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Protecting Sensitive Habitats and Other Natural Resources

The Coastal Act sets high standards for the protection of Environmentally Sensitive Habitat Areas (ESHA), wetlands, riparian areas, and other natural resources in the coastal zone. The Commission has gained significant experience in applying the Coastal Act and LCPs to the protection of such resources. Also, there have been some important changes regarding the protection of ESHAs that stem from new scientific research, such as the identification of new sensitive species, or from court decisions interpreting the requirements of the Coastal Act.

➤ ***What should an updated resources component include?***

Based on the Commission's regulatory experience and new information, the Commission has identified a number of areas where LCP Resource policies and ordinances should be updated. As applicable, an LCP should include:

- ❑ A definition of ESHA that is consistent with the Coastal Act §30107.5.
- ❑ A definition of wetland that is consistent with Coastal Act §30121 and §13577(b) of the Code of Regulations.
- ❑ An updated map and description of existing, known habitats, with strengthened requirements for conducting site specific biological evaluations and field observations to identify ESHA and other sensitive resources at the time of proposed development or plan amendments.
- ❑ Clear policies stating that the identification of ESHA, wetlands, etc. will be determined in part through an evaluation of existing known resources at the time of proposed development or plan amendment.
- ❑ Review of areas adjacent to environmentally sensitive habitat areas and parks and recreation areas to ensure land use designations and development standards that are compatible with the protection of the resources.
- ❑ Updated setback requirements to reflect new scientific information on adequacy of buffers.
- ❑ Updated requirements for ensuring complete and detailed restoration and monitoring plans for projects involving habitat mitigation and restoration.

Review the principal Coastal Act policies concerning Marine Resources and ESHA in Sections 30107.5, 30121, 30240, 30230, 30231, 30233. These statutes can be found at:
<http://www.coastal.ca.gov/coactact.pdf>

➤ ***Where can I read some examples of updated resource policies?***

- City of Malibu LUP policies pages 38-75 of the LUP at <http://www.coastal.ca.gov/ventura/malibu-lup-final.pdf>.
- City of Malibu Zoning Ordinance provisions at <http://www.coastal.ca.gov/ventura/malibu-lip-final.pdf>.

San Luis Obispo County Periodic LCP Review at:

- <http://www.coastal.ca.gov/recap/slo/slo-intro.pdf>.
- <http://www.coastal.ca.gov/recap/slo/slo-asha.pdf>.

City of Newport Beach LUP Coastal Resource Protection at:

- <http://www.city.newport-beach.ca.us/Pln/LCP/Internet%20PDFs/CLUP%20Part%204.pdf>.

➤ ***What are some of the issues to be addressed in an updated resources component?***

The following highlights information that should be considered in updating policies for protection of environmentally sensitive habitat areas and other important natural resources.

◆ **Avoidance of Impacts to ESHA**

The Bolsa Chica decision [*Bolsa Chica Land Trust v. Superior Court* 71 Cal. Ap.4th 493, 507] confirmed that the Coastal Act requires that ESHA be avoided and buffered from development impacts and that providing mitigation is not sufficient justification for allowing development with avoidable impacts to ESHA. LCPs should clearly state that only “resource dependent” development, such as restoration or nature study, is allowed in ESHA, consistent with Coastal Act §30240.

◆ **Need for Updated Definitions**

Since many LCPs were certified, there have been problems on appeals and increased litigation stemming from confusing and inconsistent definitions for wetlands and other ESHA. The general LCP definition of ESHA should mirror Coastal Act §30107.5; similarly the definition of wetland should be that of §30121 of the Coastal Act and §13577(b) of the Calif. Code of Regulations (CCR). Note that the Coastal Commission relies on a potentially more inclusive, one-parameter definition of wetlands whereas the U.S. Army Corps of Engineers uses a three parameter definition under its federal authorities. The Commission conducted a workshop on wetlands delineation that may be useful in understanding these distinctions: *Definition and Delineation of Wetlands in the Coastal Zone* <http://documents.coastal.ca.gov/reports/2006/11/Th3-11-2006.pdf>.

In addition, see, for example, the revised findings for A-2-HMB-01-011(Keenan/Beachwood Subdivision).

◆ **Use of Resource Maps**

In recent years the Commission has identified at least two major concerns related to the use of LCP Resource Maps. First, many LCPs adopted a decade or more ago may be relying on maps that no longer adequately illustrate the potential presence of ESHAs given new scientific information and changes in the natural environment. This could result in the lack of protection of ESHA. Second, some jurisdictions may be relying only on outdated maps in determining whether ESHA exists on a site, potentially resulting in an incorrect determination of appealability and, possibly, resulting in litigation. While maps can serve as one illustrative tool to help identify potential resources, the presence of ESHA on the ground dictates the application of policies. LCPs must be updated to ensure that ESHA and wetland determinations are based on site specific biological surveys at the time of proposed development or plan amendment, and that any area that actually meets the definitions of either must be given all the protection provided for in the Coastal Act, regardless of its prior identification on a resource map. Be sure your LCP policies and filing requirements ensure that a thorough site-specific assessment of habitat and resources is undertaken as part of the development review process in order to identify any such resources.

◆ **Identifying ESHA**

ESHA designations are often based on the presence of rare habitats or on areas that supports populations of rare, sensitive, or especially valuable species or habitats. The Department of Fish and Game identifies rare habitats in their *List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database*. Rare species also include those that are listed under the California or Federal Endangered Species act, those that are listed as “1b” or “2” by the California Native Plant Society, and those for which there is other compelling evidence of rarity such as published academic studies.

More online tools have become available recently to assist in site specific analysis, including such resources as the California Natural Resources Diversity Database at <http://www.dfg.ca.gov/bdb/html/cnddb.html> and <http://www.dfg.ca.gov/bdb/pdfs/natcomlist.pdf>, as well as the Inventory of the California Native Plant Society at <http://cnps.web.aplus.net/cgi-bin/inv/inventory.cgi>

For an example of an updated Resources Component, including ESHA definitions, see Chapters 3 and 4 of the City of Malibu LCP found at <http://www.coastal.ca.gov/ventura/malibu-lup-final.pdf> and <http://www.coastal.ca.gov/ventura/malibu-lip-final.pdf>.

Also check out Chapter 4 of the *San Luis Obispo County LCP Periodic Review* at <http://www.coastal.ca.gov/recap/slo/slo-asha.pdf>, <http://www.coastal.ca.gov/recap/slo/slo-intro.pdf>

Coastal Act §30107.5 defines environmental sensitive area as: any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

◆ Monitoring Requirements

Updated LCPs should include specific provisions to require a complete and detailed Restoration and Monitoring Plan for any proposed or required habitat restoration or creation. Because submittal of conceptual plans can cause review delays, it is recommended that LCP filing requirements be updated to require that applications that involve habitat restoration or mitigation not be deemed filed until submittal of such a plan. Nearly all significant restoration projects will require preliminary field sampling and the results of this sampling should be included in the Restoration and Monitoring Plan.

Your updated LCP should ensure that such a Restoration and Monitoring Plan:

- Is a stand-alone document that describes actual methods and practices to be employed,
- Avoids such things as marginal notes on large format engineering or landscaping plans, simple tables and bulleted lists or mere references to information in other planning documents or to literature on field or statistical methods,
- Is able to be implemented by a technical specialist who has not been involved in the project, and
- Is written in such a way that an educated layman could understand and evaluate the plan.

Restoration and Monitoring Plans should include the following key components:

- A clear statement of the goals of the restoration for all habitat types. Characterization of the desired habitat, including an actual habitat, sampled that can act both as a model for the restoration and as a reference site for developing success criteria.
- Sampling of reference habitat using the methods that will be applied to the restoration site with reporting of resultant data.
- Quantitative description of the chosen restoration site.
- Requirements for designation of a qualified restoration biologist as the Restoration Manager who will be personally responsible for all phases of the restoration.
- Prohibition on assignment of different phases of the restoration to different contractors without onsite supervision by the restoration manager.
- A specific grading plan if the topography must be altered.
- A specific Erosion Control plan if soil or other substrate will be significantly disturbed during the course of the restoration.
- A Weed Eradication Plan designed to eradicate existing weeds and to control future invasion by exotic species that is carried out by hand weeding and supervised by a restoration biologist.

- A Planting plan that specifies detailed plant palette based on the natural habitat type that is the model for the restoration and using local native stock and requiring that if plants, cuttings, or seed are obtained from a nursery, the nursery must certify that they are of local origin and are not cultivars. The Planting plan should provide specifications for preparation of nursery stock and include technical details of planting methods (e.g., spacing, micorrhizal inoculation, etc.)
- An Irrigation Plan that describes the method and timing of watering and ensures removal of watering infrastructure by the end of the monitoring period.
- An Interim Monitoring Plan that includes maintenance and remediation activities, interim performance goals, assessment methods, and schedule.
- A Final Monitoring Plan to determine whether the restoration has been successful that specifies:
 - A basis for selection of the performance criteria,
 - Types of performance criteria,
 - Procedure for judging success,
 - Formal sampling design,
 - Sample size,
 - Approval of a final report, and
 - Provision for possible further action.

➤ ***What are some important LCP issues in resource protection?***

◆ **Invasive, Non-native Species**

The impacts of non-native invasive species on natural plant and marine resource communities are a growing concern. Such species can displace native species and impact natural communities. Consider including requirements for landscaping in your LCP. These could include:

- Professionally prepared landscape plans,
- Permanent implementation of the plans through bonding or deed restrictions,
- Requiring non-invasive plants, and
- Removing non-natives from the site.

Your LCP should also promote other methods to eradicate non-native invasive plants, recommending the most environmentally benign methods available.

LCPs should be updated to include a specific prohibition on the use of non-native invasive plants. The identification of such plants should be tied to authoritative lists, such as the California Invasive Plant Council inventory: <http://www.cal-ipc.org/ip/inventory/index.php>.

◆ **Beach Grooming/Beach Wrack/Grunion**

Recent research has reinforced the importance of protecting the beach wrack as part of the marine ecosystem. Beach wrack refers to the piles of seaweed and plant and animal remains that are washed ashore by waves. While this may appear to beach visitors as unsightly debris, wrack accumulates as a result of natural processes. Research has found that it is an important nutrient source and provides micro-habitat for a variety of organisms. Regular grooming of sandy beaches can destroy the wrack and help to degrade the near shore habitat. LCPs should be updated to include policies and management measures for beach maintenance to strike the appropriate balance between protection of this habitat and maintaining the recreational values of sandy beaches.

Beach grooming or other disruptive activities on the high shore can also have negative impacts to grunion. The grunion is a fish that comes ashore in the spring and summer during particularly high night-time tides to reproduce and lay their eggs. The eggs develop while buried in the sand and hatch two weeks later when high tides again wash the high-shore and enable the baby grunion to reach the sea. Where applicable, LCPs should include policies and management procedures that protect grunion by restricting sand-disturbing activities when grunion are present. During those periods, beach grooming and other disruptive activities should only take place above the semi lunar high tide mark

For more information concerning beach wrack see:

- <http://www.coastalconservancy.ca.gov/coast&ocean/winter2004/pages/two.htm>.

You can find more information on grunion at:

- <http://www.dfg.ca.gov/mrd/gruschd.html>, and
- <http://arachnid.pepperdine.edu/grunion>.

To read some discussion of these issues check out the Beach and Sediment Management Program for the Santa Barbara Harbor and Waterfront Area at <http://documents.coastal.ca.gov/reports/2006/4/Th12c-4-2006.pdf>, and the City of Santa Cruz Beach Management Permit at <http://documents.coastal.ca.gov/reports/2006/8/Th12a-8-2006.pdf>.