

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

August 29, 2008

Santa Barbara County
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

RE: Board of Supervisors Hearing on Proposed Revisions to CIAP Project List, Agenda Item # 5, 9/2/08

Dear Chair Carbajal and Members of the Board,

This office represents the Gaviota Coast Conservancy (Conservancy or GCC) in this matter. We are deeply concerned that the proposed Resolution includes funding for County projects that are not authorized to receive federal Coastal Impact Assistance Program (CIAP) funds. Specifically, Business Target Pollution Reduction, Education Coastal Areas, Creek Signage and Targeted Mailing and Public Opinion Survey are not authorized uses under governing law and therefore CIAP funds cannot be used for these purposes. We urge the Board to further revise the list of CIAP projects to exclude these four projects, and substitute projects for Gaviota Coast protection and specifically for the Transfer of Development Rights (TDR) program for Naples.

1. Authorized Uses of CIAP Funds

The Energy Policy Act of 2005 established the Coastal Impact Assistance Program to distribute funds to Outer Continental Shelf (OCS) oil and gas producing states to mitigate the impacts of OCS activities. All CIAP funds received by the County must be used only for one or more of the authorized uses articulated in the Energy Policy Act. Those uses are:

1. Projects and activities for the conservation, protection, or restoration of coastal areas, including wetland.
2. Mitigation of damage to fish, wildlife, or natural resources.
3. Planning assistance and the administrative costs of complying with this section.
4. Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan.
5. Mitigation of the impact of outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

43 U.S.C. § 1356a(d)(1).

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Expenditures that are not consistent with the CIAP authority are not permitted. 43 U.S.C. § 1356a(d)(2). Improper expenditures jeopardizes future CIAP funding and may require repayment. *Id.*

The CIAP Guidelines gives illustrative examples of each type of authorized use, stating:

“For CIAP purposes, land acquisition for the protection or restoration of wetlands would be an example of Authorized Use #1, while creation of an artificial reef to mitigate damage to fish populations would be an example of Authorized Use #2. For Authorized Use #3, administrative costs may include costs associated with preparing and managing the Plan. Under Authorized Use #4, examples of federally approved plans may include, but are not limited to, Coastal Zone Management Plans and Coastal and Estuarine Land Conservation Program Plans. For Authorized Use #5, *infrastructure* means public facilities or systems needed to support commerce and economic development; it may include, but is not limited to, buildings, roads, trails, parks, bridges, utility lines, wastewater treatment facilities, detention/retention ponds, seawalls, breakwaters, piers, and port facilities.”

Coastal Impact Assistance Program State Plan Guidelines, U.S. Department of the Interior, Minerals Management Service, September 2006 (Amended May 2007) (“CIAP Guidelines”) § 4.1 Authorized Uses of Funds.

2. The Revised List of Recommended Tier 1 CIAP Projects Includes Unauthorized Projects

The County proposes using CIAP funds for a number of uses. Four of the proposed projects are not authorized uses under the Energy Policy Act of 2005, and because they are not, expenditure of CIAP funds for these projects is expressly prohibited. *See* 43 U.S.C. § 1356a(d)(2). The unauthorized projects are:

- a) Business Target Pollution Reduction
- b) Education Coastal Areas
- c) Creek Signage and Targeted Mailing
- d) Public Opinion Survey

All four of these projects concern educational and outreach efforts to minimize storm water pollution as required by the Clean Water Act (see below for further detail). While the prevention of storm water pollution is an important community objective, the County is under an existing duty to undertake these programs, and they do not qualify as authorized uses. Specifically, as described in the CIAP project proposal, Business Target Pollution Reduction is not a project or activity for the conservation, protection, or restoration of coastal areas or wetlands. It is not mitigation of damage to fish, wildlife, or natural resources, or mitigation of the impact of OCS activities. Indeed it does not fit within any of the five authorized uses articulated in the Energy

Policy Act. Similarly, Education Coastal Areas is not a project or activity for the conservation, protection, or restoration of coastal areas or wetlands, and does not constitute any other authorized use. Education, while a laudable activity, is simply not the type of project the CIAP is authorized to fund.

Creek Signage and Targeted Mailing, related to educational efforts, is similarly not an authorized use of CIAP funds. Public Opinion Survey is also outside the scope of projects authorized for CIAP funding.

Significantly, these four programs are part of the County's Storm Water Management Program (SWMP) required by the State of California's Phase II Municipal Separate Storm Sewer Systems (MS4) Program¹ under the Clean Water Act. The County's adopted SWMP states in Chapter 1, Public Education and Outreach² that "the County has implemented or will implement all BMPs [best management practices] listed below." P. 1-1. The BMPs listed in the SWMP include the four projects listed above, which we maintain cannot be included in the list of CIAP projects. See p. 1-2 – 1-4. Santa Barbara County is already obligated to implement these BMPs under their MS4 General Permit³, which states, "[t]he Permittee shall maintain, implement, and enforce an effective SWMP designed to reduce the discharge of pollutants from the regulated Small MS4 to the MEP and to protect water quality. [The] SWMP must describe BMPs, and associated measurable goals, that will fulfill the requirements of the ...Minimum Control Measures." Section D (1 and 2).

The General Permit and SWMP make clear that the County is already obligated to implement these projects in order to comply with state and federal requirements under the Clean Water Act. While worthy and important projects, their implementation is the subject of existing County regulatory obligations that have been and should be funded from general funds or fees, not federal mitigation funds. These four projects therefore constitute an inappropriate and illegal diversion of federal CIAP funds to meet Santa Barbara's Obligations under the CWA. Consequently we strongly suggest that you must strike these four items from the revised list of recommended Tier 1 Projects.

3. Redirect the Funds to Authorized Projects

The funds designated for the unauthorized uses discussed above should instead be designated to authorized uses including Gaviota Coast preservation and specifically the Transfer of Development Rights (TDR) program at Naples. The Naples TDR program would extinguish development rights at Naples, a critically important segment of the Gaviota Coast, and transfer them to appropriate urban areas. This program necessitates funding to succeed, and the County

¹ See http://www.swrcb.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

² http://www.sbprojectcleanwater.org/Documents/SWMP/1.0%20-%20Public%20Education%20and%20Outreach_Jul%202006.pdf

³ Available at http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/final_sm_ms4_fact_order.pdf

is duty bound by Santa Barbara Local Coastal Plan Policy 2-13 to encourage and assist the transfer of development rights from Naples.

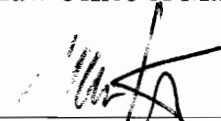
Funding the TDR program for Naples falls squarely within the first authorized use of CIAP funds: "the conservation, protection or restoration of coastal areas, including wetland." The TDR program would protect coastal resources by extinguishing the development potential of coastal lots. Further, the TDR program also constitutes mitigation of damage to natural resources, the second authorized use of CIAP funds, because it mitigates the damage to natural resources caused by the pending development project on the Naples site. Finally, the TDR program is tantamount to land acquisition, which is expressly recognized in the CIAP Guidelines as an authorized use ("Land acquisition...may occur under Authorized Uses #1, #2, and #4, in addition to Authorized Use #5.")

The Gaviota Coast is Santa Barbara County's crown jewel; it is traversed by oil pipelines, and is in view of federal OCS platforms. Projects including the Santa Barbara Ranch Project at Naples threaten this stretch of coast and the countless invaluable resources located thereon. We urge the Board to use the CIAP funds currently designated for unauthorized uses to Gaviota Coast protection including Naples' TDR program.

We appreciate your careful attention to this important matter.

Respectfully submitted,

Law Office of Marc Chytilo



Marc Chytilo

CC: Secretary of the Interior
California CIAP Coordinator