



September 3, 2010

Janet Wolf, Chair
Santa Barbara County
Board of Supervisors
105 E. Anapamu Street
Santa Barbara, CA 93101

**Re: California Coastal Commission Suggested Modifications to County
Land Use Development Code**

Dear Honorable Chair Wolf and Supervisors:

The Environmental Defense Center (EDC) is a non-profit public interest environmental law firm which protects and enhances the environment through education, advocacy and legal action. EDC urges the Board to accept the California Coastal Commission's (CCC) suggested modifications to the County's Land Use Development Code (LUDC). Accepting the modifications will enable the CCC to certify the County newly reformatted LUDC as consistent with the Coastal Act and will protect the County's unique and irreplaceable coastline from permanent pollution, erosion, habitat loss and visual damage. Accepting the modifications will avoid serious repercussions and costs to the County and its residents.

Part of the opposition to the suggested modifications stems from a misunderstanding of the Coastal Act's requirements and of the implications of the suggested modifications. Most of the suggested modifications still under discussion are simply required by the Coastal Act as described below. If the County desires to implement the LUDC, it must accept these modifications. Other modifications may be negotiable.

Many concerns stem from a lack of understanding of the modifications. For example, most of the disputed suggested modifications simply clarify which activities trigger permits under the Coastal Act, and do not prohibit activities. Concerns about permit costs and complexity of County permitting can be addressed locally by providing local incentives (e.g. priority permit processing and waiving of fees for sustainable agriculture and other beneficial projects).

Therefore, we urge the Board to accept the modifications, and continue to work with affected local constituencies on local solutions to address any remaining concerns about permitting costs and complexities.

Background:

Santa Barbara County's Local Coastal Plan (LCP) has long been outdated. In 2000, the CCC analyzed LCPs throughout the state to determine which LCPs needed updating to comply with the Coastal Act and to minimize unnecessary appeals. The CCC's analysis determined that Santa Barbara County's LCP was one of three most outdated coastal plans in the state.

In response to Process Improvement Team (PIT) recommendations in 2003, the County decided to reformat its ordinances to be more user-friendly. The Zoning Ordinance Reformatting Project (ZORP) resulted in the County combining its various ordinances into the LUDC.

Before the LUDC can take effect in the coastal zone, the CCC must certify that it complies with the County's LCP and the Coastal Act. The LUDC was first submitted to the CCC for certification in October 2006. Commission staff undertook a lengthy review process that entailed County withdrawal and resubmission of the LUDC amendment packet. The CCC staff then identified "suggested modifications" to the LUDC which it believes are necessary to ensure LUDC compliance with the LCP and Coastal Act. County and CCC staff agreed to a majority of suggested modifications before release of the CCC staff report in April 2010.

Between April and August 2010, the County Planning Commission, Montecito Planning Commission, Board of Supervisors and various advisory committees held several public hearings on the suggested modifications. EDC and numerous community groups sent a sign-on letter to the Board generally supporting the CCC's suggested modifications as necessary to protect the coast and comply with the Coastal Act.

At its fourth hearing on the subject on August 3, the Board voted to send a letter to the CCC identifying remaining issues of concern to the County. The Board also voted to send Supervisors Wolf and Farr to the CCC hearing on August 12, 2010.

Summary of Coastal Commission Hearing

The August 12, 2010 CCC was very informative. CCC staff presented the reasons for the suggested modifications and sought input from Commissioners. The County representatives respectfully highlighted the importance of the Coastal Act and CCC to Santa Barbara County while noting that despite very productive interactions between County and CCC staff the County had remaining concerns with several modifications. The CCC hearing concluded with the following discussion:

- Four Commissioners supported staff recommended suggested modifications.

- Commissioner Dan Secord took the lead in opposing the CCC staff recommendations. Two other Commissioners recommended further clarification and exploration of a limited range of issues, such as agricultural activities.
- The hearing was continued until November 2010 to allow the County to hold additional public meetings.

Most of the Remaining Suggested Modifications in Question are Required under the Coastal Act

The suggested modifications in question can be categorized as (1) specifically required under the Coastal Act (hence, there is no room for negotiation) or (2) supporting Coastal Act policies protecting resources such as agriculture, habitat or water quality (and thus providing some room for negotiation, so long as the objectives of the policies are met).

Category 1 includes:

- One principally permitted use (PPU) per zone district (PRC §30603(a)(4))
- CDP requirement for lot mergers (PRC §30106: Development defined as “change in the density or intensity of use of land;” also applies to any division of land)
- CDP requirement for ag intensification (PRC §30106: Ag intensification causes a change in the density or intensity of use of land, and can alter landforms, require grading, and/or change the intensity of use of water, and therefore constitutes “development” under the Coastal Act)
- CDP requirement for restoration projects (because they are not the PPU under §30603(a)(4))
- Prohibition on private bluff staircases (LCP Policy 3-7, which limits development of bluff staircases to those that provide beach access; see also PRC §30253: prohibition against development that creates or contributes to erosion, geologic instability, or in any way requires construction of protective devices that would substantially alter natural landforms along bluffs and cliffs).

Category 2 includes:

- CDP trigger for residential development in ag zones (to ensure compliance with ag protection policies in PRC §30241, 30242)
- Prohibitions on schools next to ag lands (to avoid conversion of ag lands and ensure protection of ag from land use conflicts; schools can still request re-zone; ties back to PRC §30241, 30242).

1. CDPs for Lot Mergers (Suggested Modifications #9 and 13) – Category 1

Lot mergers are a form of subdivision and are “development” which trigger CDPs, since the Coastal Act definition of development includes any change to the intensity of the use of land, as noted above.

The County has never required CDPs for voluntary lot mergers because some mergers may reduce development potential, although other mergers (e.g. at Naples) actually *increase* development potential. The County staff objects to having to hold a public hearing and go through a permit process for lot mergers. In response to suggested Modifications 9 and 13, County staff proposed that lot mergers which increase development potential should trigger CDPs, and that the Director of P&D would make the determination regarding whether a particular lot merger would increase or decrease development potential. County staff said the Director's determination could be appealed to the CCC. The CCC, however, has pointed out that a Director's determination by itself (without a CDP) is not appealable.

Issues addressed by this Suggested Modification:

- Increased Development Potential: Allowing voluntary mergers to escape the CDP process or deferring the decision regarding whether mergers increase or decrease development potential to the Director of the P&D can allow merging of undevelopable lots to create development potential that does not otherwise exist.
- Lack of Public Process: If mergers are not appealable to the CCC, this would be a loss of public process which is required by the Coastal Act. There is no mechanism under the Coastal Act which would allow the Director's determination to be appealable; only permits are appealable. Thus, if the Director determines that a merger would not increase development potential, no CDP would issue and there would be no means to appeal the determination to the CCC. Accordingly, the County's proposed solution to allow appeals of the Director's determination is not workable under the Act and does not assure the public's right to appeal an adverse decision to the CCC.

Recommendation:

EDC supports the Suggested Modifications 9 and 13.

Reasons:

- To ensure compliance with the Coastal Act
- To protect coastal resources from additional development and ensure adequate review of such proposals
- To maintain public process and ability to appeal CDPs for lot mergers that increase development potential.

2. Private Bluff Staircases (Suggested Modification #21) – Category 1

The CCC staff report notes that private bluff staircases are legally nonconforming structures and thus suggests that the County prohibit rebuilding of private coastal bluff staircases unless less than 50% of the structure needs to be replaced, or they are made

into public access ways. This suggested modification is consistent with the County's LCP (Policy 3-7), which limits development on the bluffs to staircases that provide beach access.

Issues addressed by this Suggested Modification:

- Repairing, rebuilding and maintaining existing private stairways can damage bluffs, cause erosion, and lead to the need for construction of bluff protection devices.

Recommendation:

EDC supports the CCC suggested modification.

Reasons:

- To ensure consistency with the County's LCP and the Coastal Act. The CCC has certified other LCPs which use the 50% rule.
- To protect the bluff and bluff habitat from damage of rebuilding staircases.
- If people keep their staircases well-maintained and they are never damaged more than 50%, then owners can maintain their staircases.
- If people make the staircases public, they can maintain them forever.

3. Ag Intensification and Expansion (Suggested Modification #9) – Category 1

In order to protect habitat, soil and water, and ensure compliance with the Coastal Act (PRC §30106), the CCC suggested modifications require appealable CDPs for expanded or intensified agricultural activities. The County has never required permits for agricultural activities like grazing and growing crops. The CCC and County discussed compromises that would have provided parameters on grazing land (e.g. slope >30%, <100 feet from ESH, and >50 cubic yards of grading¹) for determining when ag expansion and intensification would trigger CDPs. Ultimately the CCC rejected these as too complicated to enforce on the ground with regards to grazing, but retained this language as it applies to cultivated agriculture.

Issues addressed by this Suggested Modification:

- Habitat loss and degradation from expanded and intensified agricultural uses.
- Increased use of water.
- Increased runoff and water quality impacts.
- Need for agency review to mitigate environmental impacts of expanded and intensified agricultural activities.

¹ EDC believes there may be room to compromise on this exemption for cultivated agriculture, i.e. to 100 cubic yards of grading.

EDC Recommendation:

EDC supports the CCC's suggested modifications clarifying that agricultural expansion and intensification is development subject to CDPs, public process and mitigation of environmental impacts.

Reasons:

- To ensure consistency with the Coastal Act and County LCP.
- This suggested modification does not prohibit ag expansion or intensification; rather, it provides a permit process to prevent abuses and protect coastal resources.

4. Habitat Restoration (Suggested Modification #9) - Category 1

The Coastal Act requires County LCPs to limit each zone district to a single principally permitted use with associated accessory uses. Concerns were initially raised that limiting PPU's in this way would make habitat restoration projects more costly and difficult to implement. The CCC noted that under the County's *existing* rules, restoration projects already require appealable CDPs no matter where they are located in the coastal zone. The CCC desires to have review of these projects in part to ensure that non-restoration projects are not approved locally under the guise of "restoration" in order to escape review and mitigation of impacts.

Clarification:

The suggested modifications do not make habitat restoration projects more costly or difficult because they already trigger appealable CDPs.

Issues addressed by this Suggested Modification:

Non-restoration projects may be cloaked as habitat restoration to escape public review, CCC review, permitting and impact mitigation. As an example, the Coastal Commission referred to a Santa Barbara County flood control project which was inappropriately called a "restoration" project. The Commission asserted jurisdiction over the project in order to protect a creek from the adverse environmental effects that would have been caused by lining the creek banks with rip rap. In addition, EDC has identified other projects, including the Lower Mission Creek Flood Control Project, that were improperly termed "restoration" for various purposes, including an attempt to reduce permit requirements and qualify for grants.

EDC Recommendation:

- EDC supports this suggested modification.

Reasons:

- To ensure compliance with the Coastal Act.
- To ensure adequate agency review and prevent abuses.

EDC supports true restoration projects, and believes the County should incentivize and facilitate habitat restoration in the following ways, when feasible:

- Priority processing for genuine voluntary habitat restoration projects;
- Assigning County planner as “restoration project planner” (similar to the Ag Planner position);
- Working with landowners to apply for habitat restoration grants; and
- Waiving fees for applying for and processing permits for genuine voluntary habitat restoration projects.

5. Ag Land House and Development Envelope Size Thresholds for Permitting (Suggested Modification #9) – Category 2

To protect ag land and uses, CCC staff suggested that homes over 3,000 square feet and development envelopes over 10,000 square feet on ag zoned properties trigger CDPs which can be appealed. The County felt that only proposed homes over 5,000 square feet should trigger CDPs, and that development envelopes should be as large as two acres on larger parcels before triggering CDPs. The CCC staff appears to have accepted the County’s position regarding home size but not development area.

Clarification:

Many in the community misunderstood this issue and believed the square footage thresholds are for prohibitions (e.g. homes over 3,000 sq. ft. are flatly prohibited). The size thresholds are not prohibitions. They are merely thresholds for triggering permits.

Issues addressed by this Suggested Modification:

- Loss of Ag Land: Larger homes and development envelopes can directly displace agricultural lands.
- Loss of Farming: Estate development on agricultural lands can diminish agriculture because home and room rental income can supplant agricultural income. In addition, facilitating large estates can attract buyers who do not have an interest in farming or ranching, such as the Ballentyne residence, which was recently approved on the Gaviota coast.
- Lack of Public Process: There is no public process for homes and development that may impact agriculture unless an appealable CDP is required.

EDC Recommendation:

EDC supports the initial CCC staff recommendation to require CDPs for homes over 3,000 square feet and development envelopes over 10,000 square feet.

Reasons:

- To preserve farmland.
- To avoid loss of ag production due to loss of farmable land and to preserve farming as a source of income.
- To maintain public process and foster public participation.
- It is not a significant financial burden for applicants. Those who propose a home larger than 3,000 square feet are likely able to afford any additional permitting costs levied by the County.
- 3,000 square feet is the approximate average home size on the Gaviota Coast, according to a Gaviota Coast Conservancy Study.

Alternative Recommendation:

EDC would support a compromise of a 4,000 square foot trigger for home sizes and a 10,000 square foot trigger for development envelope sizes.

Implications of Rejecting the LUDC Suggested Modifications

If the CCC's suggested modifications are rejected, the LUDC would be rejected by the CCC. The County would be forced to go back to Article II. Recently approved amendments to the LUDC that would affect the coastal zone would have to be reprocessed in the Article II format and resubmitted to the CCC for certification, further delaying implementation. If this were the case, the County would lose updates to the IV Master Plan, Eastern Goleta Valley Residential Design Guidelines, Santa Barbara Ranch, process improvements regarding permit applications for sign plans, road naming, septic systems within Special Problems Areas, Solar Energy Systems, Special Care Facilities, and time extensions (for economic hardship). The County would also fall out of compliance with state housing mandates (RHNA) numbers. The level of effort and financial costs the County has expended on these programs would be largely wasted and new, costly, time-consuming public processes would have to be redone, diverting County staff attention and funding from other important programs.

Conclusion and Recommendations:

EDC recommends that the Board accept the suggested modifications to ensure LUDC compliance with the Coastal Act. While there is much to be said for local control - especially when local decision-makers are concerned about protecting the coast - the Coastal Act provides guidance and a necessary check and balance system, and provides for sound coastal planning throughout the state. In the past we have seen local governments propose and approve projects that would violate the Coastal Act, destroy sensitive habitats, and farmland, and pollute coastal waters. Only the Coastal Act has prevented destruction of places including Carpinteria Bluffs, Douglas Preserve, Ellwood Mesa, the Devereux Slough, and Gaviota Creek.

The County has agreed to the majority of the CCC suggested modifications. The Board should accept the Category 1 suggested modifications identified above, and continue to work with stakeholders and the CCC regarding the Category 2 items (e.g., size and scale of residential development allowed on agricultural lands, and treatment of existing schools adjacent to ag lands). Taking such action will facilitate final certification of the LUDC in November, and allow the County to move forward with programs and projects in the coastal zone.

Sincerely,



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cc: California Coastal Commission
Glenn Russell
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