ATTACHMENT 3
California Coastal Commission (CC) Staff Suggested Modifications of Principal Concern to County

County-Adopted Gaviota Coast Plan	CC Staff Suggested Modification	Legal Authority and Precedent (Where Known)	County Concern with the Modification	County Suggested Alternative[1]
1. Agriculture Permitting Coastal Zoning Ordinance (CZO) Amendment County proposed to exempt agricultural cultivation and grazing from a Coastal Development Permit (CDP). This reflects the County's historic practice of not requiring a CDP for agricultural cultivation or grazing on lands designated for agriculture. However, the County's certified CZO identifies agriculture, including grazing and cultivation, as a permitted use and does not provide for exemption from a CDP.	Historic Agriculture: Exempt cultivation or grazing on land cultivated or grazed during the previous 10 years. "New Agriculture": CDP required for new cultivation or grazing (including new cultivation on land previously grazed) (no hearing, not appealable to CC).	**Legal Authority:** The CC Staff Report dated April 24, 2018, does not specifically cite a section of the Coastal Act to support its requirement for a CDP for new agriculture, nor does it cite the Coastal Act to allow an exemption for cultivated agriculture and grazing within existing areas of ongoing cultivated agriculture and grazing, respectively, where there is evidence of historic legal use of the site. Regarding exemptions for ongoing agriculture, the CC Staff Report states that the CC has allowed similar limited exemptions "in past actions" without referring to said actions. Instead, the CC relies of the definition of development (Coastal Act Section 30106) as the legal authority for requiring a CDP for agriculture, along with an interpretation adopted on March 2, 1981. Section 30106 states, in relevant part, "'Development'" means, on land … change in the density or intensity of use of land … and the removal or harvesting of major vegetation other than for agricultural purposes." Among other findings discussed in the CC's September 29, 2017 Informational Guide for the Permitting of Agricultural Development, the CC relies on findings adopted March 2, 1981, that "expressly state that a CDP is required for agricultural development which involves the removal of major vegetation to begin or expand agricultural croplands into areas not previously farmed." This Informational Guide also states that "the expansion of agricultural uses into areas of native vegetation or other undisturbed land constitutes a 'change in the intensity of the use of lands,' and is therefore considered development under the Coastal Act." **Precedent:** This issue is being addressed throughout the Coastal Zone and has been the subject of public workshops in 2017, resulting in the Informational Guide for the Permitting of Agricultural Development dated September 29, 2017. Marin County has been grappling with this issue, and its Local Coastal Program (LCP) amendment has still not	The most significant concern with requiring permits for agriculture is that 92% (approximately 46,102 acres) of the land within the Coastal Zone is located within the Appeal Jurisdiction. Within the Appeal Jurisdiction, development that would otherwise be allowed with a CDP (a permit that does not require a hearing and that is not appealable to the CC) must be approved through a hearing process and be appealable to the CC. The CZO implements this permit requirement through a Coastal Development Permit with Hearing (CDH), which is reviewed for approval by the Zoning Administrator. The suggested modifications address agriculture as an activity to be permitted, when agriculture should also be addressed as a coastal resource because agriculture is included in Chapter 3 of the Coastal Act titled, Coastal Resources Planning and Management Policies. Although the Coastal Act does not include a definition of "coastal resources," the CC recognizes that agriculture is a coastal resource (Informational Guide for the Permitting of Agricultural Development, p. 8). Coastal Act Section 30241 (Chapter 3) 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: …" Sections 30241(b) and (c) also prioritize the conversion of agricultural lands to non-agricultural uses to those lands around the periphery of urban areas and lands surrounded by urban uses. In addition, the Legislature made findings when adopting the Coastal Act that conflicts between policies "be resolved in a manner which is the most protective of significant coastal resources" (Coastal Act Section 30007.5). Historically, the County has not required permits for grazing and cultivation anywhere in the County. The CC staff's suggested exemption is limited to exempt agriculture on land that has been subject to agricultural	1. Exempt new grazing and cultivation according to criteria that was approved by CC in 2010 (LUDC certification process): • Located on slopes < 30% • Involves ≤ 50 cu yd cut/fill • Not within 100 ft of a stream, wetland or other ESH • No removal of protected trees 2. Develop an agricultural waiver process, similar to the de minimis waiver process recently approved by the Board of Supervisors and submitted to the CC for certification to address like-for-like rebuilds in the Montecito mudslide area. The process would require notification to the CC Executive Director and interested parties of the intent to waive a proposed agricultural development, but would not be an appealable decision. The drawback to this alternative is that the CC may not allow a waiver within the Appeal Jurisdiction, approximately 92% of the Plan area.

[1] Where more than one County alternative is suggested, the alternatives are listed in order of the County's preferred alternative.

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		been certified pending ongoing efforts by Marin County and the CC to reach a compromise.	uses during the previous 10 years. The exemption does not provide any criteria that could allow exemptions to support minor expansions of agriculture or adjustments to agricultural practices that might support the ongoing use of agricultural lands in agricultural uses.	
2. Policy NS-4 ESH Criteria and Habitat Types Gaviota Coast Plan This extensive policy has two parts. The first part defines the criteria for determining which habitats warrant the environmentally sensitive habitat (ESH) designation, including and building upon the criteria of the County's certified Local Coastal Program. The second part of the policy identifies and lists the habitats that qualify as ESH, including habitats that carry a CNDDB rarity ranking of G1 and S1 through G3 and S3. For example, the policy would protect rare chaparral habitats such as Burton Mesa shrubland chaparral and wart leaf Ceanothus chaparral, but not common types such as Ceanothus megacarpus chaparral.	The suggested modification deletes the County's Policy NS-4 in the Coastal Zone and replaces it with a new Policy NS-4. It replaces the criteria for determining environmentally sensitive habitat area (ESHA), although most criteria are similar, only reorganized. One notable change to the criteria is the addition of the definition of ESHA from the Coastal Act. The modification revises the list of habitats identified as ESH. However, the list is mostly the same, including the same list of habitats ranked as rare pursuant to the CNDDB. However, the modification removes "rare", which qualifies that only rare chaparral should be protected by the ESH Overlay.	**Legal Authority:** First, Coastal Act Section 30107.5, which defines an ESHA as "any area in which plant or animal life or their habitats are either rare *or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments*." [emphasis added] Second, Coastal Act Section 30240, which requires the protection of ESHA against any significant disruption of habitat values. The CC staff states, "the habitat types provided in Policy NS-4 do not represent all of the potential habitat types that may be found within the Plan area and which have the potential to meet the definition of ESH pursuant to Section 30107.5" (CC Staff Report dated April 24, 2018). The memo from Jonna D. Engel, Ph.D., Coastal Commission Senior Ecologist, dated April 24, 2018, provides evidence and analysis to support CC staff's modification to include all chaparral as potential ESHA for the Gaviota Coast Plan. The memo concludes on p. 24, "in addition to the rare natural communities and plant and animal species, other undeveloped native habitats that are large and relatively unfragmented may meet the definition of ESHA because of their relatively pristine character, physical complexity, and resultant biological diversity and valuable roles in the Gaviota Coast Mediterranean Ecosystem, regardless of their relative rarity throughout the state. … all natural habitats within the Gaviota Coast are in grave danger of direct loss or significant degradation as a result of many factors related to anthropogenic changes." **Precedent:** The County adopted the same criteria for the EGVCP but only pursuant to CC modification. The criteria did not raise as much concern in EGV because chaparral is not a habitat type within the much smaller Coastal Zone of the EGV planning area. However, similar to the Gaviota Coast Plan, the EGVCP policy lists	The County historically has only protected chaparral as ESH if it is rare according to CNDDB rankings or if it is habitat for a listed species. It was the County's expressed intent to protect rare types of chaparral, not common types. This modification would greatly expand ESH to include any type of chaparral, even those ranked as "demonstrably secure." There are approximately 2,153 acres of chaparral types of vegetation within coastal zone, based on the Figures 2-1 and 2-2 of the Gaviota Coast Plan. Within the Coastal Zone, chaparral vegetation primarily occurs north of U.S. Highway 101 at the Arroyo Hondo Preserve and extending westward into the easterly portion of Hollister Ranch properties. Coupled with the CC staff's suggested modification to add a detailed biological resources study to permitting requirements (see item 3 below), it may potentially limit new agricultural activities, or at a minimum add significant costs that may curtail new or ongoing agricultural activities, 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 policies to protect agriculture (Sections 30241, 30242, and 30250).	1. Restore "Rare" to Policy NS-4 where it modifies chaparral, coastal bluff scrub, and coastal sage scrub as ESH, as adopted by the County. 2. Clarify in the policy that this requirements for determining ESH are in the context of a CDP application for development and provide more clarification as to when chaparral would be considered ESH, for example, if chaparral is not a rare type according to accepted rarity rankings, it would be considered ESH if (from Engel's memo): • large and relatively unfragmented; • relatively pristine character; and • physical complexity.

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		only the rare ranked habitat types occurring within the planning area (or those that may not be ranked rare but which have historically been protected in Santa Barbara County, including Coast live oak woodlands, and all riparian habitats (most are ranked as rare, some are not).		
3. Biological Study/Report Requirements **CZO Amendment**	The suggested modification adds a new subsection to the CZO under Section 35-430.C Permit Requirements, to incorporate into the requirements for "an application for a CDP for any new development on a lot that supports native habitat, has habitat that may support rare species, may be part of a wildlife corridor, and/or potentially supports an Environmentally Sensitive Habitat (ESH) area, as defined in Policy NS-4, shall include a detailed biological study of the site …" The modification then lists a two-page highly detailed list of elements that must be included in the biological study.	**Legal Authority:** In general, the CC Staff Report cites Coastal Act Sections 30107.5 and 30240 regarding environmentally sensitive habitats. However, the CC Staff Report does not cite any specific authority that supports or directs the specific modification, which adds the study to the permit requirements as well as the elements needed in the study. Rather, the CC staff explains its rationale as follows: "The proposed ESH Overlay map for the coastal zone portion of the Gaviota Coast Plan only identifies limited habitat types, because a comprehensive update of the mapping of ESH in the Plan area has not been conducted. Additionally, it is impossible to identify and capture all ESH in an ESH Overlay map due to both the dynamic nature of biological and ecological resources and the small scale of certain resources (e.g., vernal pools). Such maps can only represent a snapshot in time within a very dynamic natural environment …" Therefore, the study is required "in order to protect ESH areas not shown on the ESH Overlay map." **Precedent:** Similar biological study requirements have been incorporated in the Santa Monica Mountains and City of Malibu Implementation Plans (i.e., zoning ordinances), both of which have been certified. The City of Santa Barbara is currently amending its LCP and intends to include these requirements also. Incorporation of biological study requirements is part of the CC guidance for amending LCPs statewide. According to CC staff, the level detail to request in the study is related to the level of detail of the ESH map. Because the coastal ESH overlay within the Gaviota Coast Plan area has not been updated since original certification, the CC staff is suggesting more detail be required in the modification.	There are three issues 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. Third, the elements to include in a biological study simply do not belong in a zoning ordinance. The list of requirements is too extensive and detailed to include in an ordinance. The County has been requesting biological studies for many years and is unaware of significant deficiencies of the current process for any recent projects in the Coastal Zone. The County continues to keep abreast of the current biological standards and requirements. The ESH Overlay of the CZO (Section 35-97) already includes basic submittal requirements with specific direction allowing the Director to request any information necessary for review, and states that the provisions of the ESH Overlay apply to any ESH not mapped but identified at the time of proposed development. The County Environmental Threshold and Guidelines Manual includes in an appendix the requirements for submittal of an adequate biological study.	1. Remove the biological study requirement from the submittal requirements and the required study elements from the modification. 2. At a minimum, revise the introductory language of the modification to clarify that the biological study would be required for "areas of proposed development" instead of "any new development on a lot." 3. Move the biological study requirement to the CDP submittal requirements (Section 35-169.3) or to ESH Overlay (Section 35-97.5). However, Alternatives 2 and 3 would not address the County's root concerns that the biological study would be required for the majority of CDP applications and the requirement does not belong in the zoning ordinance.
4. Permitting for Residential Accessory Structures **CZO Amendment** A Coastal Development Permit (CDP) is required (no hearing,	The suggested modification presents a new concept in the CZO, identifying Principal Permitted Uses (PPU) for each zone, and non-Principal Permitted Uses (non-PPU). The	**Legal Authority:** According to the CC Staff Report dated April 24, 2018 (p. 62), Coastal Act Section 30603(a)(4) "provides that approval, by a coastal county, of any development that is not designated in the LCP as *"the principal permitted use"* is appealable to the Coastal Commission. Neither the Coastal Act, nor the	Under the existing certified CZO, the County does not separate uses as PPU or non-PPU; however, the CZO allows single-family dwellings to be permitted with a CDP on agricultural-zoned lands, without a hearing or appeal to the CC. It also permits residential accessory structures (including uses such as guest house, cabana, artist studio,	Identify residential accessory structures as a PPU and thus, allow them to continue to be permitted with a CDP without a hearing.

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not appealable to CC) unless the development is located within the Appeal Jurisdiction, in which case a CDP with a hearing (CDH) is required and the approval can be appealed to the CC.	different uses require different permits. PPU = CDP, no hearing, not appealable to CC. Non-PPU = CDP with hearing (CDH), appealable to CC. The modification identifies residential accessory structures (e.g., guest house, artist studio pool house/cabana) and home occupations as non-PPU (see PPU and Non-PPU comparison table).	Commission's regulations provide further interpretation regarding the term *"principal permitted use"* or specify an exact method that must be used by a local government to designate the principal permitted use" [emphasis added]. Therefore, the CC staff report states the interpretation of the principal permitted use must be based on the entire Section 30603. The entire Section 30603 describes several circumstances when development should be appealable to the CC. It includes geographic descriptions that have been memorialized on County zoning overlay maps as the "Appeal Jurisdiction." Contrary to its statement, the CC staff does not present any evidence to base its interpretation on all of Section 30603 but instead states the County has not proposed a principal permitted use for each zone but a range of uses and thus the CC must "clarify the concept of the *"principal permitted use"* of each zone to execute the provisions of 30603(a)(4)." CC staff then proposes a definition of "principal permitted use" be added to the CZO, a definition that has no precedent (insofar as no evidence of one is presented in the CC Staff Report) and is not defined in the Coastal Act. The CC Staff Report then states "the principal permitted use on land zoned for agriculture would include, but not be limited to forms of cultivated agriculture, grazing and ancillary agricultural accessory structures, while the principal permitted use on land zoned as residential would be residential structures" (p. 64). The CC Staff Report then clarifies that "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. … [on agricultural-zoned lands] such uses include agricultural accessory structures as well as the primary single family dwelling" (p. 64). Thus, a single-family dwelling is allowed as a PPU only because it is accessory to the agriculture use (i.e., the farm house to the farm). Accessory uses to the dwelling shall not be considered accessory to the agricultural principal permitted use because they are accessory to an accessory use, and are therefore, not a principal permitted use.	detached garage etc.) in the same way with a CDP. Home occupations are also currently allowed with a CDP provided they are accessory to a residential use (CZO Section 35-121) but may also be allowed without a permit under certain provisions of Section 35-121.5. The suggested modification would change permit requirements that have been in place since 1982 and would treat residential accessory structures differently on coastal agricultural-zoned lands in Gaviota. The County believes that the certified CZO complies with Section 30603 because: 1) As stated by the CC staff, "neither the Coastal Act, nor the Commission's regulations provide further interpretation reading the term *"principal permitted use"* or specify an exact method that must be used by a local government to designate the principal permitted use," and 2) Consistent with this lack of interpretation and direction, the certified CZO identified "conditional uses" which are uses not considered "principal" permitted uses in a given zone, and which require Minor or Major Conditional Use Permits that require a hearing and are appealable to the CC. Clearly the County's identification of uses that would be permitted with a simple CDP and not appealable to the CC was accepted by the CC as consistent with Section 30603 when it certified the CZO in 1982. Although the CZO amendment reorganizes the presentation of these uses in a table for the Gaviota Coast, the allowable uses and permit requirements for agriculture follow the same permit concepts as provided in the certified CZO. The CC staff instead sets forth its interpretation without recognizing that the lack of clarity and interpretation identified in the Coastal Act, can allow for different methods. The CC staff is essentially concluding, without stating it directly, that the County's certified CZO is inconsistent with the Coastal Act because it does not identify essentially one principal use. Thus, CC staff identifies the principal permitted use as agriculture for the agricultural zone and identifies a primary one-family dwelling not as a principal use per se, but as an accessory use to the agriculture use, which can be permitted then be permitted as a PPU.	

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		Precedent: The principal permitted use and permitted use structures is widely used in County coastal zoning ordinances. The division of uses between the two categories widely varies.	The majority of the land within the Coastal Zone (approximately 46,102 acres or 92%) is located within the Appeal Jurisdiction. The suggested modification would have no practical effect within this area as all development already requires a CDH, hearing, and is appealable to the CC. However, 3,747 acres (8% or about 33 parcels) are located outside the Appeal Jurisdiction and would be subject to the changes imposed by this modification.	
5. Economically Viable Use Determination (EVUD) Gaviota Coast Plan and CZO Amendment The EVUD was not included in the Board of Supervisors adopted Gaviota Coast Plan and CZO amendments.	The suggested modification revises Gaviota Coast Plan Policy LU-2: Policy Implementation for the Coastal Zone, adding new language into the Plan that would require an EVUD when an applicant asserts that the application of the policies does not provide a reasonable use of the property before any exceptions to Plan policies may be granted. The suggested modification incorporates a new section in the CZO that would provide a process for making such an economically viable use determination.	**Legal authority:** Coastal Act Section 30010, which states that the Coastal Act is not authorizing the CC or local government to exercise their power to grant or deny a permit in a manner which would take or damage private property for public use, without the payment of just compensation. CC staff justifies the addition of the policy amendment and the EVUD, because the Gaviota Coast Plan includes language allowing exceptions to policy standards, and where it "would preclude reasonable use of the parcel," the Plan "creates a very broad exception to the ESH requirements, which is unwarranted and extremely vague. Such an exception could be misapplied to generally allow development that is inconsistent with the policies of the Coastal Act whenever the County found that to deny the development would preclude reasonable development – an undefined term" (CC Staff Report dated April 24, 2018, p. 27). The CC staff then states that the modification is necessary "to ensure that the only appropriate exception to the sensitive resources protection policies and standards is that which is necessary to avoid an unconstitutional taking of private property." **Precedent:** County accepted this modification in the Toro Canyon Plan and the Eastern Goleta Valley Community Plan. Ventura County is intending to incorporate the EVUD into its ongoing LCP amendment.	During coordination discussions, County staff asked that the modification not be included. CC staff responded that the County accepted the EVUD in other community plans (i.e., the Toro Canyon Plan and the Eastern Goleta Valley Community Plan), and therefore we should accept it again. The County objected to the EVUD during the certification process for both of those projects. Claims of a taking of private property should be addressed by the courts, and not by planning staff. Even with the detailed submittal requirements, the required findings indicate that planning staff would be required to make findings as to whether a takings would occur without adequate legal or financial training to do so. Although the County eventually accepted the EVUD for Toro Canyon and Eastern Goleta Valley, the EVUD is inappropriate for the Gaviota Coast Plan area. Toro Canyon and Eastern Goleta Valley are primarily urban areas within the Coastal Zone, zoned for residential uses with limited areas of agricultural land. The Gaviota Coast Plan area consists primarily of agricultural lands, followed by preserves (Dangermond, Arroyo Hondo), and recreational lands (California State Parks and County Parks). Approximately 1.1 % of the Coastal Zone is designated for other uses and of this small percentage; nearly all is associated with the Highway 101 and UPRR transportation corridors. Thus, most of the land in Gaviota Coast is used differently than land within Toro Canyon and Eastern Goleta Valley, with the Gaviota Coast's primary land uses of agriculture and recreation already serving two of the goals of the Coastal Act: preservation of agriculture and coastal access/recreation. The detailed information to be submitted under the EVUD and the specific findings that would be made are based on financial and economic factors. It is unclear how these	Delete modified Policy LU-2 from the Gaviota Coast Plan amendment and the suggested new EVUD process from the CZO amendment.

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			requirements could be practically addressed for agricultural uses on agricultural-zoned lands that may have been family owned for generations, or on lands owned by non-profit organizations that were purchased with donated funds for preservation in perpetuity or State or County parks (which have no "investment backed expectations"). Finally, the County is concerned that the ordinance language, as currently drafted, presumes a landowner would assert at submittal of a coastal permit application that the policies of the Plan would constitute a taking of private property, and therefore, submit an EVUD concurrent with proposed development. Implications of the EVUD include additional costly expenses for landowners, putting people in a litigious mode early in the application review process, and a lack of clarity regarding who decides and on what basis this decision is made. In addition, takings law is fact-specific, and it is unclear whether the EVUD would be applied to an entire lot or just the part of the lot with proposed development, or how much economically viable use is enough or too much.	
6. Policy REC-8 Protection of Existing Coastal Access ("Prescriptive Rights") Gaviota Coast Plan The County adopted policy simply states to ensure to the extent feasible that development does not interfere with the Public's right of access to the sea where acquired through use.	The suggested modification adds policy language 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.	**Legal Authority:** Coastal Act Section 30211, which provides that development not interfere with the public's rights of access to the sea where acquired through use or legislative authorization. It does not clarify different circumstances such as implied dedication or unadjudicated prescriptive rights. The CC Staff Report dated April 24, 2018, states "there are also areas of historic public use where there may be an implied dedication, but where the public's legal rights of access have not yet been confirmed by a court. New development could threaten continued use of these historically-used areas and adversely impact public access."	The suggested modification to Policy REC-8 is contrary to case law, which makes it clear that the County <u>does not</u> have the authority to recognize unadjudicated prescriptive rights to use private property.	Remove the suggested modification regarding prescriptive rights.