



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

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

Department Name: Planning &
Development
Department No.: 053
For Agenda Of: July 17, 2018
Placement: Departmental
Estimated Time: 1 hour
Continued Item: Yes
If Yes, date from: May 15, 2018
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director: Dianne M. Black, Director, Planning and Development
(805) 568-2086
Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning
(805) 568-2072
SUBJECT: Gaviota Coast Plan – California Coastal Commission Local Coastal Program
Amendment No. LCP-4-STB-16-0067-3 Staff Report, Third Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

- a) Receive and file a report on a community workshop held by an Ad-Hoc Subcommittee of the Board of Supervisors on July 3, 2018, regarding the California Coastal Commission staff's suggested modifications to Local Coastal Program Amendment No. LCP-4-STB-16-0067-3 to certify the Gaviota Coast Plan and associated amendments to Article II of Chapter 35 of the County Code (Article II);
- b) Provide direction to staff on the contents of a comment letter to be sent to the Coastal Commission, authorize the Chair of the Board to sign a comment letter on behalf of the Board regarding the suggested modifications, and direct staff to present the Board's comment letter to the Coastal Commission at its hearing on the Gaviota Coast Plan and associated amendments to Article II (Attachment 1); and,
- c) Determine that the Board's action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15265 (Attachment 2).

Summary Text:

The purposes of this Board Letter and the hearing on July 17, 2018, are to: (1) provide the Board with a summary of a July 3, 2018, community workshop regarding the Coastal Commission's suggested modifications to the Gaviota Coast Plan and Article II; (2) afford the public an additional opportunity to provide input regarding the Board's comments on the suggested modifications; and (3) authorize the Chair of the Board to sign a comment letter on behalf of the Board regarding the suggested modifications, and direct staff to present the Board's comment letter to the Coastal Commission at its hearing on the Gaviota Coast Plan and associated amendments to Article II.

Background:

On May 15, 2018, the Board considered a staff report and received public testimony regarding suggested modifications proposed by California Coastal Commission staff regarding the proposed certification of the Gaviota Coast Plan and associated amendments to Article II. The Board continued the hearing to July 17, 2018, established an Ad-Hoc Subcommittee consisting of Supervisor Hartmann and Supervisor Williams, and directed staff to schedule a community workshop on July 3, 2018.

In addition, the Board authorized staff to withdraw and resubmit the Gaviota Coast Plan and associated amendments to Article II to the Coastal Commission to allow its hearing on this matter to occur in August 2018. On May 22, 2018, the Planning and Development Director submitted a letter to the Coastal Commission withdrawing and resubmitting the Gaviota Coast Plan and Article II amendments. On June 5, 2018, Coastal Commission staff issued a letter stating the submittal is in proper order and assigned the amendment a new project case number, LCP-4-STB-18-0039-1-Part B.

On July 3, 2018, the Ad-Hoc Subcommittee held a community workshop to provide an opportunity for the public to express their comments on the Coastal Commission staff's suggested modifications.¹ The workshop was well attended by interested parties representing landowners and ranchers, coastal access advocates, and environmental groups. Also attending were several staff from the Coastal Commission's South Central Coast District, including Deputy Director Steve Hudson, and Barbara Carey, Deanna Christensen, and biologist Jonna Engel. Staff appreciates the Coastal Commission staff's willingness to attend, listen to public comment, and respond to questions from the community and the Ad-Hoc Subcommittee. Approximately 20 attendees offered comments regarding the issues discussed at the workshop. The workshop focused on six suggested modifications that staff and the community identified as of particular concern. A principal issues matrix provided for the workshop presents more details regarding these issues and is included as Attachment 3 to this Board Letter. Additional materials provided at the workshop are provided in Attachments 4 through 6.

Since the May 15, 2018, Board hearing, County and Coastal Commission staff have continued to discuss the suggested modifications, and in response to comments and questions at the workshop, Coastal Commission staff has indicated a willingness to work further with County staff to provide some clarifications and refinements to five of the six modifications discussed further below. If County staff and Coastal Commission staff develop revised modification language prior to the July 17, 2018, hearing,

¹ The Coastal Commission staff suggested modifications are set forth in Exhibits 2 and 3 to the Coastal Commission staff report regarding the LCP Amendment, dated April 24, 2018. The staff report and all exhibits can be found on the Coastal Commission website at <https://www.coastal.ca.gov/> (See the May 10th meeting agenda – South Central Coast area). To facilitate Board and community review of the suggested modifications, County staff included the Coastal Commission staff report, suggested modifications to the Gaviota Coast Plan, and suggested modifications to Article II as Attachments 3, 4, and 5, respectively, to the Board Letter prepared for the May 15, 2018, hearing.

staff will present the revisions at the hearing for the Board’s consideration and incorporation into the comment letter.

1. Permitting Requirements for Certain Types of Agricultural Development on Agricultural Designated Lands

As discussed in the Board Letter dated May 15, 2018, the LCP Amendment included a number of amendments to Article II to allow new development, and to change the permitting requirements for certain types of development that are currently allowed within the Coastal Zone portion of the Gaviota Coast Plan area. As part of the suggested modifications, Coastal Commission staff identified agricultural cultivation and grazing as principal permitted development, requiring the issuance of a Coastal Development Permit (CDP). However, an exception to the permit requirement (and, thus, a permit exemption) would be allowed for cultivation or grazing within an area that has been subject to cultivation or grazing within the previous 10-year period. (See the Board Letter dated May 15, 2018, Attachment 5, page 15, proposed Sections 35-430.D.2 and -4 of the Coastal Commission staff suggested modifications to Article II.) As discussed at the community workshop, there are several concerns raised by this suggested modification.

a. Potential for Appeals to the Coastal Commission

Although the suggested modification would identify new grazing and cultivation as a principal permitted use and require a simple CDP, 92% of the Coastal Zone (approximately 46,102 acres) is located within the Coastal Commission appeal jurisdiction (as defined within the Coastal Act). In practical terms, development within the appeal jurisdiction that would otherwise be permitted with a simple CDP, would instead require a hearing before the Zoning Administrator and be appealable to the Coastal Commission. (Article II defines this permit type or process as a Coastal Development Permit with Hearing, or CDH.) This geographic appeal jurisdiction is graphically represented by the attached map (Attachment 4).

b. Agriculture as a Coastal Resource

Concern has been expressed that the Coastal Commission staff is addressing agriculture primarily as development instead of one of the coastal resources the Coastal Act is intended to protect (agriculture, biological resources or environmentally sensitive habitat (ESH), and public access to the coast). The Coastal Act (Public Resources Code Section 30241) states, in relevant part:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas’ agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following: ...

In this regard, the suggested modifications are problematic in several ways. It is unclear as to what ongoing agricultural practices or uses would be exempt under the proposed “historic” exemption. The 10-year timeframe for the “historic” agricultural use exemption seems arbitrary and may not be appropriate for some standard agricultural practices or the potential need to allow lands to remain fallow for longer periods in order to allow them to recover and become more productive. The exemption for ongoing agriculture does not appear to consider regenerative agricultural practices, a system of farming principles and practices that increases biodiversity, enriches soils, improves watersheds, and enhances ecosystem services. An example is carbon farming, which encourages less intensive grazing (which requires more rotation between pastures and more grazing pastures),

and planting hedgerows and other native plants to improve water quality, sequester carbon, and attract pollinators.

c. Previous Certified Modification

Although the existing, certified Article II does not overtly exempt agriculture from the requirement to obtain a CDP, the County has not historically required the issuance of a CDP for agricultural cultivation or grazing on lands designated for Agriculture, regardless of whether the area proposed to be cultivated or grazed had been used as such within the previous 10-year period.

Four standards for exempting new agricultural cultivation and grazing were adopted by the Coastal Commission in November 2010 as modifications to the County's LCP Amendment to convert Article II into the LUDC format:

- Does not occur on slopes of 30% 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 ESH areas (e.g., riparian corridors and wetlands).
- Does not result in the removal of protected trees.

Coastal Commission staff commented at the July 3, 2018, workshop that the Coastal Commission's counsel has made it clear they have no authority to expand the exemption provisions of the Coastal Act in a Local Coastal Program. However, the definition of development in the Coastal Act includes the removal of major vegetation other than for agricultural purposes. Despite this definition, any removal of major vegetation that qualifies as ESH would require a permit. It can be argued that the four criteria listed above avoid resource areas that would qualify as ESH and align with the objectives of the definition of development. Therefore, adherence to these criteria would not constitute development that necessitates the requirement of CDP for agriculture.

Last, the specific permitting requirements for new agricultural cultivation or grazing that are set forth in Table 18-2 of the Coastal Commission staff suggested modifications to Article II (Board Letter dated May 15, 2018, Attachment 5, page 20) and the new Sections 35-430.D.2 and -4 in the Coastal Commission staff suggested modifications to Article II present confusing and potentially conflicting information regarding the criteria distinguishing between agriculture that is exempt and agriculture that requires a permit.

d. Alternative Processes to the Coastal Development Permit

Alternative suggestions were discussed at the workshop including (1) the development of an agricultural waiver process for agriculture, similar to the de minimis waiver recently approved by the Board and submitted to the Coastal Commission for like-for-like rebuilds in the Montecito debris flow area, and (2) a categorical exclusion. At the workshop, Coastal Commission staff noted two considerations for developing a de minimis waiver for new agriculture. First, findings must be made that ensure no adverse effects on ESH. Second, de minimis waivers cannot be granted for development located within the appeal jurisdiction, which as noted in paragraph a. above, encompasses 92% of the Coastal Zone within the Gaviota Coast Plan area.

County staff recently investigated the categorical exclusion process for opportunities to exclude other types of agricultural structural development and determined the pursuit of the process would

not yield much benefit. First, the same finding regarding no effects on ESH must also be made for a categorical exclusion. Second, the process to obtain a categorical exclusion and the requirements that would be included in a categorical exclusion order are somewhat vague; thus, the process to obtain a categorical exclusion order could take as long as an LCP amendment and the end product could have as many requirements as a CDP. Finally, a categorical exclusion order requires a 2/3 majority vote by the Coastal Commission instead of a simple majority. Thus, staff does not recommend a categorical exclusion as a viable option, and does not believe that the de minimis waiver would have much value since they are not allowed in the appeal jurisdiction.

Request: Staff recommends that the Board make several requests of the Coastal Commission.

- 1) Revise the Coastal Commission staff’s suggested Article II modifications to clarify that the removal of major vegetation for agricultural purposes shall not require a CDP if it complies with the standards below, as determined by the Director of P&D.
 - Does not occur on slopes of 30% 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 ESH areas (e.g., riparian corridors and wetlands).
 - Does not result in the removal of protected trees.
- 2) Revise the suggested Article II modifications to increase the historic timeframe for allowing the exemption for ongoing grazing and cultivation to 20 years to address the generational context of agriculture and the fallowing and rotation of grazing pastures and cultivated fields.
- 3) Revise the suggested Article II modifications to provide additional clarification and definition as to what constitutes exempt activities pursuant to the historic/ongoing agriculture exemption, especially as they would incentivize regenerative agricultural practices rather than damaging ones (such as overgrazing).
- 4) Revise the suggested Article II modifications to clarify the distinction between historic and new agricultural cultivation and grazing and provide consistency between Table 18-2 and the new Sections 35-430.D.2 and -4 in the Coastal Commission staff suggested modifications to Article II.

Coastal Commission staff indicated they are willing to consider a different timeframe for determining (and exempting) ongoing “historic” agriculture and are willing to work with staff on compromise language. The key consideration for the Coastal Commission staff in defining a “historic” timeframe is determining the point that ongoing agricultural operations cease, such that any agricultural after that time period would be considered new.

2. Gaviota Coast Plan Natural Resources Stewardship Policy NS-2: Environmentally Sensitive Habitat (ESH) Protection

The Coastal Commission staff’s suggested modification for Policy NS-2 revises the language entirely to address ESH protection within the Coastal Zone. The suggested modifications also include a definition of “resource dependent use” and provide several examples of what constitutes

such use. Following the workshop, County and Coastal Commission staff have reached agreement to support the inclusion of low impact campgrounds as a resource dependent use. This use would also be consistent with Coastal Commission staff's general support for low cost accommodations in the Coastal Zone.

In addition, as discussed in Item 1 of this Board Letter, above, and in public comment at the community workshop, there is community support for agriculture to be considered a coastal resource rather than development, and consider the benefits that regenerative agricultural practices can provide to other coastal resources, including ESH.

Request: Staff recommends that the Board request that the Coastal Commission revise the suggested modifications to Gaviota Coast Plan Policy NS-2 to add low impact campgrounds and regenerative agriculture to examples of resource dependent uses.

3. Gaviota Coast Plan Natural Resources Stewardship Policy NS-4: Environmentally Sensitive Habitat (ESH) Criteria and Habitat Types

As discussed in the Board Letter dated May 15, 2018, the Gaviota Coast Plan includes Policy NS-4, which sets forth criteria to be used for determining which habitats within the Gaviota Coast Plan area qualify as ESH. (Attachment 4, pages 2-3 presents the Coastal Commission staff's suggested modification to the Policy.) The Board-adopted Policy states in pertinent part that plant communities which have certain California Natural Diversity Database (CNDDDB) rarity rankings qualify as ESH (Board Letter dated May 15, 2018, Attachment 6, highlighted portions). The Policy then lists "*Rare Native Chaparral*" (as well as Coastal Scrub Habitats) that have a CNDDDB rarity ranking which qualify them as ESH.

Coastal Commission staff is recommending that the Coastal Commission modify Policy NS-4 in part to remove "Rare" from the policy. In addition, Coastal Commission staff is recommending the policy be modified to include as ESH any habitat that is especially valuable because of its special nature or role in the ecosystem which could be easily disturbed or degraded by human activities and development, consistent with the definition in the Coastal Act (Section 30107.5). The Coastal Commission staff stated in their staff report that all chaparral within the Gaviota Coast Plan area qualifies as ESH (Board Letter dated May 15, 2018, Attachment 3, pages 21-23, referencing in turn a memo prepared by Coastal Commission senior ecologist, Jonna D. Engel, Ph.D. attached to the Coastal Commission staff report).

As drafted, the modification to Policy NS-4 reads as if all chaparral would be considered ESH and, consequently, subject to the protections afforded to ESH. This would be a departure from how the County historically has treated native chaparral whereby only rare native chaparral qualified as ESH. In addition, County staff and the community are concerned that this modification would greatly expand ESH, and coupled with the modification to require a CDP for new grazing and cultivated agriculture (item 1 above) and a biological study (item 3 below), could potentially limit new agricultural activities or add significant costs that may curtail new or ongoing agriculture, leading to pressure to convert agricultural lands to other uses and a loss of agriculture over time, which would be inconsistent with the Coastal Act.

Attendees at the workshop also commented that light to moderate grazing, as well as other restorative agricultural practices, such as carbon farming, when well-managed, can benefit some native plant species and ESH and should therefore be recognized as a use that can complement and support the protection of ESH, while engaging new agricultural practices that support both agricultural and biological coastal resources.

At the community workshop, Coastal Commission staff clarified that they cannot limit the ESH designation to only rare types of chaparral because it does meet the basic definition of “especially valuable” as described in Dr. Engel’s memo. However, Coastal Commission staff also stated it was not their intent to protect all stands of chaparral as ESH. Rather, the Coastal Commission staff indicated a willingness to work with County staff and provide clarifying criteria to identify when stands of chaparral would be considered ESH.

Request: Staff recommends that the Board request that the Coastal Commission restore “Rare” to Policy NS-4 to reflect the County’s intent to protect the rare and not the demonstrably secure types of chaparral. In addition, staff recommends that the Board request that the Coastal Commission provide clarifying criteria to identify when stands of chaparral would be considered ESH. Criteria should include the condition and integrity of the habitat, considering attributes such as patch size and connectivity, dominance by invasive/non-native species (the number of, and/or, percent cover of invasive/non-native plant species), the level of disturbance, the proximity to development, and the level of fragmentation and isolation. Existing developed areas and existing fuel modification areas (for existing structures) required by the County Fire Department would not meet the definition of ESH.

4. Article II Requirement to Submit a Biological Study

Related to the modification of Policy NS-4, Coastal Commission staff suggested a modification that adds to the permit requirements of the Gaviota Coast Plan area, the submittal of a detailed biological study when an application is submitted for a CDP for any new development on a lot that supports native habitat, habitat that may support rare species, may be part of a wildlife corridor, and/or potentially supports an ESH area. Coastal Commission staff stated at the workshop that part of the reason for adding the detailed biological study requirement to Article II is due to the especially valuable biological resources (of statewide importance) that qualify as ESH and the lack of an update to the ESH Overlay map within the Coastal Zone to identify their locations. Therefore, there is little clarity or certainty as to where ESH areas might be located.

The detailed requirements for the biological study are extensive. County staff and the community have several concerns with this modification. First, both the modification language and the location of the biological study indicates that the study would be required for the vast majority of CDP applications, including applications for any new or expanded agriculture or grazing (no matter how small) due to the permit requirements for agriculture under the CC staff’s suggested modifications.

Second, the study would be required for any “lot” with native habitat not just for projects that may affect habitat and, as drafted, appears to require the study for entire lots, instead of only the areas that would be disturbed by the proposed development.

Third, County staff does not believe that a detailed list of requirements for an adequate biological study belong in a zoning ordinance; Coastal Commission staff disagrees. The County includes requirements for a biological study in the County’s Environmental Thresholds and Guidelines Manual. Although the Coastal Commission does not recognize this document as it has not been certified, the County has relied on these requirements for over 20 years, including in the Coastal Zone. Furthermore, if any of the biological study requirements were to change, the County would then be required to process an LCP Amendment to address those changes. County staff would prefer that it be removed from the suggested modifications. However, if the Coastal Commission continues to require it, County staff recommends it be moved to an appendix to Article II, similar to the Repair and Maintenance Guidelines.

At the workshop, Coastal Commission staff indicated a willingness to work with County staff to: (1) clarify the requirements do not apply to the entire lot or existing developed and disturbed areas, and (2) work with County staff to identify an appropriate location for the biological study requirements in Article II.

Request: Staff recommends that the Board request that the Coastal Commission revise its modification to remove the biological study detailed requirements from the Article II amendment or, at the very least, relocate it as an appendix to Article II. Second, staff recommends that the Board request that the Coastal Commission revise its modification to revise permit requirements to:

- 1) Allow the County the discretion to determine when a biological study is required, as some proposed developments would be located in areas that are already disturbed and do not support native habitat, rare species, potential ESH, or wildlife corridors.
- 2) Limit the biological study requirement to the area of disturbance associated with a proposed development.
- 3) Not require a biological study for areas of historic and/or ongoing grazing and agricultural cultivation.

Staff also recommends that the Board suggest that the Coastal Commission pursue state efforts (for example, the California Department of Fish and Wildlife’s VegCAMP mapping program) or other state funding to map Gaviota Coast Plan habitats considering the statewide importance of the Gaviota Coast’s habitats and the cost to local jurisdictions to conduct such mapping efforts.

5. Gaviota Coast Plan Natural Resources Stewardship Development Standard (Dev Std) NS-2 and Article II Subsection 35-440.E: ESH Setbacks and Buffers – Riparian Habitats

As adopted by the Board of Supervisors, Gaviota Coast Plan Dev Std NS-2 identifies specific minimum setback buffers for development adjacent to riparian, wetland, and monarch butterfly ESH areas. It provides criteria for the establishment of appropriate setback buffers for other types of ESH. Finally, as adopted, Dev Std NS-2 provides criteria to allow the adjustment of riparian ESH buffers upward or downward on a case-by-case basis, subject to a number of criteria to determine when adjustment could be allowed. The allowance for the adjustment of riparian ESH buffers mirrors Policy 9-37 of the certified Coastal Land Use Plan (CLUP). Of note, existing CLUP policies do not provide allowances to adjust buffers downward for non-riparian ESH.

The Coastal Commission staff's suggested modification provides prescribed minimum buffers for the other types of ESH rather than the establishment of the buffers on a case-by-case basis. More significantly, the suggested modifications revise the riparian buffer adjustment to allow a downward buffer adjustment only in the circumstance that the minimum buffer would preclude reasonable use of property; thus, requiring an Economically Viable Use Determination. The suggested modifications also add the policy requirements to the development standards of the Article II amendment.

County staff believes that the suggested limitation to the allowance of a downward riparian buffer adjustment is unnecessary and inconsistent with CLUP Policy 9-37. There is no evidence that the discretion the County has exercised in regards to this buffer adjustment policy has been abused in the past. The suggested modification would preclude consideration of site specific factors and history of use, and would require a takings determination (the Economically Viable Use Determination) in every instance where the mandatory minimum 100-foot riparian buffer could not be feasibly met.

Request: Staff recommends that the Board request that the Coastal Commission revise its modification to restore language to the policy that would allow the County full discretion to adjust riparian habitat (a.k.a. streams and creeks) buffers downward on a case-by-case basis, consistent with the buffer adjustment criteria of CLUP Policy 9-37 and Gaviota Coast Plan Dev Std NS-2. Staff also recommends that corresponding revisions be made to Article II Subsection 35-440.E, which adds the same requirements to coastal zoning ordinance.

6. Permitting Requirements for Certain Residential Accessory Structures

As discussed in the Board Letter dated May 15, 2018, Coastal Commission staff suggested modifications to Article II set forth new definitions for a "principal permitted use" versus a "non-principal permitted use" (Board Letter dated May 15, 2018, Attachment 5, pages 9-10). Table 18-2 of Article II, as proposed to be modified by Coastal Commission staff, identifies which types of development would be considered a "principal permitted use" versus a "non-principal permitted use" (Board Letter dated May 15, 2018, Attachment 5, pages 20-23). Under the existing certified Article II, the County does not separate uses as principal permitted or non-principal permitted. The suggested modification would have the effect of dividing the existing "permitted uses" of Article II into uses that are considered principally permitted and those that are not.

The key distinctions between a "principal permitted use" and "non-principal permitted use" are (1) the degree to which they implement the designated land use and intent and purpose of a zone; and (2) principal permitted uses are not subject to a hearing and appeal to the Coastal Commission, whereas non-principal permitted uses require a hearing and are subject to appeal to the Coastal Commission. As a consequence of the suggested modification, some allowable land uses that today would be permitted with a CDP, without a hearing and without being appealable to the Coastal Commission, would, after certification, require a hearing and be subject to appeal (i.e., require the processing of a CDH) (Attachment 5).

Article II currently allows one-family dwellings, home occupations, and residential accessory structures, including guest houses, artist studios, and pool houses/cabanas, to be permitted in the Agriculture II (AG-II) zone with a CDP without a hearing. However, Coastal Commission staff identifies agriculture as the principal permitted use of the AG-II zone, and states in its staff report,

“accessory uses and structures that are incidental, appropriate and subordinate to the designated principal permitted use may be considered a component of the principal permitted use ... and can be processed as a component of the principal permitted use ...” (Board Letter dated May 15, 2018, Attachment 3, page 64). Thus, the suggested modification would allow the primary dwelling on an AG-II-zoned lot to be considered principal permitted, but according to this rationale, residential accessory uses and structures would not be principal permitted uses as they are accessory to the dwelling, not accessory to the principal agricultural use of the land. Attachment 6 presents a summary of the suggested identification of uses as principal permitted or non-principal permitted uses and the permits that would be required.

County staff worked with Coastal Commission staff to appropriately categorize accessory uses on AG-II-zoned lots. For example, County and Coastal Commission staff agreed that ancillary agricultural accessory structures would be considered principal permitted uses. In addition, following ongoing conversations with County staff and public comments at the workshop, Coastal Commission staff agreed to revise the suggested modification to allow home occupations and most ancillary residential accessory uses and structures to be considered principal permitted uses, such as garages, storage sheds, and pools. Although County staff and Coastal Commission staff continue to disagree regarding guest houses, artist studios, and pool houses/cabanas; public comment at the community workshop expressed little support to identify these three residential accessory structures as principal permitted uses.

Request: Staff recommends that the Board request that the Coastal Commission revise its modification to identify ancillary residential accessory structures and home occupations as “principal permitted uses.”

7. Economically Viable Use Determinations - Gaviota Coast Plan Land Use Policy LU-2: Policy Implementation and Proposed Article II Section 35-480

As adopted, Gaviota Coast Plan Land Use Policy LU-2 makes a basic statement that implementation of plan policies shall not result in a taking of private property for public use without just compensation. In addition, several policies state that implementation of policies shall not preclude reasonable use. The Coastal Commission staff suggested modifications would require an Economically Viable Use Determination (EVUD) as part of the Coastal Development Permit application review process if an applicant asserts that implementation of the plan would not allow for a reasonable use of the property. The suggested Article II process includes a detailed list of submittal information and findings that County planning staff would have to make in order to allow a deviation from a policy or a standard in order to avoid a taking of private property and allow a reasonable use.

Although the County has accepted this modification (while fundamentally disagreeing with it) for two other community plans with Coastal Zone components (Toro Canyon Plan and Eastern Goleta Valley Community Plan), County staff believes that significant differences between the Gaviota Coast Plan area as compared to the two other community plan areas make this process infeasible.

First, the process requires findings be made by County planning staff that application of the policies would not provide an economically viable use, that application of the policies would interfere with the applicant’s investment backed expectations, and that the development is the minimum necessary

to avoid a taking. Findings regarding investment backed expectations and submittal information such as when a property was purchased and how much was paid raises questions as to whether and how to incorporate real estate speculation into the analysis. Claims of a taking of private property should be addressed by the courts, not planning staff that do not have the necessary legal or financial training to do so.

Second, in Toro Canyon and Eastern Goleta Valley, the primary uses are residential on small or relatively small lots, with some lots in Toro Canyon mapped entirely environmentally sensitive habitats. In the Gaviota Coast Plan area, the predominant use and zoning is agriculture on large lots (dozens to hundreds of acres in size). The next most common uses are preserves, such as Arroyo Hondo and Dangermond, and recreation (County and State parks). Many AG-II zoned lots have been owned by the same families for generations, where purchase price and findings such as investment backed expectations seem to have no practical application. Similarly, preserves were purchased by non-profit organizations using donated funds with a goal to preserve natural, historic, and cultural resources, while public parks are intended for the recreational use and enjoyment of the public and are managed by public agencies without any investment or profit motives. Thus, for these uses the EVUD also seems to be particularly difficult to apply, especially for planning staff who do not have the necessary legal or financial training to do so, and considering the seemingly inappropriate submittal information and findings.

Finally, the suggested Article II language presumes a landowner would submit an application asserting a taking of private property before a proposal has been reviewed (and denied), and lacks clarity as to who decides.

Request: Staff recommends that the Board request that the Coastal Commission revise its modification to delete modified Policy LU-2 for the Coastal Zone from the Gaviota Coast Plan amendment (and allow Policy LU-2 for the inland and coastal areas to apply everywhere, as adopted by the Board), and delete the proposed EVUD process (Section 35-480) and all related references from the Article II amendment.

8. Gaviota Coast Plan Parks, Restoration, and Trails Policy REC-8: Protection of Existing Coastal Access

The County adopted Policy REC-8 to “[e]nsure to the extent feasible that development does not interfere with the Public’s right of access to the sea where acquired through use.” This simple policy statement allows the County flexibility to address the issue of public access to the extent that it can do so legally, depending upon the site-specific issues surrounding a proposed development and public access that has not been formalized in the past through the granting of an easement for such access.

The Coastal Commission staff suggested modification would delete “to the extent feasible” and add language so that if substantial evidence that implied dedication or prescriptive rights may exist, the County would protect the public access area through public acquisition measures or permit conditions for new development, which incorporate measures to provide, maintain, or protect public access (Board Letter dated May 15, 2018, Attachment 4, page 15). County staff believes that this language, as drafted, would require the County to recognize unadjudicated prescriptive rights of public access, contrary to case law, which clarifies that the County does not have such authority.

Coastal Commission staff stated that they will continue to work with County staff to revise the policy such that the County will not be faced with policy direction for which it has no authority.

Request: Staff recommends that the Board request that the Coastal Commission revise its modification to restore “to the extent feasible” to Policy REC-8 and strike language directing the county address implied dedications and prescriptive rights.

Next Steps:

County and Coastal Commission staff will continue negotiating to address the outstanding issues raised in this Board Letter in preparation for the August hearing. In addition, County staff will incorporate any additional comments or revisions to the Board of Supervisors letter to the Coastal Commission that the Board makes on July 17, 2018. The Coastal Commission intends to reschedule the Gaviota Coast Plan and associated amendments to Article II for its August hearing (August 8, 9 and 10, 2018) to be held in Redondo Beach. The Coastal Commission will decide whether to certify the Gaviota Coast Plan and associated amendments to Article II with the modifications suggested by Coastal Commission staff, or make additional modifications considering the County’s comments and requests. .

Fiscal and Facilities Impacts:

Budgeted: Yes

Funding for the current work effort (to complete the Coastal Commission certification process for the Gaviota Coast Plan) is included in the Board of Supervisors-adopted Planning and Development Department budget in the Long Range Planning Budget Program on page D-272 of the adopted Fiscal Year 2018-2019 budget. There are no facilities impacts.

Special Instructions:

The Clerk of the Board shall provide a copy of the minute order to P&D, attention: David Villalobos.

Attachments:

1. Board of Supervisors Letter to the Coastal Commission regarding the Gaviota Coast Plan
2. Notice of Exemption
3. Principal Issues Matrix
4. Coastal Development Permit Requirement - Map
5. Permit Path – CDP vs. CDH
6. Principal and Non-Principal Permitted Uses

The Board Letter and all related information for the May 15, 2018, hearing regarding this project can be found on the Board’s website for this project at the following link:

<https://santabarbara.legistar.com/LegislationDetail.aspx?ID=3500012&GUID=2C3FEEE7-7021-4E42-956F-459EBA33837D>

Authored by:

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