



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: 11/2/2010
Placement: Departmental
Estimated Tme: 60 minutes
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
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 Suggested Modifications to County and Montecito Land Use and
Development Codes - Coastal Commission hearing of November 18, 2010

County Counsel Concurrence

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Other Concurrences: N/A

Recommended Actions:

That the Board of Supervisors:

- A. Receive a report on the four informational sessions conducted by the Planning and Development Department;
- B. Review the status of suggested modifications (based on newest Coastal Commission staff report);
- C. Provide direction to the Planning and Development Department regarding how the Board of Supervisors would like to proceed in presenting its comments regarding the recommended modifications to the Coastal Commission for their consideration at the November 18, 2010 hearing;
- D. Authorize the Chair of the Board of Supervisors to sign the letter to the Coastal Commission (see Attachment A) as revised by the Board of Supervisors; and,
- E. Select up to two Board members to represent the County at the Coastal Commission hearing on November 18, 2010.
- F. Continue this hearing until December 14, 2010 so that the Board may provide direction to the Planning and Development Department as to how it wants to proceed should the Coastal Commission take final action at their November 18, 2010 hearing.

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 6th, July 13th, July 27th, August 3rd, and September 7th.

At the September 7th hearing your Board received a report on the Coastal Commission's August 12, 2010 hearing regarding the County and Montecito Land Use and Development Codes (LUDCs), directed the Planning and Development Department to conduct four informational sessions to further inform the public regarding the modifications to the LUDCs currently suggested by the Coastal Commission staff and obtain additional public input, and continued the hearing to November 2, 2010 so that the Planning and Development Department could report back to your Board regarding the informational sessions and any further revisions to the suggested modifications made by the Coastal Commission staff since the hearing on August 12th. The November 2nd hearing was continued to November 9th due to the late distribution of the Coastal Commission staff report (draft report received on November 2nd, officially released on November 5th).

The LUDCs will next be considered by the Coastal Commission at their upcoming hearing in Santa Monica on November 18th.

2.0 DISCUSSION/ANALYSIS

2.1 Informational Sessions

As directed by your Board at the September 7, 2010 hearing, the Planning and Development Department conducted four informational sessions to further acquaint the public with the scope and ramifications of the suggested modifications to the County and Montecito Land Use and Development Codes proposed by the Coastal Commission staff and obtain additional public input. In addition, staff met on several occasions with interested individuals and stakeholder groups. The following shows the dates and locations of these sessions:

October 4 th	Montecito Hall, 1469 East Valley Road, Montecito
October 6 th	Canalino Elementary School, 1480 Linden Avenue, Carpinteria
October 11 th	Vista de Las Cruces School 9467 San Julian Road, Gaviota
October 12 th	Goleta School District, 401 North Fairview Avenue, Goleta

There were approximately 45 to 60 people at each session. The issue areas raised by the public are summarized below. A more extensive summary of the public comments is included in Attachment B.

Agriculture: Increased permit requirements; need for documentation to establish historic use; restrictions on grazing; restrictions on multi-generation housing.

Animal Keeping: County enforcement of permit requirements; increased permit costs will render existing stables economically non-viable.

Beach Stairways: Use of private stairways for emergency access; difficulty in providing public access through private property; liability in case of accidents; increased potential for illegal repairs that may damage coastal bluffs.

Costs: Increased permit costs and delays due to permit requirements for non-Principal Permitted Uses; counter-productive for habitat restoration projects.

Process: Suggested modifications may interfere with Community Plan process.

Sea Level Rise: No apparent scientific basis for this new requirement.

Vegetation Removal: Requiring permits for vegetation removal may interfere with Fire Department required clearance.

Although many of the issues and questions raised at the informational sessions were similar to those raised at other public hearings and presentations, the sessions did provide a good opportunity for the public to meet with County staff in an informal setting and direct their questions to a particular portion of the County. Valuable input was received from a variety of stakeholders including agriculturalists, environmental interests, property owners, and school representatives.

These sessions were successful both in terms of educating the public about the specific nature of the suggested modifications as well as dispelling many misconceptions regarding the suggested modifications.

2.2 Existing and Proposed Permit Requirements

As submitted for certification by the County, and consistent with the existing permit requirements in the certified Article II Coastal Zoning Ordinance, the use tables in the LUDCs divide uses into the following categories:

- uses that are Exempt from a permit requirement;
- uses that are Permitted Uses that require the approval of a Coastal Development Permit (CDP);
- uses that require the approval of a Conditional Use Permit and CDP; and,
- uses that are not allowed in a particular zone.

CDPs for development that is defined as appealable development (e.g., the development is located within the Appeals Jurisdiction of the Coastal Zone, or is within 100 feet of a wetland, or is within 300 feet of the top of a coastal bluff) require a public hearing if a public hearing is otherwise not required (e.g., the CDP is associated with a Conditional Use Permit or Development Plan that requires a public hearing). If the County approves a CDP for appealable development, that decision may be appealed to the Coastal Commission once local appeals have been exhausted.

One of the major changes proposed by the Coastal Commission staff suggested modifications is to divide those uses currently listed in the LUDC as requiring only a CDP into (1) uses that are designated as a Principal Permitted Use within a particular zone and (2) uses that are designated as a Permitted Use. A Principal Permitted Use may be allowed with a CDP without a public hearing if the project is not otherwise considered to be appealable development due to location, etc. However, uses that are designated as a Permitted Use are always considered appealable development, and thus are subject to a public hearing. Also, since the project is considered to be appealable development, a decision by the County to approve a CDP for a Permitted Use is subject to appeal to the Coastal Commission once local appeals have been exhausted. CDPs for appealable development are also referred to as appealable CDPs.

The basis to designate uses as either a Principal Permitted Use or a Permitted Use is provided in the Coastal Act in Section 30603(a)(4) of the Public Resources Code (PRC) which requires for coastal counties (but not cities) that any development that is not designated as the Principal Permitted Use under the zoning ordinance requires an appealable CDP.

Section 30603 Appeal of actions taken after certification of local program; types of developments; grounds; finality of actions; notification to Commission

(a) *After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:*

...

- (4) *Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).*

...

The overall effect of the Coastal Commission staff's suggested modifications would be to require a CDP for certain uses that are currently exempt, require an appealable CDP for certain uses that currently only require a non-appealable CDP, and to prohibit certain uses that may currently be allowed with a Conditional Use Permit.

However, existing uses that would require a CDP under the suggested modifications that were established when a CDP was not required are considered "grandfathered" and do not need a CDP, appealable or otherwise, to continue. A CDP would only be required if the use were to be expanded, or require some sort of new structural development (e.g., an addition to an existing structure) in a manner that was not otherwise exempt from the CDP requirement.

2.3 Summary of remaining issues regarding the suggested modifications

The following information provides a summary of the status of the remaining critical suggested modifications. This information includes any revisions to those suggested modifications made by the Coastal Commission staff subsequent Coastal Commission hearing on August 12th. This information also shows how the Coastal Commission staff has amended the suggested modifications since they were first released in the March 30, 2010 staff report.

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.	<p>Historic use: Exempt from CDP 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 staff is recommending that CDPs be required for new cultivated agriculture, orchards and vineyards based on Coastal Act Section 30106 that defines development as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is

brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). (emphasis added)

Since all development within the Coastal Zone requires a CDP (unless otherwise designated as exempt), the Coastal Commission staff's position is that since the expansion of agriculture can constitute a "change in the density or intensity of use of land" a CDP is required. When staff reviewed this suggested modification with stakeholders from the agricultural community, they expressed a great deal of concern with the new requirement for a CDP due to both the costs of obtaining permits and the potential for delay related to processing time and potential for appeals. At the urging of County staff, the Coastal Commission staff revised the original suggested modification (which would have required a CDP for all new cultivated agriculture, orchards and vineyards) to include exemptions for new agriculture provided the new agriculture complies with a set of development standards designed to protect sensitive coastal resources. These standards are listed in the table above.

Planning and Development Department staff requested that the language of the suggested modification be further revised to delete the 50 cubic yard threshold from the exemption criteria; however, this is not supported by the Coastal Commission staff. The Coastal Commission staff did, however, clarify that this threshold only relates to grading that results in landform alterations (e.g., benching for orchard development) and does not apply to tilling or planting of individual trees.

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>

Similar to the discussion above, the Coastal Commission staff's position is that since the expansion of grazing can constitute a "change in the density or intensity of use of land" a CDP is required. County staff also reviewed this suggested modification with agricultural stakeholders and they expressed the same concerns they had with the proposed requirement for a CDP for new cultivated agriculture. Additionally they were concerned with how the reference to intensification of grazing was going to be interpreted. In response, County staff worked with the Coastal Commission staff to revise the original suggested modification (which would have required a CDP for all new grazing operations) to include exemptions for new grazing provided the areas to be grazed complied with the same set of development standards listed for new cultivation and delete the reference to intensification of grazing. Later, after reviewing the revised modification with agriculturalists, County staff recommended that these development standards not be included due to the difficulty in implementing them (e.g., having to install fencing to keep cattle away from creeks and off slopes), and the Coastal Commission staff did not list them in the suggested modification included in the August 11, 2010 Coastal Commission staff report. However, the Coastal Commission staff now feels that is important to have consistent exemption language for cultivated agriculture and grazing, and has re-inserted the standards into the current language of the suggested modification included in the November 2, 2010 Coastal Commission staff report. County staff also believes that including these criteria is not a meaningful change due to the practical difficulty in implementing them and the increased potential for confusion.

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 without hearing unless constitutes appealable development • A Permitted Use in Resource Management and Residential zones; new animal keeping constitutes appealable development; requires a CDP with hearing. 	<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 without hearing unless constitutes appealable development • 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).

The Coastal Commission staff's position is that the keeping of animals can constitute a "change in the density or intensity of use of land" and therefore a CDP is required unless designated as exempt (see

above chart). They also argue that because animal keeping can degrade sensitive coastal resources (e.g., riparian areas, sensitive habitats) inconsistent with Coastal Act policies that act to protect these resources, a CDP is necessary to properly regulate animal keeping activities. The original suggested modification would have required a CDP for all animal keeping not designated as exempt, and further designated the keeping of livestock as a Permitted Use in non-agricultural zones which would have required a CDP with hearing. Several members of the public commented that this was an onerous requirement, especially since it would change the permit requirement from the existing situation where keeping a horse was exempt from a CDP to one requiring a CDP with hearing and potential for appeal to the Coastal Commission. Again, County staff was able to work with the Coastal Commission staff to revise the suggested modification to designate the keeping of horses for personal use in residential zones as a Principal Permitted Use instead of a Permitted Use. The allowed number of horses would still be limited by the size of the property. County staff also requested that keeping of horses for personal use also be designated as a Principal Permitted Use in the resource protection zones; however, the Coastal Commission staff does not support this change due to the sensitive nature of areas zoned for resource protection.

Although there is language in the Coastal Act that supports requiring a CDP for new animal keeping activities, there is no direct language addressing why the keeping of horses as accessory to a residential use should be a Principal Permitted Use in some zones but not in others; rather, the revised language of the suggested modification represents Coastal Commission staff's interpretation of Coastal Act policy requirements. County staff continues to request that the Coastal Commission modify the suggested modification to designate the keeping of horses for personal use as a Principal Permitted Use in all zones when accessory to the primary residential use of the property.

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.	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. <ul style="list-style-type: none"> • Adjacent includes land separated by a street or road, not including a highway. • Schools may reoccupy former facilities.

The original suggested modification simply deleted the allowance for schools in agricultural zones pursuant to a Conditional Use Permit. The Coastal Commission staff is suggesting this modification in order to be consistent with Coastal Act Sections 30241 (Prime agricultural land; maintenance in agricultural production) and 30242 (Lands suitable for agricultural use; conversion). Section 30241 states in part that “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 ...” Section 30242 states in part that “all other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.” However, while these policies seek

to preserve and protect land suitable for agriculture, the Coastal Act does not affirmatively prohibit schools on land suitable for agriculture. Therefore, the prohibition of new schools on agricultural zoned property represents an interpretation by the Coastal Commission staff that is not directly referenced in the Coastal Act.

Planning and Development Department staff was concerned with the original language of the suggested modification because existing schools located in the Coastal Zone would be rendered nonconforming and thus would not be able to expand or make any structural repairs to the existing facilities. Representatives of local school districts also contacted County staff to express their concerns that the suggested modification would (1) interfere with their ability to expand onto neighboring property owned by the school district, and (2) possibly prevent their ability to re-occupy former school facilities located in the Coastal Zone. In response to these concerns, County staff worked with the Coastal Commission staff to revise the suggested modification to (1) provide that existing school facilities remain as conforming uses that can be expanded and/or reconstructed, including expanding on to adjacent lots owned by the school, and (2) allow for the Vista del Mar School to re-occupy their former school buildings located on the Gaviota Coast.

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 staff argues that because the definition of development under the Coastal Act includes a “change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits,” that (1) a CDP is required for all applications for subdivisions, lot line adjustments and voluntary mergers, and (2) because these are not designated as a Principal Permitted Use that a public hearing is required. County staff agrees that subdivisions, because they create an increase in the number of lots, constitutes development; however, it is not the case that lot line adjustments and voluntary mergers, neither of which are land divisions that result in an increase in the number of lots, always cause a change in the density or intensity of use of land.

For example, many lot line adjustments are simple property exchanges between adjacent owners to that landscaping and fences do not straddle lots. Because lot line adjustments are already subject to a public hearing, the requirement for an appealable CDP does not impose any additional processing requirements except that a decision of the County to approve the CDP may be appealed to the Coastal Commission. However, voluntary mergers are currently processed solely by the County Surveyor in a ministerial fashion and there is no existing planning permit requirement. Requiring an appealable CDP would mean that voluntary mergers would be subject to a public hearing and appeal to the Coastal Commission.

County staff attempted to convince the Coastal Commission staff to revise the language of the suggested modification to include that a voluntary merger could be exempt from a CDP if the Director determined that the merger would not result in an increase in the intensity of use of the subject lots.

This was not supported by the Coastal Commission staff primarily because there does not appear to be a method to appeal such a determination to the Coastal Commission outside of a CDP process.

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 foot. • 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.

The Coastal Commission staff is basing this suggested modification on Coastal Act Section 30603(a)(4) which requires for coastal counties that any development that is not designated as the Principal Permitted Use under the zoning ordinance requires an appealable CDP; within agricultural zones, agricultural uses are the Principal Permitted Use. As originally proposed by Coastal Commission staff all residential development on agriculturally zoned land (except for agricultural employee dwellings) would have required an appealable CDP; however, County staff was able to successfully argue that farm and ranch dwellings are typically a normal and important part of the overall agricultural operation such that the Coastal Commission staff revised the suggested modification to provide that a residence that provides housing for the operator of the agricultural operation would be a Principal Permitted Use if it met the restrictions listed above in the table. Based on input from County staff they subsequently revised the modification to allow that the Principal Permitted residence may also provide housing for the owner of the lot, even if the owner is not the operator of the agricultural operation. Dwellings that do not meet these restrictions may still be permitted, but the CDP would be subject to a public hearing and a decision to approve the CDP could be appealed to the Coastal Commission.

County staff reviewed the revised modification with agriculturalists who expressed their concern that these limitations on house size and development area would preclude the development of multi-generation housing on agricultural lots due to the costs and other factors involved in obtaining an appealable CDP. County staff tried to convince the Coastal Commission staff to revise the suggested modification to increase the size of the development area to reflect that which is allowed for agricultural properties subject to agricultural preserve contracts (e.g., a range of 10,000 square feet to two acres depending on lot size and the type of preserve); however, the Coastal Commission staff has not agreed with this request.

The Coastal Act does not provide any specific parameters on what residential uses are allowed on agriculturally zone property, and therefore it appears the Coastal Commission staff is interpreting the Coastal Act policies in a manner that restricts what level of residential use can be considered a Principal Permitted Use. Therefore, County staff continues to recommend that the Coastal Commission modify the suggested modification to provide flexibility in the size of the development area (for example, to reflect that which is allowed for agricultural properties subject to agricultural preserve contracts).

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)
<p>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</p>	<p>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.</p>	<p>All accessory uses are designated as a Principal Permitted Use if the use:</p> <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. <p>Exception: residential second units.</p>

The Coastal Commission staff is also basing this suggested modification on Coastal Act Section 30603(a)(4) which requires for coastal counties that any development that is not designated as the Principal Permitted Use under the zoning ordinance requires an appealable CDP. As summarized in above table, the original suggested modification designated only a very limited number of accessory uses as Principal Permitted Uses. However, County staff was able to work with Coastal Commission staff to increase the number of principal permitted accessory uses to include essentially all typical accessory uses except for artist studios and guesthouses; this was reflected in the July 28, 2010 Coastal Commission staff report. Based on further interaction between Coastal Commission and County staff, the Coastal Commission staff further revised their suggested modification to include artist studios and guesthouses as Principal Permitted Uses.

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)
<p>Engineered staircases & access ways allowed on bluff face; private versus public use not specified.</p>	<p>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.</p>	<p>Lawful, existing private staircases & access ways considered nonconforming; however:</p> <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.

As originally proposed this suggested modification would (1) restrict any new beach access stairways

constructed on a coastal bluff face to those that provide public access and (2) make any existing private beach access stairways constructed on a bluff face nonconforming such that structural repairs could not be allowed. After discussions with County staff, the Coastal Commission staff first revised the suggested modification to allow structural repairs provided that any structural repair not exceed 50 percent of the structural elements of the stairway (not including stair treads and handrails) on a cumulative basis. Also, to be consistent with Section 30610(g)(1) regarding the reconstruction of structures destroyed by a disaster, the Coastal Commission staff further revised the suggested modification to include that a private beach access stairway that is destroyed by a natural disaster may be completely rebuilt in the same location. It should be clarified that this suggested modification regarding private beach access stairways would only apply to stairways constructed on a coastal bluff face, and not to private stairways built on top of other structures such as sea walls that are located adjacent to or on the beach.

The Coastal Commission is basing this suggested modification on several Coastal Act policies that seek to (1) protect coastal bluff habitats, geologic stability, and visual resources, (2) prevent activities that lead to increased coastal erosion, and (3) prohibit development that creates the need for the construction of shoreline protective devices (e.g., seawalls). However, these policies would apply equally to both public and private access stairways, and these policies do not affirmatively prohibit the construction of access stairways on the bluff face that only provide private access. Therefore, it appears that the Coastal Commission staff interprets these policies in a manner that prohibits private access stairways, and that interpretation is reflected in the suggested modification that would prohibit any new private coastal bluff access stairways and limit the repairs of lawful, existing stairways.

Therefore, County staff continues to recommend that the Coastal Commission modify the suggested modification to delete the language that (1) would restrict access stairways to those that provide public access and (2) limits the ability to structurally alter existing, lawful private stairways that are not available for use by the general public. All such stairways are located within the Appeals Jurisdiction so that any structural repairs would still be subject to a CDP that requires a public hearing, and any decision by the County to approve such repairs could be appealed to the Coastal Commission.

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.	<p>Projects located near the shore must submit coastal hazards analysis.</p> <p>Must use prescribed sea level rise scenarios based on type of project:</p> <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. 	<p>Projects located near the shore must submit coastal hazards analysis.</p> <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 basis for this suggested modification is Coastal Act Section 30253 that requires that development be sited and designed to minimize risks, assure stability and structural integrity, and neither create nor contribute significantly to erosion or require the construction of protective devices that would substantially alter the natural landforms along bluffs and cliffs. Requiring such a sea level rise analysis provides critical information that can be used during the review of a project to ensure that the project is

sited correctly so as to be consistent with Section 30253 and not require the construction of seawalls, etc., to protect the project.

At the request of County staff the Coastal Commission initially revised the language of the original suggested modification to eliminate the specific sea level rise scenarios and instead rely on the best scientific data available when the project is reviewed. However, Coastal Commission staff is now proposing to insert new minimum sea level rise standards based on a recent action by the Coastal Commission in October regarding an amendment to the Humboldt County Local Coastal Program that included sea level rise scenarios.

2.4 Draft Letter to the Coastal Commission for consideration at their November 18th hearing

Attached to this Agenda Letter is a draft letter to the Coastal Commission for their November 18, 2010 hearing. Staff seeks input from the Board on the draft letter and authorization for the Chair of the Board to sign the letter.

2.5 Board of Supervisors Future Processing Steps

Following the Coastal Commission decision on the County and Montecito LUDCs, the Board will have six months from the date of the Coastal Commission's action to evaluate the modifications as adopted by the Coastal Commission and decide whether or not to accept the modifications. If the Board chooses not to accept the modifications, then the existing Coastal Zone zoning regulations as contained in existing Article II zoning ordinance will remain in effect. Many people have expressed that this would have the positive effect of maintaining the existing Article II regulatory scheme for the Coastal Zone that does not have all the controversial aspects contained in the suggested modifications. However, all the positive benefits that the County sought to gain by re-formatting Article II into the Land Use and Development Code (e.g., have a zoning ordinance that is easier to read and understand by the public and staff) would be lost unless the County decides at a later date to re-format Article II. However, it is likely that the Coastal Commission staff will propose very similar modifications in the review and certification process of any future amendments to Article II submitted by the County, including those mentioned below.

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 (2), if your Board decides to not accept the certified modifications, 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 (County LUDC)
- Isla Vista Master Plan (County LUDC)
- Santa Barbara Ranch Naples Townsite Zone (County LUDC) and Transfer of Development Rights Program (County and Montecito LUDCs)
- Process improvements regarding permit applications for overall sign plans, road naming, septic systems within Special Problem Area, solar energy systems, special care facilities, and time extensions (County and Montecito LUDCs)
- Time extensions due to economic hardship considerations (County and Montecito LUDCs).

Therefore, staff intends to return to your Board on December 14th for direction on how your Board wishes to proceed.

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.

Special Instructions:

The Clerk of the Board will send a copy of the Minute Order to the Planning and Development Department, attention Noel Langle.

Attachments:

- A. Draft Letter to the California Coastal Commission
- B. Summary of Public Comments Given at the Informational Sessions
- C. November 2, 2010 Coastal Commission Staff Report

Authored by:

Noel Langle (805.568.2067)

ATTACHMENT A: DRAFT LETTER TO THE CALIFORNIA COASTAL COMMISSION

November 9, 2010

Bonnie Neely, Chair, and Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Santa Barbara County Local Coastal Program Amendment No. MAJ-1-09 (Land Use and Development Code, Montecito Land Use and Development Code, and Two Parcel Rezone, Montecito)

Dear Chair Neely and Members of the Commission,

The Santa Barbara County Board of Supervisors greatly appreciates the time and effort your staff has committed to working with County staff to address the remaining substantive concerns with the suggested modifications as proposed by Commission staff. This includes the resolution of several issues subsequent to your Commission's hearing on August 12, 2010, including designating the keeping of horses for personal use as a principal permitted use in residential zones, designating artist studios and guesthouses as principal permitted accessory uses, allowing schools to re-occupy former facilities located in the Coastal Zone, and including the provision that existing, lawful private beach access stairways may be rebuilt if destroyed by a natural disaster.

However, the Santa Barbara County Board of Supervisors remains concerned about several of the suggested modifications that would require costly permits and public hearings not currently required and would delete several uses currently allowed by the County's certified coastal zoning ordinance. These modifications, which we feel are not necessary to ensure compliance with Coastal Act goals and policies, include:

- increasing the permit requirements for agricultural operations (including dwellings in agricultural zones);
- increasing the permit requirements for the keeping of animals that are normally accessory to a residential use;
- increasing the permit requirements for voluntary mergers of existing, separate legal lots that can reduce development potential;
- imposing new restrictions on existing, lawful private beach access stairways; and
- imposing minimum standards for sea level rise scenarios that may be superseded as better scientific data is developed.

The County Board of Supervisors understands that the goal of the suggested modifications is to implement the policies of the Coastal Act that seek to protect sensitive coastal resources including access to the coast. The County shares this goal but feels that the suggested modifications impose unnecessary increased costs and requirements on coastal landowners.

Where the intent of different Coastal Act policies must be balanced against each other, and where specific language in the suggested modifications is not supported by affirmative language in Coastal Act policies, we respectfully request that the Coastal Commission modify your staff's recommendations in a manner that addresses the concerns of the Board of Supervisors. This is especially important in regards to encouraging, preserving and protecting existing agricultural operations, which is consistent with both the policies of the Coastal Act and Santa Barbara County.

Sincerely,

Janet Wolf, Chair
Santa Barbara County Board of Supervisors

DRAFT

ATTACHMENT B: SUMMARY OF PUBLIC COMMENTS GIVEN AT THE INFORMATIONAL SESSIONS

Agriculture

- Permits should not be required for agricultural activities that were previously exempt under Article II.
- What level of documentation is required to establish an historic agricultural use in order to be exempt from a Coastal Development Permit requirement?
- Concerns about the permit requirement for grazing on slopes that exceed 30 percent. This effectively requires permits for all new grazing since the majority of grazing land is located on slopes of 30 percent or more.
- Concerns about the potential requirement for a Coastal Development Permit just to move a temporary corral.
- Would teaching classes on sustainable agriculture be prohibited given that new school facilities would no longer be allowed?
- If non-profit facilities are no longer allowed, how does this effect land owned by non-profit institutions?
- Restrictions on housing in agricultural zones discourages the provision of multi-generation housing and does not appear to be necessary to protect the agricultural use of the property.
- There should be an exemption for sustainable agricultural practices.
- Why is there a permit requirement to begin to graze an area that was previously cultivated? The land has already been disturbed.

Animal Keeping

- How is County going to enforce the permit requirements for the keeping of animals. If an animal is removed from a property or dies, does it require a permit to replace it?
- Horse boarding operations are already marginally sustainable fiscally. Additional permit requirements and costs may result in the closing of the few remaining stable operations.

Beach Stairways

- Existing private beach access stairways that are utilized in emergency situation should be allowed to be completely maintained and repaired so that they can be safely used by emergency responders or to provide an emergency escape route.
- How does a person provide public access if lives on a public street? How is parking proposed to be provided?
- If the public is allowed to use stairways located on private property, who is liable in case of an accident?
- If existing stairways are not allowed to be completely repaired, this may lead to additional bluff erosions due to work done without permits.

Coastal Resource Protection

- Coastal Commission serves a necessary function to help protect coastal resources.

Costs

- Requiring a Coastal Development Permit with a public hearing dramatically increases costs due to both permit fees and delays. The total costs included not only the permitting fees paid to the Planning and Development Department, but also costs related to the need to hire land use agents, architects, geologists, biologists, etc. Also costs of materials may increase due to delays.

Process

- Keep existing Article II in place so that Community Plan process can proceed forward unhindered by the suggested modifications.

Restoration

- Requiring a Coastal Development Permit with a public hearing for restoration projects is counterproductive; restoration projects should be encouraged, not discouraged by requiring a more difficult process.

Sea Level Rise

- What is the scientific basis for assuming future sea level rise?

Vegetation Removal

- Concerns about requiring permits for Fire Department mandated vegetation clearance.

General

- The more regulations that are, the more people will seek to avoid the permit process; may lead to greater resource destruction.
- Not always negative if additional permit requirements leads to additional public involvement.
- Coastal Commission is essentially trying to write the implementation plan which they are not allowed to do.
- Existing Article II system is fine; does not need to be changed.
- Coastal Commission is disconnected from local situation; "one size fits all" regulations do not work.
- The suggested modifications interfere with private property rights.