

**SANTA BARBARA COUNTY PLANNING COMMISSION**  
**Review of Coastal Commission Recommended Modifications to the**  
**County Land Use and Development Code**

**Hearing Date: June 2, 2010**  
**Staff Report Date: May 14, 2010**

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## **1.0 REQUEST**

Hearing on the request of the Planning and Development Department that the County Planning Commission review the California Coastal Commission staff's recommended modifications to the County Land Use and Development Code and provide comments to the County Board of Supervisors regarding the modifications.

## **2.0 RECOMMENDATION AND PROCEDURES**

Staff is seeking input from your Commission regarding the modifications to the County Land Use and Development Code (LUDC) that staff of the Coastal Commission is recommending that the Coastal Commission adopt as part of their certification of the LUDC, and possible recommendations to the Board of Supervisors regarding their response to the suggested modifications.

## **3.0 JURISDICTION**

There is no mandate that the Coastal Commission recommended modifications be reviewed by the County Planning Commission, However, given the scope of the revisions, Planning and Development staff felt it appropriate that the County Planning Commission review the recommended modifications and provide comments to the Board of Supervisors as to how the Board should respond to the recommended modifications.

## **4.0 EXECUTIVE SUMMARY**

Any time the County Board of Supervisors adopts an amendment to the County's Local Coastal Program (LCP), either the Coastal Land Use Plan, or the implementation portion (currently the Article II Coastal Zoning Ordinance), the amendment must be submitted to the Coastal Commission for certification. The typical process for certifying a LCP amendment (LCPA) consists of the following:

- Step 1: The amendment and all supporting materials (staff reports, exhibits, etc.) are transmitted to the Coastal Commission office.
- Step 2: The Coastal Commission staff reviews the submittal and, if they determine that the submission is complete, files that submittal for processing.
- Step 3: The Coastal Commission staff reviews the amendment, and develops recommended modifications. The purpose of these modifications is to ensure that the amendment is consistent with the Coastal Act and the County's LCP.
- Step 4: The Coastal Commission staff schedules a public hearing on the amendment in front of the Coastal Commission itself and prepares a staff report that includes an analysis of the amendment and the recommended modifications.

- Step 5: The Coastal Commission holds the public hearing and acts to certify the amendment with the recommended modifications. Both oral and written testimony may be presented to the Coastal Commission. The Board of Supervisors normally provides testimony on items of concern.
- Step 6: The County Board of Supervisors reviews the Coastal Commission's action in a public hearing and, within six months of the Coastal Commission hearing, either adopts a resolution accepting Coastal Commission approval with certified modifications, or rejects the certified modifications. If the Board of Supervisors rejects the modifications, then the amendment is not certified and the LCP is not changed. For the subject LCPA this would mean that the existing Article II would remain in effect and would not be replaced by the County LUDC.
- Step 7: The Executive Director of the Coastal Commission reviews the Board of Supervisors resolution to determine if the resolution of the Board of Supervisors accepting the modifications conforms to the requirements of the Coastal Act. If the Executive Director determines that the action of the Board of Supervisors does conform, that determination is placed on the next Coastal Commission hearing agenda.
- Step 8: If the Coastal Commission agrees with the Executive Director's determination, then the amendment is certified and the County's LCP is revised accordingly. Any revisions to the LCP become effective immediately following the action of the Coastal Commission to accept the Executive Director's determination.

The County LUDC was submitted to the Coastal Commission as a LCPA for certification in October 2006. This amendment is now at Step 4 in the process shown above. The Coastal Commission hearing on the amendment was to have occurred on April 15, 2010. However, because the Coastal Commission's staff report (see Attachments A and B) was not released until April 1, 2010, and because the recommended modifications contained several revisions that do not appear to be necessary to either implement the Coastal Act or conform the amendment to the remainder of the LCP, at the direction of the Board of Supervisors, the Planning and Development Department requested that the Coastal Commission hearing be postponed until August 2010.

Based on their review of the submission, the Coastal Commission staff is recommending to the Coastal Commission that they should approve the LCPA only if Coastal Commission also adopts the recommended modifications. These modifications can be divided into four groups:

- Group 1: Modifications the Coastal Commission staff feel are necessary to conform the County LUDC to the Coastal Land Use Plan and to implement the Coastal Act.** These modifications are the most far reaching of the recommended modifications and seek to impose new restrictions on development in the County beyond what is contained in the existing certified LCP. The discussion of these modifications begins on page 6 of this report.
- Group 2: Planning and Development Department suggested revisions to Modifications that the Coastal Commission staff does not support.** During the review of the amendment, the Planning and Development Department staff identified two recommended modifications that should be revised in order to address some existing procedural problems. Planning and Development staff provided the Coastal Commission staff with text revisions that would fix the existing problems, however, the Coastal Commission staff declined to include the revisions in the recommended modifications. The discussion of these revisions begins on page 17 of this report.
- Group 3: Minor clarifications, clean-ups and corrections.** Most of the recommended modifications

are minor in nature and relate to (1) language corrections so that the County LUDC tracks the language of the Coastal Act more closely, (2) revising the County LUDC so that it reflects the language of recently certified amendments to the LCP, and (3) correcting minor errors, omissions, and section references. The discussion of these modifications begins on page 19 of this report.

**Group 4: Beneficial modifications.** The Coastal Commission staff is including in the recommended modifications the inclusion of several amendments to the County LUDCs adopted by the County in 2008 subsequent to the transmitting the LUDCs to the Coastal Commission for certification. This will both (1) save the County fiscal resources as staff will not have to process these items as separate amendments for certification, and (2) cause the amendments to take effect much more quickly. The discussion of these modifications begins on page 23 of this report.

The first two groups contain what Planning and Development Department staff feels are the most significant changes contained in the modifications as recommended by the Coastal Commission:

- **Modification 3 (Appeals):** This modification includes language that specifies that a CDP that follows the approval of an Amendment to a Conditional Use Permit or Development Plan (for development that may be appealed to the Coastal Commission) is subject to a public hearing and is appealable to the Coastal Commission. This is inconsistent with existing Planning and Development Department procedures and would add a new hearing requirement to such applications.
- **Modification 5 (Noticing and Clarifications):** This modification deletes the special noticing requirements for CDPs that follow the approval of a Conditional Use Permit or Development Plan. This would mean that the County would have to use a noticing process for such “follow-up” CDPs that not provided for in the certified County LUDC.
- **Modification 9 (Allowed Land Uses and Permit Requirements Table):** This modification divides the allowable land uses within different zones into uses that are designated as principal permitted uses, and those that are not. Under the Coastal Act, uses other than principal permitted uses are subject to a public hearing and potential for appeal to the Coastal Commission.
- **Modification 10 (Accessory Structures and Uses):** Similar to Modification 9, Modification 10 divides accessory structures and uses within the different zones into principal and non-principal permitted uses.
- **Modification 13 (Subdivisions):** This modification specifies (1) that subdivisions, lot line adjustments and voluntary mergers constitute development within the meaning of the Coastal Act and thus require the approval of a Coastal Development Permit (CDP) and (2) that they are not a principal permitted use in any zone. Therefore subdivisions, lot line adjustments and voluntary mergers would require a CDP that is subject to a public hearing and is appealable to the Coastal Commission.
- **Modification 14 (Lot Line Adjustments):** Similar to Modification 13, part of this modification adds language to again specify that within the Coastal Zone, lot line adjustments are not a principal permitted use and therefore require the approval of a CDP that is subject to a public hearing and is appealable to the Coastal Commission.
- **Modification 21 (Clarifications Regarding Bluff Development):** The main impact of this modification is to prohibit (1) the construction of any new private staircases that provide access from blufftop properties to the beach below and (2) the structural repair of any existing private

staircases.

- **Modification 34 (Sea Level Rise):** This modification adds language that a coastal hazards analysis be provided for all projects proposed to be located near the shore, and requires that for residential and commercial development, the analysis must consider a three to six feet per century range of potential sea level rise scenarios. For energy-related facilities, critical facilities, or infrastructure, the coastal analysis is required to assume a minimum sea level rise rate of 4.5 feet per century.

A more detailed discussion and analysis of these modifications, and the remainder of the modifications proposed by the Coastal Commission staff, is provided in SECTION 6.0 DISCUSSION/ANALYSIS. See Attachment C for a complete listing of the recommended modifications.

The County Planning Commission is not required to review the modifications recommended by the Coastal Commission staff and provide input to the Board of Supervisors. However, given the scope of the recommended modifications and the potential effects on permit processing and land uses within the Coastal Zone, the Planning and Development Department wanted to provide the County Planning Commission with the opportunity to provide comments to the Board of Supervisors regarding those areas that the County Planning Commission is most concerned with, and whether the Board should actively seek to request changes to the modifications and/or direct that additional negotiations should occur.

The Montecito Planning Commission will be reviewing the modifications to the Montecito LUDC recommended by the Coastal Commission staff at a special hearing on June 10, 2010.

## 5.0 BACKGROUND

On October 17, 2006, the Board of Supervisors adopted the first County and Montecito Land Use and Development Codes that replaced the then-existing Article I (Sign Ordinance), Article II (Coastal Zoning Ordinance), Article III (Inland Zoning Ordinance), Article IV (Montecito Zoning Ordinance) and Article V (Road Naming and Street Addressing Ordinance). This represented the culmination of the first phase 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. As originally adopted, the County Land Use and Development Code (County LUDC) contained the zoning regulations that applied to the whole of the Coastal Zone and non-Coastal Zone (Inland area) portions of the County located outside of the Montecito Community Plan area. The original Montecito Land Use and Development Code (Montecito LUDC) contained only the zoning regulations that applied to the non-Coastal Zone (Inland area) portion of the Montecito Community Plan area. These LUDCs were submitted to the Coastal Commission for certification as an amendment to the implementation portion (zoning regulations) of the County's Local Coastal Program in December 2006.

In November, 2007, the Board of Supervisors replaced the original County and Montecito LUDCs with new versions that shifted all zoning regulations that applied to the Montecito Planning Area, both coastal and non-coastal, into the Montecito LUDC. In December 2007 the County submitted the new LUDCs to the California Coastal Commission for certification as replacements for the versions submitted in December 2006. In September 2008, the Coastal Commission staff determined that the submittals 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, Board of Supervisors, and the public to provide any 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 and County staff to discuss and attempt to resolve differences of opinion regarding the suggested modifications.

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 would have presented their recommendations to the Coastal Commission at the 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. However, because the Coastal Commission's staff report was not released until April 1, 2010, and because the recommended modifications still contained several revisions that do not appear to be necessary to implement the Coastal Act, the County was again put in the position of not having adequate time to review and provide meaningful input on the recommended modifications.

Therefore, at the direction of the Board of Supervisors, the Planning and Development Department requested that the Coastal Commission hearing be postponed until August 2010.

## **6.0 DISCUSSION/ANALYSIS**

### **6.1 Coastal Commission Standard of Review**

The Coastal Commission standard of review for proposed amendments to the County LUDC (i.e., the Implementation Plan of the certified Local Coastal Program) is that the Coastal Commission must approve them unless any proposed amendment is not in conformance with, or is inadequate to carry out, the provisions of the Land Use Plan (LUP) portion of the certified Santa Barbara County Local Coastal Program (Coastal Act Sections 30513 and 30514). Because all of the Coastal Act Chapter 3 Coastal Resources Planning and Management Policies (public access, recreation, marine environment, land resources, development, industrial development) have been incorporated into the County's certified Coastal Land Use Plan, the Coastal Commission staff is also reviewing the County LUDC against these policies.

Additionally, because the County LUDC regulates the noticing, hearing, and appeal procedures for CDPs, it must also be reviewed for consistency with the procedural requirements established under Article 17 of Subchapter 2 of Chapter 8 of the Coastal Commission's Administrative Regulations Sections 13560 -13572 (see Attachment D).

Finally, because the County LUDC proposes to modify the scope of projects subject to the requirement for a CDP by designating additional land uses as exempt from a CDP that are not currently exempted by existing Article II, Coastal Commission staff is reviewing the County LUDC for consistency the Coastal Act and associated regulations regarding development exempt from a CDP (Coastal Act

Section 30610; Coastal Commission's Administrative Regulations Chapter 6, Exclusions from Permit Requirements.

The County LUDC was presented to the Coastal Commission staff as a simple re-codification of Article II. However, because the reformatted code includes what the Coastal Commission staff considers "substantive changes" (see Attachment A, page 160) they are taking this opportunity to correct what they see as deficiencies in the existing regulations.

## **6.2 Summary of Recommended Modifications.**

The modifications recommended by the Coastal Commission staff fall into the following four categories:

- modifications the Coastal Commission staff feel are necessary to conform the County LUDC to the Coastal Land Use Plan and to implement the Coastal Act.
- Planning and Development Department suggested revisions to Modifications that the Coastal Commission staff does not support.
- minor clarifications, clean-ups and corrections.
- beneficial modifications.

### **6.2.1 Modifications the Coastal Commission staff feel are necessary to conform the County LUDC to the Coastal Land Use Plan and to implement the Coastal Act.**

The Modifications discussed in this section have the most far reaching impacts and would both limit local control over land use decisionmaking and well as impose new permit procedures and requirements beyond those the presently exist in Article II.

#### **Modification 9 Allowed Land Uses and Permit Requirements Table (Coastal Commission staff report page 77):**

- 1. 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 (shown as "PP" in the land use tables) and those that are not (shown as "P" in the land use tables).

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. Therefore, P uses are considered appealable development.

The County's certified Article II does not distinguish between principal and non-principal permitted uses. Instead, each zone contains a list of uses allowed with a CDP and a list of uses allowed with a Minor or Major Conditional Use Permit. The requirement for a public hearing and possibility for appeal to the Coastal Commission only applies if the development otherwise constitutes appealable development:

- Developments approved by the County between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

- Developments approved by the County not included within paragraph (1) located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.
- Any development approved by the County that requires a Conditional Use Permit.
- Any development which constitutes a major public works project or a major energy facility.

This modification would change the permit process for all permitted uses that are not designated as a PP use and that would not otherwise require a public hearing from a Coastal Development Permit (CDP) approved at a staff level to a CDP under the jurisdiction of the Zoning Administrator.

The following provides a brief summary of which land uses are designated as PP uses in the different zones. Please refer to Attachment B - Coastal Commission Use Tables and Exhibits (pages 1 through 60), for a complete description of which uses are designated as PP versus those that are designated as P.

**Agricultural zones.** In the agricultural zones, since agriculture is considered to be the principal permitted use, agricultural structures and uses are proposed to be designated as PP uses. Other uses like residential, commercial, etc., are designated as P uses. One important exception to this is that the primary dwelling on an agriculturally zoned lot may be considered a Principal Permitted use provided:

- there is an existing primary agricultural use on the lot on which the primary dwelling is proposed to be 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 primary dwelling and all accessory structures and landscaping associated with the primary dwelling occupies a development area of no more than 10,000 square feet.

If the dwelling does not 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.

Individual septic systems and domestic water wells that are accessory to a PP use are also designated as PP. Agricultural water wells are designated as PP.

See the discussion of Modification 10 (page 12) regarding the permitting of accessory uses in the Agricultural zones.

**Residential/Resource Protection zones.** In residential and resource protection zones, dwellings are proposed to be designated as the principal permitted use. However, within the Resource Management zone (RMZ), the Coastal Commission is proposing to add the following development standards in order to protect the resources typically found in that land (e.g., watershed):

- the primary dwelling and all accessory structures and landscaping associated with the primary dwelling occupies a development area of no more than 10,000 square feet.
- the development shall not occupy slopes of 30 percent or greater.

As is the case with primary dwelling in the agricultural zones discussed above, if the dwelling

does not 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.

**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.

2. **Development exempt from a Coastal Development Permit.** The County LUDC as submitted to the Coastal Commission proposed that agricultural activities (i.e., cultivated agricultural, orchards, vineyards, and grazing) would be exempt from a CDP consistent with the County's administrative practice. As proposed by the Coastal Commission staff, any intensification of agricultural activities (e.g., conversion of grazing land to orchards, expansion of grazing operations into area that historically have not been grazed) would require would require the approval of a CDP. In the Agricultural zones, agricultural activities are shown as PP; however, in the Residential zones and the Special Purpose zones, agricultural activities are shown as a P, such that any intensification of agricultural activities in these zones would require the approval of a CDP subject to a public hearing and potential for appeal to the Coastal Commission.

The County LUDC as submitted to the Coastal Commission also proposed that animal-keeping would be exempt from a CDP in several zone; however, as proposed by the Coastal Commission staff, animal-keeping would be designated either as a PP or P use, depending on the principal use of the particular zone (see Attachment B, pages 61 through 68). The revisions also specify that "confined animal facilities" (e.g., barns, paddocks, stables) are considered a PP use only when incidental, appropriate and subordinate to animal keeping that itself is designated as a PP use. For example, keeping of livestock in an agricultural zone is considered a PP use; however, in the residential zones, it is not considered a PP use. Therefore, as proposed by this Modification, an application for a CDP for stabling a horse on a residentially zoned requires a public hearing and is subject to appeal to the Coastal Commission.

Lastly, this Modification adds language to the use tables that a structure or use shown as exempt from a planning permit must still meet the additional requirements for exempt development (e.g., must comply with zone development standards and conditions of previous permits).

3. **Additional changes to the land use tables.** This modification includes revising the zone use tables to (1) add a limited number of uses in the different zones, and (2) delete what the Coastal Commission staff considers to be incompatible uses currently allowed by Article II with either a CDP, a Minor Conditional Use Permit (MCUP) or a Conditional Use Permit (CUP). The Coastal Commission staff feels this is necessary in order to:

- preserve long-term agriculture in Agricultural zones
- protect environmentally sensitive habitat areas and watersheds in Resource Protection zones
- protect and promote visitor-serving uses in the Commercial zones
- reserve Coastal Related and Coastal Dependent industrially zoned sites for only uses that support or require a site on or adjacent to the sea to be able to function at all.

The following summarizes the use table revisions for the various zone types; please refer to Attachment B - Coastal Commission Use Tables and Exhibits (pages 1 through 60), for a more complete description of the proposed revisions.

- a. **Agricultural zones.** The following uses would no longer be allowed by a CUP in the AG-I and/or AG-II zones:

Cemetery	Golf Driving Range	School - Business/Trade
Charitable Organization	Meeting Facility, Religious	Sports/Recreation Facility
Fairgrounds	School	Water Extraction, Commercial
Golf Course		

Existing schools would be allowed to expand or reconstruct existing facilities. Religious meeting facilities (churches) would not be allowed unless the prohibition would result in a violation of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

**b. Resource Protection zones.**

**(1) Restricting agricultural operations in the Resource Management Zone.** Under the existing Article II regulations, grazing is allowed with a CDP, and cultivated agriculture is allowed with a CUP. The Coastal Commission recommended modification would:

- Change the permit requirement for grazing from a CDP to a MCUP, and add a restriction that it may only occur on slopes of 30 percent or less, and
- Retain the CUP requirement for cultivated agriculture, but only it to occur it to slopes of 30 percent or less.

**(2) 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 does not allow grazing operations and allows cultivated agriculture throughout the zone with a CDP, provided there is evidence of either a permitted or nonconforming use on the site within the previous ten year period, or a MCUP if there is no evidence of previous use. The recommended modifications would:

- allow grazing operations subject to the approval of a MCUP, and
- require a MCUP for all new or expanded cultivated agriculture and restrict the use 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, in regards to cultivated agriculture, is necessary to protect the sensitive resources of land zoned MT-TORO.

**(3) Uses no longer allowed with either a CUP or MCUP.** The following uses would no longer be allowed by either a CUP or a MCUP in the MT-TORO and RMZ zones:

Aquaculture(1)	Fairgrounds	Meeting Facility-Public/Private(2)
Cemetery	Golf Course	Meeting Facility-Religious
Charitable Organization	Golf Driving Range	Mortuary(2)
Country Club(2)	Library(2)	Museum(2)
Child care - Non-residential	Mausoleum(2)	School
Child care - Residential	Medical Services - Clinic(2)	School-Business/Trade
Drive-through, accessory(2)	Medical Services-Extend. Care(2)	Sports/Recreation Facility
Equestrian Facility(1)	Medical Services-Hospital(2)	Water Extraction, Commercial

Notes:

1. RMZ only
2. MT-TORO only

Existing schools would be allowed to expand or reconstruct existing facilities. Religious

meeting facilities (churches) would not be allowed unless the prohibition would result in a violation of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

**c. Residential zones.** There are no additional proposed changes to the Residential zones use tables except to add “meeting facility, religious” as a use allowed with a CUP in the EX-1 zone within the Coastal Zone.

**d. Commercial zones.**

**(1) C-1 (Limited Commercial) zone.** The only proposed revision to the C-1 zone use tables is to add “visitor serving commercial” as a PP use within the Coastal Zone.

**(2) C-V (Visitor Serving Commercial) zone.** Campgrounds, bed and breakfast, and hostels are proposed to be added as a PP use in the C-V zone. Stand alone restaurants, cafés and coffee shops that are not associated with resort development are proposed to be added as a P use.

The following uses are proposed for deletion as a use allowed with either a CDP or a CUP:

Bulk water importation facility	Large family day care home	Mortuary, access. to cemetery
Desalination facilities	Medical Services - Clinic	School
Cemetery/Mausoleum	Medical Services-Extended Care	School-Business/Trade
Charitable Organization	Medical Services-Hospital	Special Care Home
Country Club	Meeting Facility-Public/Private	Wastewater treatment facility
Child care - Non-residential	Meeting Facility-Religious	Water diversion project
Child care - Residential	Mining	Water extraction, commercial
Drive -through facility	Mortuary	

The special provision that allows for the expansion or reconstruction of existing school facilities that is included in the Resource Protection zones use tables is not repeated in the Commercial zones use table. Religious meeting facilities (churches) would only be allowed if the prohibition would result in a violation of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

**(3) PI (Professional and Institutional) zone.** The following uses are proposed for deletion as either a use allowed with a CDP or a CUP:

- Bulk water importation facility
- Desalination facilities
- Mining
- Special Care Home

**e. Industrial zones (M-CD) and M-CR.** The M-CR zone (Coastal Related Industry) is intended to provide areas that are appropriate for coastal-related industrial uses. The M-CD (Coastal Dependent Industry) zone is applied within the Coastal Zone to areas appropriate for certain energy and industrial uses that require a site on, or adjacent to the sea to function.

Repair service (indoor/outdoor) is proposed to be added as a use allowed with a CUP in the M-CR and M-CD zones.

The following uses are proposed for deletion as a use allowed with either a CDP or a CUP:

Agricultural access. structure	Fairgrounds	Medical Services-Hospital
Agricultural processing	Golf Course	Meeting Facility-Public/Private
Cemetery	Golf Driving Range	Meeting Facility-Religious
Charitable Organization	Grazing	Mortuary (2)

Child care - Nonresidential	Greenhouse	Mortuary, access. to cemetery
Child care - Residential	Large family day care home	Museum
Conference center	Library	Music recording studio (1)
Country Club	Lodging - Hostel (1)	School
Cultivated agriculture	Mausoleum	School-Business/Trade
Drive -through facility	Medical Services - Clinic	Special care home
Equestrian Facility	Medical Services-Extend. Care	Wastewater treatment facility

Notes:

1. M-CD only
2. M-CR only

**f Special Purpose zones.**

- (1) **PU (Public Utility) zone.** Public works or private service facility is proposed to be added as a use allowed with a MCUP. This corrects an error in the County LUDC as adopted.

The following uses are proposed for deletion as a use allowed with either a CDP, CUP, or MCUP:

Agricultural product sales	Fairgrounds	Mining
Cemetery	Golf Course	Monastery
Charitable Organization	Library	Mortuary
Child care - Nonresidential	Mausoleum	Mortuary, access. to cemetery
Conference center	Medical Services - Clinic	Museum
Country Club	Medical Services-Extend. Care	School
Cultivated agriculture	Medical Services-Hospital	School-Business/Trade
Drive -through facility	Meeting Facility-Public/Private	Special care home
Equestrian Facility	Meeting Facility-Religious	Sports/Recreation Facility

- (2) **REC (Recreation) zone.** Residential accessory use or structure is proposed to be added as a use allowed with a MCUP. This corrects an error in the County LUDC as adopted.

The following uses are proposed for deletion as a use allowed with either a CDP, CUP, or MCUP:

Bulk water importation facility	Mausoleum	Mining
Cemetery	Medical Services - Clinic	Monastery
Child care - Nonresidential	Medical Services-Extend. Care	Mortuary
Child care - Residential	Medical Services-Hospital	Mortuary, access. to cemetery
Desalination facility	Meeting Facility-Religious	Wastewater treatment facility
Drive -through facility		

Religious meeting facilities (churches) would only be allowed if the prohibition would result in a violation of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

- (3) **TC (Transportation Corridor) zone.** The following uses are proposed for deletion as a use allowed with either a CDP, CUP, or MCUP:

Agricultural access. structure	Drive -through facility	Mining
Agricultural processing	Equestrian Facility	Monastery
Agricultural product sales	Fairgrounds	Mortuary
Aquaculture	Golf Course	Mortuary, access. to cemetery
Building/Landscape materials	Greenhouse	Museum
Bulk water importation facility	Library	School
Cemetery	Lodging - Hostel	School-Business/Trade
Charitable Organization	Mausoleum	Special care home

Child care - Nonresidential	Medical Services - Clinic	Sports/Recreation Facility
Conference center	Medical Services-Extend. Care	Vehicle inspection station
Country Club	Medical Services-Hospital	Water extraction, facility
Cultivated agriculture	Meeting Facility-Public/Private	Wastewater treatment facility
Desalination facility	Meeting Facility-Religious	

- 4. Coastal Development Permit requirement for subdivisions, lot line adjustments and voluntary mergers.** 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 CDP. Currently, Article II only specifies that a CDP is required for recording vesting tentative maps. Additionally, because subdivisions, lot line adjustments and voluntary mergers are not listed as principal permitted uses, they would require the approval of a CDP 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.

**Staff comment regarding Modification 9.** Staff’s primary concerns with the revisions proposed under Modification 9 relate to the following:

- The additional time and processing costs for uses that are designated as appealable development (P uses) due to the requirement for a public hearing before the Zoning Administrator and potential appeal to the Coastal Commission.
- Requiring a CDP for any intensification of agricultural activities (e.g., cultivated agriculture, orchards, vineyards, grazing), including restrictions on what is considered a principal permitted dwelling in agricultural zones
- Restrictions on what is considered a principal permitted dwelling in the Resource Management zone
- Permit requirements for animal keeping, including confined animal facilities
- Permit requirements for tentative maps other than vesting maps, lot line adjustments, and voluntary mergers.

**Modification 10 Accessory Structures and Uses (Coastal Commission staff report page 83):**

This Modification is aligned with Modification 9 above and specifies which accessory structures are considered a PP use, and those which are a P use and therefore subject to a public hearing and potential appeal to the Coastal Commission.

**Agriculture:** In the agricultural zones, agricultural accessory structures and uses are designated as PP only when they are considered a component of the agricultural use of the property. The only residential accessory structures and uses that are designated as PP are the following provided they are accessory to

a principal permitted dwelling:

- garages
- landscaping,
- pools, spas and hot tubs,
- storage sheds.

All other residential accessory structures and uses, such as guest houses, would be considered appealable development.

**Residential/Resource Protection zones.** Only the following structures and uses are designated as PP accessory structures and uses in the residential and resource protection zones:

- garages
- landscaping
- pools, spas and hot tubs
- storage sheds.

All other residential accessory structures and uses, including artist studios, barns and stables, guest houses, tennis courts, residential second units, etc., would be considered appealable development.

**Commercial/Industrial zones.** In the commercial and industrial zones, only the following structures and uses are designated as PP accessory structures and uses when accessory to a principal permitted use:

- equipment, maintenance and other minor outbuildings
- infrastructure
- landscaping
- parking.

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.

Please refer to Attachment B - Coastal Commission Use Tables and Exhibits (pages 1 through 60), for a complete description of the Coastal Commission recommended revisions to the allowable accessory structures and uses in the different zone types.

**Staff comment regarding Modification 10.** Staff's primary concern with the revisions proposed under Modification 10 relates to the additional time and processing costs for accessory structures and uses that are designated as appealable development (P uses).

**Modification 13 Subdivisions (Coastal Commission staff report page 99):**

This Modification adds language to specify that within the Coastal Zone, subdivisions and other land divisions or re-divisions (including voluntary mergers) are not a principal permitted use and therefore all such land divisions require a CDP that is subject to a public hearing and is appealable to the Coastal Commission. Also see the discussion under Modification 9 above regarding CDP requirement for subdivisions, lot line adjustments and voluntary mergers.

**Staff comment regarding Modification 13.** Staff's primary concern with the revisions proposed under Modification 13 relate to the additional permit requirements for tentative maps other than vesting maps, lot line adjustments, and voluntary mergers. Additionally, since they are not designated as principal permitted uses, all CDPs for tentative maps, lot line adjustments and voluntary mergers would require a noticed public hearing under the jurisdiction of the Zoning Administrator and would be

appealable to the Coastal Commission.

**Modification 14 Lot Line Adjustments (Coastal Commission staff report page 99):**

Article II currently requires, for lot line adjustments that result in lots that are nonconforming as to size, that “development of the lot avoids or minimizes impacts where appropriate to environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.” As proposed, the effect of this Modification would be to require that development of the lot avoid impacts to environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas in all instances, as shown below:

Article II (existing)	Proposed County LUDC (as modified)
<p><b>Section 35-134. Lot Line Adjustments.</b></p> <p><b>A. Findings:</b></p> <p>3.a(3)</p> <p><b>(f) Environmental Sensitive Habitat.</b>                      Development of the parcel avoids or minimizes impacts where appropriate to environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.</p>	<p><b>35.30.110 - Lot Line Adjustments</b></p> <p><b>B. Required findings for approval.</b></p> <p>3.c(6)</p> <p><b>(a) Coastal Zone.</b> Within the Coastal Zone, development of the lot avoids impacts to environmentally sensitive habitat and buffer areas, and riparian corridor and buffer areas.</p>

This Modification also adds a new finding for lot line adjustments to require that an adjustment of agricultural land located within the Coastal Zone will not diminish the long-term agricultural productivity of the land as a result of the proposed adjustments. Adding this finding serves to reinforce the protections for productive agricultural land including (1) the existing requirement that lot line adjustments must be found consistent with the Coastal Land Use Plan which includes policies that serve to protect agricultural lands and (2) the existing finding in the County LUDC for lot line adjustments that result in lots that are nonconforming as to size that requires that development of the lot shall not threaten or impair agricultural viability on productive agricultural lands within or adjacent to the lots.

Lastly, this Modification adds language to again specify that within the Coastal Zone lot line adjustments are not a principal permitted use and therefore require the approval of a CDP that is subject to a public hearing and is appealable to the Coastal Commission.

**Staff comment regarding Modification 14.** Staff’s primary concern with the revisions proposed under Modification 14 relate to eliminating the flexibility for highly constrained lots that currently exists in the finding regarding impacts to environmentally sensitive habitat and buffer areas and riparian corridor and buffer areas, and the imposition of additional permit requirements (i.e., potential for appeal to the Coastal Commission) for all lot line adjustments.

**Modification 21 Clarifications Regarding Bluff Development (Coastal Commission staff report page 112):**

This Modification addresses two bluff development issues, (1) structures in the bluff setback and (2) access stairways from the bluff to the beach.

First, the Modification adds the following new requirements for any minor improvements that may be allowed within the required geologic bluff setback:

- structural foundations are not allowed
- the structure must be sited a minimum of 15 feet from the bluff edge

- if such structures that are threatened by erosion they must be removed or relocated landward.

This Modification also proposes to restrict engineered staircases that provide access from bluff-top properties to the beach to those that provide public access. The existing language of the LCP is silent as to whether the staircase provides private or public access to the beach. The County has always interpreted this section to allow for private staircases to provide individual homeowners or members of homeowners associations access to the beach from blufftop properties (e.g., those located in Hope Ranch), and has issued CDP 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 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 when the need arises.

The table below compares the existing Article II language with the proposed County LUDC language as modified by the Coastal Commission:

<b>Article II (existing)</b>	<b>Proposed County LUDC (as modified)</b>
<p><b>Section 35-67. Bluff Development.</b></p> <p>3. Within the required blufftop setback, drought-tolerant vegetation shall be maintained. Grading, as may be required to establish proper drainage or to install landscaping, and minor improvements, i.e., patios and fences that do not impact bluff stability, may be permitted. Surface water shall be directed away from the top of the bluff or be handled in a manner satisfactory to prevent damage to the bluff by surface and percolating water.</p> <p>5. No development shall be permitted on the bluff face, except for engineered staircases or accessways to provide beach access, and pipelines for scientific research or coastal dependent industry. Drainpipes shall be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach. Drainage devices extending over the bluff face shall not be permitted if the property can be drained away from the bluff face.</p>	<p><b>35.60.060 - Bluff Development</b></p> <p><b>C. Landscaping, grading, and drainage.</b> Within a required blufftop setback, drought-tolerant vegetation shall be maintained. Grading, as may be required to establish proper drainage or to install landscaping, and minor improvements (e.g., patios and fences that do not require structural foundations or otherwise impact bluff stability) may be permitted but in no case shall minor ancillary structures or improvements be sited closer than 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Surface water shall be directed away from the top of the bluff or be handled in a manner satisfactory to prevent damage to the bluff by surface and percolating water.</p> <p><b>E. Bluff face development, drainage structures.</b> No development shall be permitted on the bluff face, except for engineered staircases or access ways to provide public beach access, and pipelines for scientific research or coastal dependent industry. Drainpipes shall be allowed only where no other less environmentally damaging drain system is feasible and the drainpipes are designed and placed to minimize impacts to the bluff face, toe, and beach. Drainage devices extending over the bluff face shall not be permitted if the property can be drained away from the bluff face.</p>

**Staff comment regarding Modification 21.** Staff’s primary concern with the revisions proposed under Modification 21 relate to specifying that only staircases that provide public access are allowed as this would render all the existing private staircases nonconforming. This increases the likelihood that

when the need arises to repair these staircases it will be done without a permit which could result in additional damage to the bluff and result in additional hazards to the public enjoying the beach below the bluff. Further, the County’s certified LCP and the Coastal Act do not distinguish between public and private accessways.

**Modification 34 Sea Level Rise (Coastal Commission staff report page 152):**

This Modification adds language (shown below) requiring that the best available scientific information, in the form of a coastal hazards analysis, be provided for proposed projects located near the shore. The analysis must encompass potential coastal hazards from erosion, flooding, wave attack, scour and other conditions as well as localized uplift or subsidence, local topography, bathymetry, and geologic conditions. For residential and commercial development, the analysis must consider a three to six feet per century range of potential sea level rise scenarios. 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 (1) is expected to have a long economic life, (2) has few options for adaptation to sea level higher than the design minimum, or (3) if the best available scientific information at the time of review supports a higher design level.

<b>Proposed County LUDC (as modified)</b>	<b>Article II (existing)</b>
<p><b>A. Residential and Commercial, Coastal Hazard Analysis in Consideration of Sea Level Rise.</b> The best available scientific information with respect to the effects of long-range sea level rise shall be considered in the preparation of findings and recommendations for all requisite geologic, geo-technical, hydrologic, and engineering investigations. Residential and commercial development at nearshore sites shall analyze potential coastal hazards from erosion, flooding, wave attack, scour and other conditions, for a range of potential sea level rise scenarios, from three to six feet per century. The analysis shall also consider localized uplift or subsidence, local topography, bathymetry, geologic conditions, and potential tsunami inundation areas. These hazard analyses shall be used to identify current and future site hazards, to help guide site design and hazard mitigation and identify sea level rise thresholds after which limitations in the development’s design and siting would cause the improvements to become significantly less stable. For design purposes, residential and commercial projects shall assume a minimum sea level rise rate of three feet per century; greater sea level rise rates shall 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.</p> <p><b>B. Energy Facilities and Other Critical Development, Coastal Hazard Analysis in Consideration of Sea Level Rise.</b> The best available scientific information with respect to</p>	<p>No similar regulations in Article II with respect to sea level rise. However, all projects are evaluated for conformance with Coastal Land Use Plan policies regarding bluff protection and geologic hazards and Article II development standards regarding beach development and bluff development.</p>

<p>the effects of long-range sea level rise shall be considered in the preparation of findings and recommendations for all requisite geologic, geo-technical, hydrologic, and engineering investigations. The analysis shall be performed for critical facilities, energy production and distribution infrastructure, and other development projects of major community significance using a minimum rise rate of 4.5 feet per century. The hazards analysis shall analyze potential coastal hazards from erosion, flooding, wave attack, scour and other conditions in conjunction with sea level rise scenarios and shall also consider localized uplift or subsidence, local topography, bathymetry, geologic conditions, and potential tsunami inundation areas. These hazard analyses shall be used to identify current and future site hazards, to help guide site design and hazard mitigation and identify sea level rise thresholds after which limitations in the development's design and siting would cause the improvements to become significantly less stable. For design purposes, energy projects and critical infrastructure shall assume 4.5 feet per century; greater sea level rise rates shall 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.</p>	
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**Staff comment regarding Modification 34.** Staff's primary concern with the revisions proposed under Modification 34 is that the Coastal Commission has not provided any scientific basis for establishing a specific sea level rise estimations. Any estimates should instead be based on the best scientific evidence available at the time a project is evaluated which may evolve as conditions relating to sea level rise are better understood. Establishing a specific sea level rise standard, as is proposed in this modification, would require amending the certified LCP in order to revise later it if necessary.

**6.2.2 Planning and Development Department suggested revisions to Modifications that the Coastal Commission staff does not support.**

**Modification 3 Appeals (Coastal Commission staff report page 30):** The primary purpose of this Modification is to revise the language of the County LUDC so that it correctly reflects the language of a recently certified LCP amendment (LCPA 2-06) that updated the appeal and noticing requirements for development projects. Because this amendment, which was approved by the Board of Supervisors and submitted for certification to the Coastal Commission in 2006 prior to the adoption of the County LUDC in 2007, was not certified until March 2008, the language of the County LUDC does not reflect exactly the language of the amendment as certified. Therefore, this Modification would reconcile the language of the County LUDC with the certified language regarding appeals.

Besides revising the appeal and noticing requirements, one of the primary goals of LCPA 2-06 was to combine the processing of CDP s with required Conditional Use Permits and Development Plans in order to reduce the number of permit actions that could be appealed to the Coastal Commission. All

Conditional Use Permits, and certain Development Plans (e.g., applications for development located in the Appeals Jurisdiction) are considered “appealable development” that may be appealed to the Coastal Commission. As required by the Coastal Act, appealable development is required to have a public hearing prior to being approved.

Amendments to Conditional Use Permits and Development Plans are under the jurisdiction of the Director, and Article II provides that a public hearing is not required prior to approval of the amendment. Both the application for the Amendment and the decision of the Director on the Amendment is noticed to the surrounding property owners and residents. Historically, when the Director approved an Amendment to a Conditional Use Permit or appealable Development Plan, staff followed this approval with the approval of a CDP 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. Notice of this approval was provided to the same parties that received notice regarding the Amendment, and a Notice of Final Action was sent to the Coastal Commission.

As proposed by the Coastal Commission staff, this Modification includes language that specifies that a CDP that is subject to a public hearing and is appealable to the Coastal Commission is required in order to allow any development approved through the Amendment process. Planning and Development Department staff requested that the Coastal Commission staff revise the recommended Modification to include procedures that reflects the existing Planning and Development procedure and provided revised text that included a “waived hearing process” for those instances where a surrounding property owner requests that a public hearing be held on the Amendment, and requirements for providing mailed notice including sending a Notice of Final Action to the Coastal Commission. However, these revisions were not acceptable to the Coastal Commission staff as they feel that any project change allowed by an Amendment is too significant to be covered by the original hearing.

**Staff comment regarding Modification 3.** Staff’s concern with the revisions proposed under Modification 3 is that the effect of this recommended modification will be the requirement for an additional public hearing before the Zoning Administrator for all Amendments for essentially the same project, and associated increases in processing time and costs.

**Modification 5 Noticing and Clarifications (Coastal Commission staff report page 60):**

The primary purpose of this Modification is to revise the language of the County LUDC so that it correctly reflects the language of a recently certified LCP Amendment (LCPA 2-06) that updated the Noticing requirements for development projects. These revisions are necessary due to the overlap between submitting the County LUDC for certification and the Coastal Commission certifying LCPA 2-06 as explained above under the discussion for Modification 3 (Appeals).

As described above, LCPA 2-06 also updated the processing requirements for CDP, Conditional Use Permits and Development Plans by combining the processing of CDPs with Conditional Use Permits and Development Plans in order to reduce the number of permit actions that could be appealed to the Coastal Commission. Prior to this amendment, a Conditional Use Permit or Development Plan would be approved, and then some time later a “follow-up” CDP 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. One result of this amendment was to require that the CDP 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 Plans approved prior to March 2008, such that a follow-up CDP would still be required to be issued to allow the actual construction of the project, the County LUDC included procedures that provided special requirements for noticing these follow-up Coastal Development Permits.

As proposed by the Coastal Commission staff, this Modification deletes the special requirements for noticing these follow-up Coastal Development Permits as they believe that retaining these procedures would be confusing and is inconsistent with the goal of requiring that CDPs are processed concurrently with the discretionary project. Planning and Development Department staff provided the Coastal Commission staff with alternative language that retained the procedure for noticing such follow-up CDP with the clarification that this only applies to projects approved prior to March 2008, however, this was not acceptable to the Coastal Commission staff.

**Staff comment regarding Modification 5.** Staff's concern with the revisions proposed under Modification 3 is that for remaining follow-up CDPs the County will have to use a noticing process not provided for in the certified County LUDC.

### **6.2.3 Minor clarifications, clean-ups and corrections.**

Many of the recommended modifications are minor in nature and relate to the following:

- Language corrections so that the County LUDC tracks the language of the Coastal Act more closely.
- Corrections required so that the County LUDC correctly reflects the language of recent amendments to certified Article II. This results from 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 County LUDC was 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 were not reflected in the County LUDC as adopted. The recommended modification will reconcile any differences.
- Correcting minor errors, omissions, and section references.

Planning and Development Department staff does not have any concerns regarding the following recommended modifications. Please refer to Attachment B - Coastal Commission Use Tables and Exhibits (pages 1 through 60), for a complete description of the proposed revisions.

**Modification 1 Inland Area (Coastal Commission staff report page 18):** Because the County LUDC contains zoning regulations that address both the Coastal Zone and the Inland area, Modification 1 is proposed in order to ensure clarity as to which provisions apply only in the Coastal Zone, which provisions apply only in the Inland Area, and which provisions apply to both areas. This Modification will add "Coastal Zone," "Inland area," or "Coastal Zone and Inland area" to the titles of different sections and subsections of the County LUDC as appropriate.

**Modification 2 References (Coastal Commission staff report page 26):** This Modification removes references to documents where the Coastal Commission staff feels that it may be interpreted to incorporate documents that are not part of the County's certified LCP. The Coastal Commission staff is concerned that these outside documents may change guidelines or provisions without further notice to the Coastal Commission. For example, the reference to County Code Chapter 14 (the Grading Ordinance) has been removed and replaced by incorporating the applicable standards directly.

**Modification 4 Clarification for Removing Follow-Up CDP (Coastal Commission staff report**

**page 55):** This Modification is aligned with Modifications 3 and 5 discussed on pages 17 and 18, above, and is proposed by the Coastal Commission in order to ensure consistent implementation of the requirement that an application for a CDP be processed concurrently and in conjunction with any application for a CUP or DP.

**Modification 6 Design Review (Coastal Commission staff report page 70):** The purpose of Modification 6 is reconcile the language of the County LUDC regarding projects under the jurisdiction of the North Board of Architectural Review with the certified language of the Board of Architectural Review amendment that was adopted and submitted to the Coastal Commission for certification prior to the adoption of the County LUDC, but was not certified until after the adoption of the County LUDC.

**Modification 7 Application Contents (Coastal Commission staff report page 72):** The specific submittal requirements for each of the various planning permit applications (e.g. CDP, Conditional Use Permits, Development Plans) that were previously included in Article II were not included into the County LUDC and instead are now specified within the application forms for each of the different permit applications. The purpose of this is to leave the application requirements flexible to ensure that the Planning and Development Department has the ability to tailor the application requirements as necessary for specific applications. However, to ensure that new applications for CDPs and other and other applications in the Coastal Zone include the necessary information required to adequately review and analyze whether new development proposals are consistent with the coastal resource protection policies of the certified County LCP, Modification 7 adds the following statement of the minimum information requirements that will have to be satisfied in an application in order for the County (or the Coastal Commission on appeal) to make an informed decision regarding consistency of the project with the LCP:

*At a minimum the application shall include all information and materials necessary for the review authority to make an informed decision regarding the consistency of the application with the Comprehensive Plan, the Local Coastal Program, and the regulations of this Development Code.*

**Modification 8 Applicability, Interpretation and Conflicts (Coastal Commission staff report page 72):** In translating the Article II language into Land Use and Development Code format, several revisions were made to language regarding the applicability, interpretation, and means of resolving conflicts within the Coastal Zone. The Coastal Commission staff is concerned that the language as revised is not consistent with the requirements of the Coastal Act or the County's Coastal Land Use Plan and is not fully protective of coastal resources. Therefore, Modification 8 is proposed to revert to the existing certified language contained in Article II regarding the purpose, authority and applicability of existing ordinances of the certified LCP. In addition, Modification 8 specifies the hierarchy of conflict resolution in the Coastal Zone as follows: (1) the provisions of the LCP take precedence over any other non-certified provisions, guidelines, or plans where conflicts occur with non-certified documents and (2) the standards that are most protective of coastal resources shall take precedence where conflicts occur within the LCP (unless otherwise specified). Modification 8 also updates the language that describes what development must comply with the provisions of the County LUDC by adding clarifications and deleting an existing inconsistency within the LCP which indicated that certain repair and maintenance activities are not subject to the County LUDC. Finally, Modification 8 addresses two other important implementation issues: (1) it clarifies that in the Coastal Zone, where provisions of State law are amended, such changes require an LCP amendment to be effective within the Coastal Zone and (2) it provides a full list of updated zoning maps and overlays.

**Modification 11 Exemptions (Coastal Commission staff report page 88):** This Modification reorganizes the section of the County LUDC that enumerates those uses that are exempt from planning permits to separate exemptions applicable in the Coastal Zone versus those that are applicable in the Inland area. Additionally, the text describing what is exempt in the Coastal Zone is revised to better reflect the requirements of Sections 13250-13253 of the Coastal Commission's Administrative Regulations. The revised language divides the Coastal Zone exemptions into the following categories:

- improvements to a structure other than a public works facility
- agricultural activities
- utility hook-up exclusions
- temporary events and filming
- repair and maintenance
- disaster replacement.

However, this modification also adds language to specify that any activities listed under the first two categories are exempt only if they comply with development standards that serve to protect coastal resources including wetlands, beaches, environmentally sensitive habitat areas, coastal bluffs, and public access.

**Modification 12 Development Standards (Coastal Commission staff report page 97):** The purpose of this modification is to provide clarification throughout the County LUDC that development in the Coastal Zone is subject to all the provisions of the certified LCP, not just the development standards identified within each zone district. This modification also includes minor clarifications within the different zone standards to bring the text into conformance with the existing certified language of the LCP.

**Modification 15 ESHA Clarifications (Coastal Commission staff report page 101):** The purpose of this modification is to (1) ensure that the revised language in the ESHA Overlay is consistent with the protections provided in the existing certified LCP, (2) rectify an existing internal inconsistency regarding nonconforming structures within the Toro Canyon Area, (3) reiterate that the ESHA Overlay applies when new ESHA is identified on a project-level basis, and (4) establish a new standard that the ESHA Overlay still applies in cases where habitat or species have been unlawfully destroyed.

**Modification 16 Flood Hazard Overlay (Coastal Commission staff report page 105):** This Modification eliminates the reference to the standards located within County Code Chapter 15A (Floodplain Management) that have not been certified as part of the County's LCP. In the Coastal Commission staff's view, references to uncertified standards have the potential to create a conflict with the standards of the certified LCP because the standards may change without further notification to the Commission. This Modification remedies this situation by incorporating the applicable standards directly into the County LUDC. In addition, the modified language also clarifies that all other standards of the LCP still apply in addition to any need for an approval by the County Flood Control District.

**Modification 17 Hazardous Waste Management Facility Overlay (Coastal Commission staff report page 105):** Modification 17 eliminates a reference to the Hazardous Waste Element which is not certified as part of the County's LCP. The modification also reiterates that, within the Coastal Zone, conflicts between non-certified standards and certified standards shall be resolved by the LCP provisions taking precedence, and that all such development must comply with all of the provisions of the LCP.

**Modification 19 Allowed Temporary Uses (Coastal Commission staff report page 107):** Modification 19 clarifies (1) that any temporary use listed as exempt from planning permit

requirements in the Temporary Use section of the County LUDC shall be exempt in the Coastal Zone only if it also meets the additional requirements outlined in the temporary event guidelines, and (2) that temporary trailers must also meet the regular exemption criteria specified in the County LUDC Section (Section 35.20.040).

**Modification 20 Telecommunications Facilities (Coastal Commission staff report page 108):** The purpose of this Modification is to incorporate the modifications from LCP Amendment 1-05-C (Telecommunications) with regard to commercial and non-commercial telecommunications that was certified on June 14, 2007. Since the County LUDC was transmitted to the Coastal Commission for certification prior to this date, it does not contain the text as modified by the Coastal Commission. Therefore, Modification 20 re-inserts the certified modifications from LCPA 1-05-C.

**Modification 22 Clarifications Regarding Planning Permit Modifications (Coastal Commission staff report page 113):** The purpose of Modification 22 is to ensure that modifications to zone development standards approved concurrent with the approval of a CUP or DP do not adversely impact coastal resources by adding language requiring that such planning permit modifications be consistent with all other applicable resource protection policies of the LCP.

**Modification 23 Development Agreements (Coastal Commission staff report page 114):** The purpose of this modification is to clarify that a Development Agreement for development located in the Coastal Zone is only effective once it is certified by the Coastal Commission as an amendment to the LCP.

**Modification 24 Signs (Coastal Commission staff report page 115):** The existing certified Article II makes limited references to signs. The proposed County LUDC incorporates all of the permit requirements attributed to signs formerly contained in Article I, the County Sign Ordinance. Modification 24 clarifies when a sign requires a CDP and when it may be exempt.

**Modification 26 Energy (Coastal Commission staff report page 116):** This modification is proposed to ensure that the language regarding facilities related to oil and gas development more accurately reflects the language of the existing certified LCP and provides the same level of protection of coastal resources.

**Modification 27 Glossary (Coastal Commission staff report page 118):** The County LUDC provides a comprehensive set of definitions of land uses and terms that did not exist in Article II. The Coastal Commission is proposing several modifications to support the objectives of other suggested modifications, particularly to (1) provide guidance on interpreting the Land Use Tables, (2) implement the system of Principal Permitted Uses, and (3) revert some definitions back to existing Article II language.

**Modification 28 Revert to Certified Language (Coastal Commission staff report page 123):** The purpose of this modification is to re-insert language from the existing certified Article II where the Coastal Commission is concerned that the loss of such language would result in the LCP not being implemented adequately, including circumstances where it is not clear that any exceptions or modifications to approvals must be consistent with all other provisions of the LCP.

**Modification 29 Errors and General Clarifications (Coastal Commission staff report page 125):** The purpose of this modification is to correct minor errors and omissions where the Coastal Commission staff feels the lack of information may cause inadequate interpretation and implementation of the LCP.

**Modification 30 LCP Amendments (Coastal Commission staff report page 131):** Section 35.104 of the County LUDC provides guidance regarding procedures and processing of amendments to the

County LUDC. Modification 30 provides processing clarifications to ensure that an amendment to the County LUDC also requires an amendment to the certified LCP before the amendment is effective in the Coastal Zone.

**Modification 31 Attachments (Coastal Commission staff report page 134):** The County LUDC included attachments (Community Plan development standards and a table summarizing the permitting requirements for oil and gas facilities located in the Inland area) that are not proposed for certification as part of the LCP. However, the Coastal Commission feels that it is not sufficiently clear that these attachments will not be part of the certified LCP. Therefore, Modification 31 provides additional introductory language explaining that the attachments are not certified as part of the LCP.

**Modification 32 Surface Mining and Reclamation Act (Coastal Commission staff report page 135):** The existing certified Article II includes provisions for Reclamation and Surface Mining Permits consistent with the California Surface Mining and Reclamation Act of 1975 (SMARA). The proposed section covering SMARA in the County LUDC was written to cover both the Inland area and Coastal Zone areas. However, in doing so the specificity regarding implementation and procedures within the Coastal Zone was removed. The primary purpose of Modification 32 is to clarify that mining constitutes development in the Coastal Zone thus requiring at a minimum the issuance of a CDP. Also, this Modification specifies that mining is not a designated as a principal permitted use, such that all CDPs for mining operations are appealable to the Coastal Commission.

**Modification 33 Density Bonus (Coastal Commission staff report page 146):** The existing certified Article II contains provisions to allow for a density bonus for affordable housing in order to implement the incentive programs provided in the State density bonus regulations (Government Code Sections 65915 through 65918). As adopted, the County LUDC reduced the specificity regarding density bonus program implementation and incentives contained in Article II. Modification 33 incorporates for the Coastal Zone some of the specific provisions from Government Code Section 65915 *et seq.* directly into the County LUDC with regard to applicability and program parameters rather than just referencing Section 65915 *et seq.* Additionally, the Modification provides a maximum density bonus of 50 percent above the base zone density and provides that incentive or other concessions may only be granted in the Coastal Zone when such incentives or concessions are consistent with all other applicable policies and provisions of the LCP and do not create adverse impacts on coastal resources.

**Modification 35 Renumbering (Coastal Commission staff report page 153):** Though every effort has been made to correctly identify locations where numbering of sections or references has occurred as a result of the recommended modifications above, there may be cases where a reference or section number was overlooked due to the length and complexity of the modifications. Modification 35 gives the County the ability to renumber references and section numbers as necessary to incorporate the recommended modifications as certified by the Coastal Commission.

#### **6.2.4 Beneficial modifications.**

The Coastal Commission staff is including in the recommended modifications the inclusion of several amendments to the County LUDCs adopted by the County in 2008 subsequent to transmitting the County LUDC 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 amendment 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.

Beneficial modifications also include:

**Modification 18 Rural Recreation (Coastal Commission staff report page 106):** “Rural Recreation” is a land use type that is identified as an allowed use in the Agricultural and Resource Protection zones. The existing certified LCP identifies rural recreation as low intensity recreational uses within the Agricultural II (Ag-II) zone, Resource Management (RMZ) zone, and Mountainous Toro (MT-TORO) zone; however, each of the zones has a different list of potential low intensity recreational uses and some provide additional standards and some do not. Modification 18 re-inserts the uses and zone standards to be more consistent with the existing certified Article II, thus correcting inadvertent errors regarding campgrounds in the rural areas that were made when the County LUDC was adopted by the County.

**Modification 25 Economic Hardship (Coastal Commission staff report page 115):** This modification further amends the time extensions process for permits to allow additional time extensions for reasons of economic hardship; however, this provision is only effective until January 12, 2012. Specifically, the Director may extend planning permits for an additional 24 months where findings of economic hardship can be made. These additional provisions were adopted by the Board of Supervisors on July 14, 2009.

## **7.0 ENVIRONMENTAL REVIEW**

The review of the California Coastal Commission staff’s recommended modifications to the County Land Use and Development Code is not considered a project under the California Environmental Quality Act (CEQA) and therefore is not subject to CEQA.

## **8.0 NEXT STEPS**

The Coastal Commission is scheduled to consider the County LUDC at their August 2010 meeting in San Luis Obispo. The next step for the County is to provide comments and suggested changes the Coastal Commission staff’s recommendations. The Board of Supervisors will consider providing comments and testimony at their hearing on July 6, 2010. Your Commission’s comments and suggestions will be forwarded to the Board for their consideration.

Once the Coastal Commission acts to certify the County LUDC with modifications, then the Board has a maximum of six months from the date of the Coastal Commission action 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 County LUDC will be certified as of that date, and existing Article II will be of no further force or effect.

However, if the Board decides not to accept all the certified modifications within the next six month period, then the County LUDC would not be certified and Article II would continue as the implementation portion of the certified Local Coastal Program. The County LUDC would need to be amended to remove all Coastal Zone specific zoning regulations. Additionally, any recently approved amendments to the County LUDC that affect the coastal area would have to be reprocessed as an amendment to Article II 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.

## **9.0 ATTACHMENTS**

- A. Coastal Commission Staff Report
- B. Coastal Commission Use Tables and Exhibit Maps
- C. List of Coastal Commission Recommended Modifications
- D. Coastal Commission Administrative Regulations Section 13560 through 13572



## **ATTACHMENT A: COASTAL COMMISSION STAFF REPORT**

A copy of the Coastal Commission Staff Report may be obtained from the following website if not attached here:

<http://www.sbcountyplanning.org/projects/LUDCCoastalCommission/index.cfm>



## **ATTACHMENT B: COASTAL COMMISSION USE TABLES AND EXHIBITS**

A copy of the Coastal Commission Use Tables and Exhibits may be obtained from the following website if not attached here:

<http://www.sbcountyplanning.org/projects/LUDCCoastalCommission/index.cfm>



## **ATTACHMENT C: LIST OF COASTAL COMMISSION RECOMMENDED MODIFICATIONS**

- Modification 1 Inland Area
- Modification 2 References
- Modification 3 Appeals
- Modification 4 Clarification for Removing Follow-Up CDP
- Modification 5 Noticing and Clarifications
- Modification 6 Design Review
- Modification 7 Application Contents
- Modification 8 Applicability, Interpretation and Conflicts
- Modification 9 Allowed Land Uses and Permit Requirements Table
- Modification 10 Accessory Structures and Uses
- Modification 11 Exemptions
- Modification 12 Development Standards
- Modification 13 Subdivisions
- Modification 14 Lot Line Adjustments
- Modification 15 ESHA Clarifications
- Modification 16 Flood Hazard Overlay
- Modification 17 Hazardous Waste Management Facility Overlay
- Modification 18 Rural Recreation
- Modification 19 Allowed Temporary Uses
- Modification 20 Telecommunications Facilities
- Modification 21 Clarifications Regarding Bluff Development
- Modification 22 Clarifications Regarding Planning Permit Modifications
- Modification 23 Development Agreements
- Modification 24 Signs
- Modification 25 Economic Hardship
- Modification 26 Energy
- Modification 27 Glossary
- Modification 28 Revert to Certified Language
- Modification 29 Errors and General Clarifications
- Modification 30 LCP Amendments
- Modification 31 Attachments
- Modification 32 Surface Mining and Reclamation Act
- Modification 33 Density Bonus
- Modification 34 Sea Level Rise
- Modification 35 Renumbering



**ATTACHMENT D: COASTAL COMMISSION ADMINISTRATIVE REGULATIONS  
SECTIONS 13560 THROUGH 13572**

**CALIFORNIA CODE OF REGULATIONS  
TITLE 14. NATURAL RESOURCES  
DIVISION 5.5 COASTAL COMMISSION  
CHAPTER 8. IMPLEMENTATION PLANS  
SUBCHAPTER 2. LOCAL COASTAL PROGRAMS AND STATE UNIVERSITY OR COLLEGE LONG  
RANGE DEVELOPMENT PLANS  
ARTICLE 17. LOCAL COASTAL PROGRAM IMPLEMENTATION REGULATIONS**

**§ 13560. Scope of Article.**

The provisions of this Article shall constitute minimum standards of notice and hearing requirements for local governments and for the Commission in reviewing development projects after certification of a local coastal program.

**§ 13563. Existing Local Procedures.**

Existing local government notice and hearing procedures which are in substantial compliance with the provisions of these regulations may be reviewed and certified by the Commission as part of the local coastal program.

**§ 13565. Notice of Appealable Developments.**

Within ten (10) calendar days of accepting an application for an appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the first public hearing on the development proposal, the local government shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed and to the Commission. The notice shall contain the following information:

- (1) a statement that the development is within the coastal zone;
- (2) the date of filing of the application and the name of the applicant;
- (3) the number assigned to the application;
- (4) a description of the development and its proposed location;
- (5) the date, time and place at which the application will be heard by the local governing body or hearing officer;
- (6) a brief description of the general procedure of local government concerning the conduct of hearing and local actions;
- (7) the system for local and Coastal Commission appeals, including any local fees required.

**§ 13566. Public Hearing on Appealable Developments.**

At least one public hearing shall be held on each application for an appealable development, thereby affording any persons the opportunity to appear at the hearing and inform the local government of the nature of their concerns regarding the project. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 13565. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

**§ 13567. Notice of Local Government Action When Hearing Continued.**

If a decision on a development permit is continued by the local government to a time which is neither (a) previously stated in the notice provided pursuant to Section 13565, nor (b) announced at the hearing as being continued to a time certain, the local government shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section 13565.

**§ 13568. Notice of Non-Appealable Developments.**

- (a) Notice of developments within the coastal zone that require a public hearing under local ordinance, but which are not appealable pursuant to Public Resources Code Section 30603 (and which are not

categorically excluded) shall be provided in accordance with existing local government notice requirements which shall provide at a minimum:

Notice of developments shall be given at least ten (10) calendar days before a hearing in the following manner:

- (1) if the matter is heard by the Planning Commission (city or county) notice shall be published in a newspaper of general circulation or (if there is none) posted in at least three public places in the local jurisdiction;
- (2) notice by first class mail to any person who has filed a written request therefore,
- (3) notice by first class mail to property owners within 300 feet.
- (4) notice by first class mail to residents within 100 feet of the proposed project.
- (5) notice by first class mail to the Commission.
- (6) the notice shall contain a statement that the proposed development is within the coastal zone.

The local government may, instead, elect to provide notice in accordance with Section 13565.

- (b) Notice of developments within the coastal zone which are not appealable pursuant to Public Resources Code Section 30603 and which do not require a public hearing under local ordinance (and which are not categorically excluded) shall be provided as follows:

Within ten (10) calendar days of accepting an application for a non-appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the local decision on the application, the local government shall provide notice, by first class mail, of pending development approval. This notice shall be provided to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed, and to the Commission. The notice shall contain the following information:

- (1) a statement that the development is within the coastal zone;
- (2) the date of filing of the application and the name of the applicant;
- (3) the number assigned to the application;
- (4) a description of development and its proposed location;
- (5) the date the application will be acted upon by the local governing body or decision-maker;
- (6) the general procedure of the local government concerning the submission of public comments either in writing or orally prior to the local decision;
- (7) a statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the local decision.

**§ 13569. Determination of Applicable Notice and Hearing Procedures.**

The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:

- (a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.
- (b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the

local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;

- (c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:
- (d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area . The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.

**§ 13570. Finality of Local Government Action.**

A local decision on an application for a development shall not be deemed complete until (1) the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is or is not in conformity with the certified local coastal program and, where applicable, with the public access and recreation policies of Chapter 3 of the Coastal Act, and (2) when all local rights of appeal have been exhausted as defined in Section 13573.

**§ 13571. Final Local Government Action -Notice.**

- (a) Notice After Final Local Decision. (This section shall not apply to categorically excluded developments.) Within seven (7) calendar days of a local government completing its review and meeting the requirements of Section 13570, the local government shall notify by first class mail the Commission and any persons who specifically requested notice of such action by submitting a self-addressed, stamped envelope to the local government (or, where required, who paid a reasonable fee to receive such notice) of its action. Such notice shall include conditions of approval and written findings and the procedures for appeal of the local decision to the Coastal Commission.
- (b) Failure to Act -Notice.
  - (1) Notification by Applicant: If a local government has failed to act on an application within the time limits set forth in Government Code Sections 65950-65957.1, thereby approving the development by operation of law, the person claiming a right to proceed pursuant to Government Code Sections 65950-65957.1 shall notify, in writing, the local government and the Commission of his or her claim that the development has been approved by operation of law. Such notice shall specify the application which is claimed to be approved.
  - (2) Notification by Local Government: When a local government determines that the time limits established pursuant to Government Code Sections 65950-65957.1 have expired, the local government shall, within seven (7) calendar days of such determination, notify any person entitled to receive notice pursuant to Section 13571(a) that the application has been approved by operation of law pursuant to Government Code Sections 65950-65957.1 and the application may be appealed to the Commission pursuant to Section 13110 et seq. (This section shall apply equally to a local government determination that the project has been approved by operation of law and to a judicial determination that the project has been approved by operation of law.)

**§ 13572. Local Government Action -Effective Date.**

A local government's final decision on an application for an appealable development shall become effective after the ten (10) working day appeal period to the Commission has expired unless either of the following occur:

- (a) an appeal is filed in accordance with Section 13111;
- (b) the notice of final local government action does not meet the requirements of Section 13571;

When either of the circumstances in Section 13572(a) or (b) occur, the Commission shall, within five (5) calendar days of receiving notice of that circumstance, notify the local government and the applicant that the effective date of the local government action has been suspended.

**§ 13573. Exhaustion of Local Appeals.**

- (a) An appellant shall be deemed to have exhausted local appeals for purposes of Section 13111 and shall be qualified as an aggrieved person where the appellant has pursued his or her appeal to the local appellate body (bodies) as required by the local government appeal procedures; except that exhaustion of all local appeals shall not be required if any of the following occur:
  - (1) The local government or jurisdiction require an appellant to appeal to more local appellate bodies than have been certified as appellate bodies for permits in the coastal zone, in the implementation section of the Local Coastal Program.
  - (2) An appellant was denied the right of the initial local appeal by a local ordinance which restricts the class of persons who may appeal a local decision.
  - (3) An appellant was denied the right of local appeal because local notice and hearing procedures for the development did not comply with the provisions of this Article.
  - (4) The local government jurisdiction charges an appeal fee for the filing or processing of appeals.
- (b) Where a project is appealed by any two (2) members of the Commission, there shall be no requirement of exhaustion of local appeals. Provided, however, that a local government may provide, by ordinance, that notice of commissioner appeals may be transmitted to the local appellate body (which considers appeals from the local body that rendered the final decision), and the appeal to the Commission may be suspended pending a decision on the merits by that local appellate body. If the decision of the local appellate body modifies or reverses the previous decision, the commissioners shall be required to file a new appeal from that decision.

**§ 13574. Procedures for Open Space Easements and Public Access Documents.**

All coastal development permits subject to conditions of approval pertaining to public access and open space or conservation easements shall be subject to the following procedures:

- (a) The executive director of the Commission shall review and approve all legal documents specified in the conditions of approval of a coastal development permit for public access and conservation/open space easements.
  - (1) Upon completion of permit review by the local government and prior to the issuance of the permit, the local government shall forward a copy of the permit conditions and findings of approval and copies of the legal documents to the executive director of the Commission for review and approval of the legal adequacy and consistency with the requirements of potential accepting agencies;
  - (2) The executive director of the Commission shall have fifteen (15) working days from receipt of the documents in which to complete the review and notify the applicant of recommended revisions if any;
  - (3) The local government may issue the permit upon expiration of the fifteen (15) working day period if notification of inadequacy has not been received by the local government within that time period;
  - (4) If the executive director has recommended revisions to the applicant, the permit shall not be issued until the deficiencies have been resolved to the satisfaction of the executive director; or
- (b) If a local government requests, the Commission shall delegate the authority to process the recordation of the necessary legal documents to the local government if the local government identifies the department of the local government or public agency or private association that has the resources and authorization to accept, open and operate and maintain the accessways and open space/conservation areas required as a condition of approval of coastal development permits subject to the following: Upon completion of the recordation of the documents the local government shall forward a copy of the permit conditions and findings of approval and copies of the legal documents pertaining to the public access and open space conditions to the executive director of the Commission.