budget for fiscal year 2010-2011. There are no facilities impacts.

Attachments:

- A. Letter from the County of Santa Barbara to the California Coastal Commission
- B. November 17, 2010 Coastal Commission Staff Report Addenda (two separate memos)
- C. December 8, 2010 Resolution of Certification and Final Suggested Modifications and Findings