

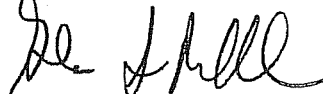


BOARD OF SUPERVISORS
AGENDA LETTER

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: 4/6/2010
Placement: Departmental
Estimated Tme: 45 minutes
Continued Item: Yes
If Yes, date from: 3/16/2010 (set hearing)
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: Information and Discussion Regarding Coastal Commission Suggested Modifications to County and Montecito Land Use and Development Codes

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 from the Planning and Development Department regarding modifications to the County and Montecito Land Use and Development Codes recommended by Coastal Commission staff; and,
- B. Authorize the Chair of the Board to sign and transmit the attached letter to the California Coastal Commission for their consideration at the April 15, 2010 hearing.

Summary Text:

In November, 2007, the Board of Supervisors adopted the County and Montecito Land Use and Development Codes (LUDCs) that replaced the former zoning regulations contained in Articles I through V of the County Code. This represented the culmination of the Zoning Ordinance Reformatting Project (ZORP) that began in late 2003 as part of Planning and Development Department's land use process improvement efforts. The goals of ZORP were to improve the quality and usability of the County's zoning regulations, streamline processing procedures and provide better customer service by arranging existing regulations into a format that is easier to read and search by (1) eliminating duplicated information/procedures, (2) using "plain English" and (3) grouping related information.

The following month the County submitted the LUDCs to the California Coastal Commission for certification as an amendment to the implementation portion of the County's Local Coastal Program. In September 2008, the Coastal Commission staff determined that the December 2007 submittal was complete for processing and initiated their review of the LUDCs. In October of the same year the

Coastal Commission approved a one year time extension to extend their processing deadline to November, 2009.

On August 31, 2009, the respective staffs of the Coastal Commission and the Planning and Development Department met to discuss the status of the review of the LUDCs. At this meeting, the Coastal Commission staff confirmed that the LUDCs would be considered by the Coastal Commission at their October hearing; however, they also brought up for the first time substantial modifications that the staff intended to recommend to the Coastal Commission that would limit local control over land use decisionmaking. Due to the limited time remaining for the Planning and Development Department to provide meaningful review of any recommended modifications, in October 2009 the Planning and Development Department formally withdrew and resubmitted the LUDCs for certification by the Coastal Commission, thereby allowing more time for the Coastal Commission to complete their review.

Since that time, Planning and Development staff has been working closely with the Coastal Commission staff to develop language and permit processes to address Coastal Commission staff's concerns. Coastal Commission staff will present their recommendations to the Coastal Commission on April 15, 2010 as modifications that the Coastal Commission should adopt if they act to certify the LUDCs as the implementation portion of the County's Local Coastal Program. This hearing will be held in the Ventura County Board of Supervisors Hearing Room.

If on April 15th the Coastal Commission acts to certify the LUDCs with modifications, then your Board will have a maximum of six months from that date to adopt a resolution accepting all the modifications as approved by the Coastal Commission. This resolution is then sent to the Executive Director of the Coastal Commission to determine if the Board's action is in compliance with the Coastal Act. If it is, then the Executive Director will place it on the next Coastal Commission agenda for their concurrence, and, if they concur, then LUDCs will be certified as of that date, and the existing Article II Coastal Zoning Ordinance will be of no further force or effect.

However, if your Board decides not to accept all the certified modifications, then the LUDCs will not be certified and will need to be amended to remove all zoning regulations applicable to the Coastal Zone. Additionally, since the Article II Coastal Zoning Ordinance will remain in effect for the Coastal Zone, any recently approved amendment to the LUDCs that would affect the coastal area would have to be reprocessed in the Article II format and resubmitted to the Coastal Commission for certification, further delaying their implementation. These include:

- Eastern Goleta Valley Residential Design Guidelines
- Isla Vista Master Plan
- Santa Barbara Ranch
- 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.
- Time extensions due to economic hardship considerations.

The following provides a summary of the recommended modifications. However, because the Coastal Commission staff report detailing all the recommended modification has not been released as of the date of this Board Agenda Letter, this summary is based on previous correspondence and meetings with the Coastal Commission staff. An update of the following summary will be provided at the April 6, 2010 Board of Supervisors hearing as necessary. The Coastal Commission staff report with the recommended modifications will be docketed with the Clerk of the Board as soon as it is received (expected to be Friday, April 2, 2010).

Summary of recommended modifications.

1. **Minor clarifications, clean-ups and corrections.** Most of the recommended modifications are minor in nature and relate to the following:
 - a. Language corrections so that the LUDCs track the language of the Coastal Act more closely.
 - b. Corrections required so that the LUDCs correctly reflect the language of recent amendments to the certified Article II Zoning Ordinance. This is due to the situation that ordinance amendments adopted by the County and sent to the Coastal Commission for certification prior to the adoption of the LUDCs in 2007 were not certified until sometime after 2007 and included modifications to the ordinance language. Because the LUDCs were based on the language of the amendments as originally adopted by the County, any modifications required as part of the certification process of those amendments would not have been reflected in the LUDCs. The recommended modification will reconcile any differences.
 - c. Correcting minor errors, omissions, and section references.
2. **Modifications recommended to implement the Coastal Act that Planning and Development Department staff does not agree are necessary.** Although the LUDCs were presented to the Coastal Commission staff as a simple re-codification of the Article II Coastal Zoning Ordinance, the Coastal Commission staff is taking this opportunity to correct what they see as deficiencies in the existing regulations. These include:
 - a. **Designating subdivisions, lot line adjustments and voluntary mergers as land uses that require the approval of a Coastal Development Permit.** The Coastal Commission staff proposes to add language to the introductory sections of the different zones regarding allowable land uses to state that subdivisions, lot line adjustments and voluntary mergers, are "land uses" that require the approval of a Coastal Development Permit. Additionally, because subdivisions, lot line adjustments and voluntary mergers are not listed as principal permitted uses, they would require the approval of a Coastal Development Permit subject both to a public hearing requirement and the possibility of an appeal to the Coastal Commission. Planning and Development Department staff's position is that these do not constitute uses of property within the typical meaning of the term as used in the LUDCs, and that any regulations of this type do not belong in the LUDCs since the LUDCs do not provide the processing procedures for subdivisions, lot line adjustments or voluntary mergers.

Because subdivisions and lot line adjustments are discretionary applications that are already required to go through a public hearing process, the primary effect of this modification on such applications is that any approvals would be subject to appeal to the Coastal Commission. However, voluntary mergers are strictly ministerial, do not require a public hearing, and are processed by the County Surveyor, not the Planning and Development Department. The result of this recommended modification would be a significant change in the processing of voluntary mergers.
 - b. **Restricting stairways on coastal bluffs to those that provide public access.** The certified Article II Coastal Zoning Ordinance provides that no development shall be permitted on the face of coastal bluffs except for engineered staircases or accessways to provide beach access, pipelines for scientific research or coastal dependent industry, and drainpipes if no other less environmentally damaging drain system is feasible. The County has always

interpreted this section to allow for private staircases to provide individual homeowners access to the beach from blufftop properties (e.g., those located in Hope Ranch), and has issued Coastal Development Permits allowing for the construction and repair of such staircases.

However, the Coastal Commission staff is now taking the position that such stairways and accessways should only be allowed when they provide public access to the beach due to the sensitive nature of the coastal bluffs. This modification, if certified, would not allow the construction of any new private access stairways, and would make all the existing, permitted private staircases nonconforming, thus precluding them from being structurally repaired should the need arise.

- c. **Eliminating the special notice procedures for Coastal Development Permits following approved discretionary projects.** An ordinance amendment (05ORD-00000-00019) adopted by the Board of Supervisors in January 2006 and certified by the Coastal Commission in March 2008 included revised procedures for processing Coastal Development Permits associated with Conditional Use Permits and Development Plans. Previous to the amendment a Conditional Use Permit or Development Plan would be approved, and then some time later a Coastal Development Permit would be issued to allow the actual construction of the project approved by the Conditional Use Permit or Development Plan. This sequential processing of permits allowed for multiple appeals to the Coastal Commission on the same project. The main effect of the amendment was to require that the Coastal Development Permit be processed concurrently with the Conditional Use Permit or Development Plan in order to delete the potential for multiple appeals to the Coastal Commission for the same project. However, because there were Conditional Use Permits and Development Plan approved prior to that date, such that a "follow-up" Coastal Development Permit would still be required to be issued to allow the actual construction of the project, the amendment as certified retained the procedures for noticing such Coastal Development Permits.

The Coastal Commission staff now believes that retaining this procedure can be confusing and is inconsistent with the goal of requiring that Coastal Development Permits are processed concurrently with the discretionary project. Therefore, they are recommending that the procedure be deleted to ensure that Coastal Development Permits are processed concurrently with Conditional Use Permits and Development Plans. If this modification is certified by the Coastal Commission, then the County will have to use a noticing process not provided for in the certified LUDC. Planning and Development Department staff provided the Coastal Commission staff with alternative language that retained the procedure for noticing Coastal Development Permits that follow approved Conditional Use Permits and Development Plan, with the clarification that this only applies to projects approved prior to March 2008, however, this was not acceptable to the Coastal Commission staff.

- d. **Requiring that Coastal Development Permits following amendments to Conditional Use Permits and Development Plans (appealable to the Coastal Commission) are subject to a public hearing.** All Conditional Use Permits, and certain Development Plans (i.e., applications for major energy/public works facilities or if located in the Appeals Jurisdiction) are considered development that may be appealed to the Coastal Commission such that, as required by the Coastal Act, they are required to have a public hearing prior to being approved. Historically, when the Planning and Development Department approved an amendment to a Conditional Use Permit or appealable Development Plan, staff followed

the approval of the amendment with the approval of a Coastal Development Permit without a public hearing since (1) the overall project previously underwent a public hearing when it was originally approved, and (2) any change allowed by the amendment must be well within the scope of that original approval. However, the recommended modifications include language specifying that any Coastal Development Permit following the approval of an amendment to a Conditional Use Permit or appealable Development Plan is subject to a public hearing requirement as the Coastal Commission staff feels that any project change allowed by an amendment is too significant to be covered by the original hearing.

The effect of this recommended modification will be an additional public hearing before either the Montecito Planning Commission or the Zoning Administrator for essentially the same project and associated increases in processing time costs. Planning and Development Department staff provided the Coastal Commission staff with an alternative process that allowed for a waived hearing where appropriate, however, this was not acceptable to the Coastal Commission staff.

3. **Significant modifications that appear to be required by the Coastal Act.** Similar to the above examples discussed above, the following modifications are recommended by Coastal Commission staff to correct what they see as deficiencies in the existing regulations. However, in these instances, Planning and Development Department staff agrees that these revisions are necessary.

- a. **Designation of certain land uses as principal permitted uses.** This is the most significant modification recommended by the Coastal Commission staff, and has the effect of dividing the allowable land uses within different zones into uses that are designated as principal permitted uses and those that are not. The Coastal Commission staff's position is that this is required by Section 30603(a)(4) of the Coastal Act which provides that any development approved by the County that is not designated as the principal permitted use within the applicable zone is considered "appealable development." Under the terms of the Coastal Act, applications for appealable development are (1) subject to a public hearing requirement and (2) a decision to approve such an application may be appealed to the Coastal Commission once local appeals are exhausted.

The County's certified Article II Coastal Zoning Ordinance does not identify any Principal Permitted Uses. Instead each zone contains a list of "Permitted Uses" and a list of uses allowed with a Minor or Major Conditional Use Permit. The recommended modification updates the land use tables of the LUDCs to specifically identify the Principal Permitted Uses for each zone.

Agricultural zones. In the agricultural zones, since agriculture would be designated as the principal permitted use, agricultural structures and uses are proposed to be designated as principal permitted uses. Other uses like residential, commercial, etc., are considered appealable development. One important exception to this is that the primary dwelling on an agriculturally zone lot is considered a principal permitted use provided:

- there is an existing primary agricultural use on the lot on which the primary dwelling is located.
- the occupancy of the dwelling is restricted to the operator of the primary agricultural use (including the family of the operator).
- the gross floor area of the primary dwelling does not exceed 3,000 square feet.

- the principal dwelling and all accessory structures and landscaping associated with the principal dwelling occupies a development area of no more than 10,000 square feet.

If the dwelling cannot comply with these standards, then it could still be allowed but would be required to undergo a public hearing, and an approval by the County would be appealable to the Coastal Commission once local appeals are exhausted.

Also, only garages, landscaping, pools, spas and hot tubs, storage sheds, when accessory to a principal permitted dwelling, are proposed to be designated as a principal permitted use; all other accessory uses, such as guest houses, would be considered appealable development.

Residential/Resource Management zones. In residential and resource management zones, dwellings are proposed to be designated as the principal permitted use. Similar to the restrictions on accessory uses in agricultural zones, in the residential and resource management zones only garages, landscaping, pools, spas and hot tubs, storage sheds, when accessory to a principal permitted dwelling, are proposed to be designated as a principal permitted use. All other accessory uses, including artist studios, barns and stables, guest houses, tennis courts, residential second units, etc., would be considered appealable development.

Commercial/Industrial zones. In commercial and industrial zones, commercial and industrial uses are proposed to be designated as the principal permitted uses in the respective zones. Only equipment, maintenance and other minor outbuildings, infrastructure, landscaping, parking, when accessory to a principal permitted use, are proposed to be designated as a principal permitted use. All other accessory uses (e.g., recreational and residential uses in commercial zones, mining and recreational uses in industrial zones) would be considered appealable development.

- b. **Additional changes to the land use tables.** Other recommended modifications would revise the land use tables of those zones that include high priority uses under the Coastal Act in order to preserve long-term agriculture, protect environmentally sensitive habitat areas and watersheds, promote visitor-serving uses, and reserve Coastal Related and Coastal Dependent sites for the only uses that support or require a site on or adjacent to the sea to be able to function at all. This would be accomplished by:
- eliminating incompatible uses in certain zones by deleting several land uses that were previously allowed by conditional use permit in all zones (e.g., country clubs, fairgrounds, golf courses, libraries, museums)
 - designating that agricultural and grazing operations in the agricultural zones are principal permitted use, but clarifying that intensification of agricultural and grazing operations require the issuance of a Coastal Development Permit (e.g., conversion of grazing land to orchards, expansion of grazing operations into area that historically have not been grazed).
- c. **Add development standards to address potential sea level rise.** This Modification adds a requirement that coastal hazards analysis utilizing the best available scientific information be provided for all nearshore projects. The analysis must encompass potential coastal hazards from erosion, flooding, wave attack, scour and other conditions as well including geologic conditions such as localized uplift or subsidence, local topography, and ocean depth. For residential and commercial development, the coastal hazards analysis must consider a range of potential sea level rise scenarios, from three to six feet per century. For

energy-related facilities, critical facilities, or infrastructure, the coastal analysis shall assume a minimum sea level rise rate of 4.5 feet per century. Greater sea level rise rates must be used if development is expected to have a long economic life, if the proposed development has few options for adaptation to sea level higher than the design minimum, or if the best available scientific information at the time of review supports a higher design level.

- d. **Restricting agricultural operations in the Toro Canyon area.** When the Toro Canyon Area Plan was adopted in February 2002, a new zone district (MT-TORO Mountainous Area - Toro Canyon Planning Area) was also approved and sent to the Coastal Commission for certification which was finally completed in December 2004. The existing certified MT-TORO zone allows cultivated agriculture throughout the zone with a Coastal Development Permit, provided there is evidence of either a permitted or nonconforming use on the site within the previous ten year period, or a Minor Conditional Use Permit if there is no evidence of previous use. The recommended modifications would revise this to:
- require a Minor Conditional Use Permit for all new or expanded operations, and—
 - restrict cultivated agriculture to slopes of 30 percent or less.

Even though this zone and the existing permitting requirements were recently certified, the Coastal Commission staff argues that this modification is necessary to protect the sensitive resource of land zoned MT-TORO. Given that the policies and development standards of the Toro Canyon Area Plan already act to restrict development on steeper slopes, restricting development to slopes of 30 percent or less should not have much of an impact.

4. **Beneficial modifications.** The Coastal Commission staff is including in the recommended modifications the inclusion of several amendments to the LUDCs adopted by the County subsequent to the transmitting the LUDCs to the Coastal Commission for certification. This will both:
- save the County fiscal resources as staff will not have to process these items as separate amendments for certification, and
 - cause the amendments to take effect much more quickly.

These include 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. Also, this will allow the recently adopted amendment providing for time extensions due to economic hardship considerations to take effect more rapidly than if the amendment went through the normal certification process.

Also, at the request of the Planning and Development Department staff, the recommended modifications include correcting inadvertent errors that were made when the LUDCs were adopted by the County regarding the processing of campgrounds in the rural areas.

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-300 of the adopted Planning and Development Department's budget for fiscal year 2009-2010. There are no facilities impacts.

Staffing Impact(s):

<u>Legal Positions:</u>	<u>FTEs:</u>
0	0

Special Instructions:

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

Authored by:

Noel Langle (805.568.2067)