

## ATTACHMENT 1

**DAS WILLIAMS**

First District, Chair

**STEVE LAVAGNINO**

Fifth District, Vice Chair

**JANET WOLF**

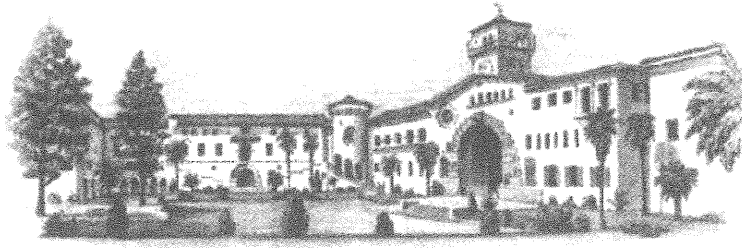
Second District

**JOAN HARTMANN**

Third District

**PETER ADAM**

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## COUNTY OF SANTA BARBARA

July 17, 2018

Ms. Dayna Bochco, Chair, and Commissioners  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

RE: Santa Barbara County Local Coastal Program LCP Amendment No. LCP-4-STB-18-0039-1-Part B (formerly LCP-4-STB-16-0067-3) (Gaviota Coast Plan)

Dear Chair Bochco and Members of the Commission:

On May 15 and July 17, 2018, the Santa Barbara County Board of Supervisors held hearings and discussed the Coastal Commission staff's suggested modifications to the Gaviota Coast Plan LCP Amendment (LCP-4-STB-18-0039-1-Part B (formerly LCP-4-STB-16-0067-3)). In between these hearings, an Ad-Hoc Subcommittee of the Board of Supervisors, consisting of Supervisor Hartmann and Supervisor Williams, held a community workshop on July 3, 2018, to receive comments regarding substantive issues identified by the community as of utmost concern. The Board of Supervisors would like to thank Deputy Director Steve Hudson, and Barbara Carey, Deanna Christensen, and Jonna Engel of your staff for attending the workshop, listening to the community's comments and concerns, and addressing questions from the community and the Ad-Hoc Subcommittee.

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 substantive concerns with the suggested modifications as proposed by Coastal Commission staff. Our staff were able to address many of the County's concerns regarding some of the modifications. However, we continue to have significant concerns regarding several modifications. We request your Commission's consideration of the following concerns discussed at the workshop and the hearings.

***1. Permitting Requirements for Agricultural Cultivation and Grazing on Agricultural Designated Lands (Suggested Modification No. 13, Sections 35-430.D.2 and 35-430.D.4)***

Coastal Commission staff suggests a modification to the permitting requirements of the Article II Coastal Zoning Ordinance (Article II) that would allow agricultural cultivation and grazing on lands designated Agriculture without the issuance of a Coastal Development

Permit (CDP) within an area that has been subject to cultivation or grazing within the previous 10-year period, but would require issuance of a CDP for new cultivation and grazing everywhere else. The County appreciates the recognition that ongoing agricultural uses should be exempt from permits. However, historically, the County has not 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 Land Use and Development Code (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 environmentally sensitive habitat (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 stated that the Coastal Commission has no authority to expand the exemption provisions of the Coastal Act in a LCP Amendment. 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. 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 a CDP for cultivation and grazing that complies with the above criteria.

Second, although the suggested modification would identify new grazing and cultivation as a principal permitted use and require a CDP, 92% of the Coastal Zone within the Gaviota Coast Plan area (approximately 46,102 acres) is located within the geographic appeal jurisdiction as described by the Coastal Act, Section 30603(a)(1) through -(3). In practical terms, development within the appeal jurisdiction that would otherwise be permitted with a CDP, instead would require a hearing and be subject to appeal to the Coastal Commission.

Third, there is concern that agriculture is being addressed primarily as development instead of one of the coastal resources the Coastal Act is intended to protect (agriculture, biological resources/ESH, and public access to the coast). 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. Following the Gaviota Coast Plan workshop on July 3, 2018, Coastal Commission staff indicated that a 20-year timeframe could be used in lieu of a 10-year timeframe.

Fourth, 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.

Last, the specific permitting requirements for new agricultural cultivation and grazing that are set forth in Table 18-2 of the suggested modifications to Article II and the new Sections 35-430.D.2 and -4 in the 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.

**Request #1:** The Board of Supervisors requests that the Coastal Commission:

- a. 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 the Planning and Development Department.
    - 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.
  - b. 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.
  - c. 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).
  - d. 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.
2. ***Gaviota Coast Plan Natural Resources Stewardship Policy NS-2: Environmentally Sensitive Habitat (ESH) Protection (Suggested Modification No. 2)***

Coastal Commission staff's suggested modifications 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, there is community support for agriculture to be considered a coastal resource rather than development (as discussed under Item #1 above), and consider the benefits that regenerative agricultural practices can provide to other coastal resources, including ESH.

**Request #2:** The Board of Supervisors requests that the Coastal Commission revise the suggested modifications to Gaviota Coast Plan Policy NS-2 to:

- a. Add low impact campgrounds and regenerative agriculture to examples of resource dependent uses in the second sentence of Policy NS-2, as modified for the Coastal Zone, as follows:

*... A resource dependent use is a use that is dependent on the ESH resource to function (e.g., nature study, habitat restoration, ~~and~~ public trails, low impact campgrounds, and regenerative agriculture). ...*

- b. Add a definition of low impact campgrounds, as follows:

*An area of land designed or used for “carry-in, carry-out” camping accessed by trail, including associated support facilities such as, picnic tables, potable water, self-contained chemical or composting restrooms, water tanks, portable fire suppression apparatus, but excluding roads and other structures. Low-impact campgrounds constitute a resource-dependent use.*

**3. *Gaviota Coast Plan Natural Resources Stewardship Policy NS-4: Environmentally Sensitive Habitat (ESH) Criteria and Habitat Types (Suggested Modification No. 2)***

The Board of Supervisors-adopted Policy NS-4 identifies and lists “Rare Native Chaparral” as ESH, to protect plant communities that are ranked as rare (S1-S3 and G1-G3) in the rarity rankings of the California Natural Diversity Database (CNDDB).

Suggested Modification No. 2 would remove the term “Rare” and incorporates other language identifying especially valuable habitats as ESH. However, as drafted, 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. The Board of Supervisors is concerned that this modification would greatly expand ESH, and coupled with the modification to require a CDP for new grazing and cultivated agriculture and a biological study, 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.

Alternatively, Policy NS-4, as modified by Coastal Commission staff, can be improved. At the community workshop, Coastal Commission staff 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 #3:** The Board of Supervisors requests that the Coastal Commission restore “Rare” to Policy NS-4 to clarify that the protections afforded to ESH only apply to “rare” native chaparral to reflect the County’s intent to protect the rare, and not the demonstrably secure, types of chaparral. In addition, the Board of Supervisors requests 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. *Coastal Development Permit Processing Submittal Requirements for a Detailed Biological Study (Suggested Modification No. 13, Section 35-430.C.3)***

Related to the modification of Policy NS-4, Coastal Commission staff suggested a modification that requires 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 updated ESH Overlay map within the Coastal Zone.

The detailed requirements for the biological study are extensive. First, both the modification language and the location in Article II of the biological study requirements indicate 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 other 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, a detailed list of requirements for an adequate biological study does not belong in a zoning ordinance. 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 successfully 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. The Board of Supervisors prefers that

it be removed from the suggested modifications. However, if the Coastal Commission continues to require it, the Board of Supervisors 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 when the biological study is required, (2) clarify the requirements do not apply to the entire lot or existing developed and disturbed areas, and (3) work with County staff to identify an appropriate location for the biological study requirements in Article II.

**Request #4:** The Board of Supervisors requests 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:

- a. 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.
- b. Limit the biological study requirement to the area of disturbance associated with a proposed development.
- c. Not require a biological study for areas of historic and/or ongoing grazing and agricultural cultivation.

The Board of Supervisors also suggests 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 (Suggested Modification No. 2) and Modification No. 13 Section 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 riparian habitats (streams and creeks) among others. 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 an adjustment could be allowed. The allowance for an adjustment of riparian ESH buffers mirrors Policy 9-37 of the certified Coastal Land Use Plan (CLUP).

Suggested modification No. 2 would allow a downward buffer adjustment only when the minimum buffer would preclude reasonable use of property; thus, requiring an economically viable use determination. Suggested modification No. 13 would add the policy requirements to the development standards of the Article II amendment.

**Request #5:** The Board of Supervisors requests 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. The Board of Supervisors also requests that corresponding revisions be made to Article II Section 35-440.E, which adds the same requirements to the coastal zoning ordinance.

**6. *Permitting Requirements for Certain Residential Accessory Structures (Suggested Modification No. 13, Section 35-430.E, Table 18-2)***

The Board of Supervisors appreciates the Coastal Commission staff's work with County staff to appropriately categorize uses as "principal permitted uses" and "non-principal permitted uses," which is a new permitting concept for the County and not within the certified Article II. The designation of a one-family dwelling in the Agriculture II zone as a "principal permitted use" is especially appreciated. Following the public workshop, County and 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.

**Request #6:** 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. *Gaviota Coast Plan Land Use Policy LU-2: Policy Implementation and Economically Viable Use Determination (EVUD) (Suggested Modification No. 8 and Suggested Modification No. 13, Section 35-480)***

The Board of Supervisors has several concerns with these proposed modifications and believes the requirements would not be feasible within the Gaviota Coast Plan Area.

First, the process requires findings be made by County planning staff that application of Gaviota Coast Plan 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 (where this modification was previously certified), the primary uses are residential on small or relatively small lots, with some lots in Toro Canyon mapped entirely with 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 agriculturally designated lands

have been owned by the same families for generations, where purchase price and findings such as investment backed expectations seem inappropriate under these circumstances. 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 processing language for Article II 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. This results in unclear processing direction.

**Request #7:** The Board of Supervisors requests 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 County), and delete the proposed EVUD process (Section 35-480) and all related references from the Article II amendment.

**8. *Gaviota Coast Plan Parks, Recreation, and Trails Policy REC-8: Protection of Existing Coastal Access (Suggested Modification No. 6)***

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 suggested modification would delete “to the extent feasible” and add language that would require the County protect public access where implied dedication or prescriptive rights may exist, by applying public acquisition measures or permit conditions for new development. The County believes 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 #8:** The Board of Supervisors requests 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.

The 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 these suggested



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modifications are not required to ensure compliance with the Coastal Act and impose unnecessary increased costs and requirements on coastal landowners.

We thank you again for the work of the Coastal Commission staff to coordinate with the County staff and consider the County's concerns. We look forward to reaching a mutually satisfactory resolution regarding these issues.

Sincerely,

Das Williams, First District Supervisor  
Chair, Santa Barbara County Board of Supervisors

cc: Santa Barbara County Board of Supervisors  
Dianne M. Black, Director, Planning and Development Department