



February 14, 2011
Kim Kimball, Chair
Gaviota Coast Planning Advisory Committee (GavPAC)

**Re: Summary Of January 12, 2011, Comments To The GavPAC
Regarding Environmentally Sensitive Habitat Areas (ESHA)**

Dear GavPAC:

The Environmental Defense Center (EDC) offers these comments regarding ESHA on the Gaviota Coast.

EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California's south central coast. EDC protects and enhances the environment through education, advocacy and legal action.

Definition of "ESHA"

ESHA is defined broadly under the California Coastal Act 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." Pub. Res. Code § 30107.5.

In *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, the court emphasized that the Coastal Act protects habitat *areas* and not just habitat *values*.

Thus, the statute does not authorize the separation of habitat values from an existing habitat and the relocation of those values elsewhere as a form of protective mitigation. Rather, the statute protected the designated habitat area itself, regardless of its continued viability, and mitigation measures could not be used to circumvent the statute's strict limits on the uses permissible in habitat areas.

McAllister v. California Coastal Commission (2008) 169 Cal.App.4th 912, 932-933 (citing *Bolsa Chica Land Trust, supra*, 71 Cal.App.4th at 507-508). This underscores the Coastal Act's requirement that ESHA generally cannot be removed and replaced through offsite mitigation.

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Even “created” habitats can be designated as ESHA if they conform to the definition in Section 30107.5.

“Safe Harbor Agreements” balance endangered species and landowner concerns under federal law, but a similar local policy may not be consistent with Coastal Act requirements for protecting ESHA.

Similarly, given the Coastal Act, mitigation banking for removal of ESHA may not be permissible in the coastal zone.

We believe that enforceable policies are necessary to preserve environmentally sensitive habitat, and we urge the GavPAC to recommend similar policies for the coastal and inland areas.

Native Grassland

Ninety-nine point nine percent of native grassland in California has been lost through conversion to non-native habitats, development, industrial agriculture and grazing, and other land uses. Native grassland is the most endangered plant community in California.

Native grasslands are defined by the County as areas in which the native grassland species exceed ten percent relative cover. This definition comes from the Department of Fish and Game’s Natural Heritage Division. The Coastal Commission also uses this definition.

There are important native grasslands remaining on the Gaviota Coast, and we hope that the GavPAC will recommend policies to protect this rare native plant community.

ESHA Buffers

Section 30240(b) of the Coastal Act requires the establishment of buffers around ESHAs that are large enough to protect the ESHAs. As an example, UCSB’s certified Long Range Development Plan requires minimum 100-foot buffers for all ESHAs.

A one-size-fits-all buffer requirement may not be the best policy for Gaviota, but precedent suggests that the Coastal Commission may prefer this approach.

In one example, UCSB worked with the Coastal Commission to reduce buffer requirements, because reduced buffers on the North Parcel enabled UCSB to redesign a project to protect the entire 70-acre South Parcel containing numerous ESHAs.

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The County's Local Coastal Plan includes Policy 9-37 which provides for a 100-foot minimum setback from creeks in rural areas. This policy has flexibility to reduce the buffer after consultation with Department of Fish and Game and the Regional Water Quality Control Board and "in order to protect the biological productivity and water quality of streams" based on consideration of factors including slope, location of the 100-year floodplain, soil type and stability.

It is appropriate to be flexible where reducing buffers results in greater protection of ESHA.

In general, existing buffers in County policies are inadequate to sufficiently protect the significant biological resources on the Gaviota Coast.

Areas not mapped as ESHA

Areas that are not mapped as ESHA but which meet the definition of ESHA *are* ESHA and must be protected.

Goleta Community Plan as model for extending ESHA mapping inland

The 1993 Goleta Community Plan (GCP) is a good model for protecting inland ESHA. Under the GCP, ESHA is mapped in the inland areas to identify it for future protection. The GCP has policies and ordinances which specifically protect ESHA. The GCP is flexible regarding buffers in the inland areas.

The Coastal Act and the California Environmental Quality Act (CEQA)

At a recent GavPAC meeting, it was suggested that inland ESHA would be adequately protected by the requirements of CEQA, and therefore may not need protections similar to those found in the Coastal Act. CEQA and the Coastal Act function very differently, however. For example, while CEQA does have a "substantive mandate," it does not focus on protecting specific resources. Rather, it provides information to decision-makers and guides consideration of discretionary actions. Under CEQA, ESHA may be removed and mitigated offsite if certain findings are made, whereas under the Coastal Act ESHA generally must be preserved in place.

Chaparral as ESHA

Maritime Chaparral is a plant community that supports more than 20 special-status species in Santa Barbara but has never been considered ESHA by the County. Chaparral may seem common locally, but it is rare globally. The Coastal Commission considers Maritime Chaparral ESHA. Other jurisdictions have designated chaparral as ESHA, including the City of Malibu.

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The GavPAC should recommend designation of chaparral as ESHA in the Gaviota Planning Area.

Takings and ESHA

In one example – referenced at the GavPAC – on Del Playa in Isla Vista, the County allowed some limited development in ESHA, because the property was otherwise not developable.

Climate Change

Underlying all consideration of ESHA is the threat of climate change. Climate change will interact with development pressures to exacerbate impacts to ESHA, and the GavPAC should consider policies to protect resources accordingly.

Conclusion

Thank you for considering these recommendations. Please contact me with any questions.

Sincerely,

Brian Trautwein
Environmental Analyst