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Sent: Sunday, July 24, 2022 7:00 PM

To: Convery, Abigail; mecagni@gmail.com

Subject: PHASE 2C AMENDMENTS

Attachments: COMMENTS - LEGAL ISSUES May7 2022.docx; COMMENT - ESHA June1st.docx;
COMMENTS - CONSTITUTIONAL ISSUE.docx; COMMENTS - MITIGATION LEGALITY FINAL.docx;
COMMENTS - PUBLIC INVOLVMENT.docx; COMMENTS - TAKING OF PROPERTY.docx

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Attached are my most recent documents which detail my objections to the PHASE 2C amendments.

I wish that they be presented to the board and that they are part of the official record.

Please advise should you have any issues with opening and processing them.

Thank you for your help in this matter.

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Rick Mecagni

ENVIRONMENTALLY SENSITIVE HABITAT AREA
COMMENT ON PHASE 2 AMENDMENTS TO VENTURA COUNTY'S LOCAL COASTAL PROGRAM (CPL)

Ventura county's Local Coastal Plan

Ventura County is now in the final stage of in their effort to certify an amendment to their local coastal plan (LCP) which will significantly change how it interprets the legislative definition of a sensitive AREA (ESHA).

The primary change being proposed is a reinterpretation of the legislative definition of a 'sensitive habitat'. For 26 years (1977-2003) the ESHA definition was interpreted to be the protection of rare or vulnerable plants or animals.

This amendment reinterprets the legislative definition and adds to ESHA protection all vegetation native to the Mediterranean ecosystem, all "coastal sage scrub chaparral".

Under the previous interpretation, ESHA protection effected relatively small areas. The new interpretation effects large areas.

In fact, it is estimated that 97 percent of the vegetation in the Coastal Santa Monica Mountains is "coastal sage scrub chaparral". With the proposed change, all vegetation in the Coastal Santa Monica Mountains (Ventura County, LA County, City of Malibu) will be legally classified as 'sensitive habitat'.

I believe that this reinterpretation was an error and that "coastal sage scrub chaparral" does not meet the legislative criteria required for ESHA designation.

The argument

What the legislature had to say: What is an ESHA?

Category (1) 'Sensitive areas' are – 30525(d), 30107.5: *Environmentally Sensitive area (ESHA): is any area' that supports plant or animal life or their habitats that are unique, fragile, and are either rare or especially valuable because of their special nature or role in an ecosystem and could be easily disturbed or degraded by human activities and developments, the adverse effects of which have not been carefully evaluated, mitigated, or avoided.*

Based on a careful reading of the ESHA definition two provisions stand out.

Provision #1: *any area' that supports plant or animal life or their habitats*

Provision #2: *because of their special nature or role in an ecosystem*

Provision #1: The use of the word “**their**” in the ESHA definition connects a protected habitat to a qualified plant or animal. An ESHA exist only within the context of that plant or animal.

“Coastal sage scrub chaparral” is not a plant nor is it an animal. It is an ecosystem and as such can not be protected under the ESHA provision of the Coastal Act. Only the area that supports a qualified animal or plant can be protected.

The Coastal Commission disagrees. The Commission has determination that all areas of an ecosystem qualifies for ESHA protection, even if the area supports no ‘sensitive plants or animals’

The Coastal Commission’s conclusion only makes sense if the wording of 30525 is changed and the word ‘**a**’ is substituted for the word ‘**their**’. Compare:

30107.5. Sensitive area means any area in which plant or animal life or their habitats (coastal act)

30107.5. Sensitive area means any area in which plant or animal life or a habitat (coastal commission)

An “**a**” substitution significantly changes the legislative definition. The letter “**a**” allows ‘sensitive area’ to exist independent of a plant or animal. The letter “**a**” qualifies an ecosystem as a ‘sensitive area’ (ESHA).

Without this change, ESHA protection is plant or animal dependent.

Provision #2: The definition itself clearly indicates that the Mediterranean ecosystem is can not be the basis of an ESHA because an ESHA is a component of an ecosystem, not the ecosystem itself. (... special nature or role in an ecosystem).

Category (2) As for "Sensitive coastal resource areas" How do you protect a vulnerable ecosystem if you can not use the ESHA tool?

The Mediterranean Ecosystem which encompasses all of Coastal Santa Monica Mountains, if found to be of ‘*vital interest and sensitivity*’, can be provided protection through the 30116, not through 30107.5.

‘Sensitive resources’ - 30116: *"Sensitive coastal resource areas" means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. "Sensitive coastal resource areas" include the following - (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries*
‘sensitive resources’ are regional and of statewide significance. (conversely, ESHA’s are local).

Because Mediterranean Ecosystem of the Santa Monica Mountains is regional (spanning three local coastal agencies) and is significant statewide (occupying all of coastal California), it qualifies for protection under 30116 as a ‘sensitive coastal resource’.

NOTE: Through 30502, the legislature sets forth a rigorous process for ‘sensitive resource’ designation and reserves, to the legislature, (not the Coastal Commission) the designating authority.

By substituting ESHA as the vehicle for ecosystem protection, the Coastal Commission circumvents the required legislative oversight.

The Consequences or, how does the new interpretation effect property owners?

What a difference a word makes! When the basis of an ESHA requires the connection to a qualifying plant or animal, an area effected is limited. When a biologist visits a proposed building site and finds that the site supports no qualifying plants or animals the property owner can proceed with the project.

When the basis of an ESHA is “coastal sage scrub chaparral”, the area qualifying as an ESHA is all vegetation affected by the development! When a biologist visits a proposed site, the purpose is not to identify qualifying plants or animals. The purpose is to document the amount of vegetation to be removed and to calculate the amount of the check (\$57,500 per acre).

I believe that the definition of racketeering is: You create a problem that would not exist unless you created the problem, then, for a price, you fix the problem you created.

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COMMENT ON PHASE 2 AMENDMENTS TO THE LOCAL COASTAL PROGRAM (LCP)
CONSTITUTIONAL ISSUE
RICHARD MECAGNI

CONSTITUTIONALLY PROTECTED RIGHT: Our inalienable right to protect our safety and our property.

The proposed ESHA amendments to Ventura County's local coastal plan would result in the denial of this inalienable right.

DISCUSSION

The part of the Santa Monica Mountains that lies in Ventura County (SMM/VC) is home to a micro wind climate, unique in the Santa Monica Mountains.

Santa Anna Winds, measured by weather stations located throughout Southern California consistently register the highest velocity Winds at SMM/VC. Verification of this statement can be secured through the analysis of data stored at Mesowest, a weather archival storage project housed at the University of Utah. Historical data for weather stations D5145 and FW0112 which are two weather stations located in (SMM/VC) is archived there and can be analyzed using the Mesowest website.

Typicaly, 15 Santa Ana event occur each year with high wind velocity ranging between 50MPH and 90MPH. The duration of each of the 15 wind events are as short as 1 day to as long as 10 days. Every several years, winds in excess of 100MPH are recorded. In March of 1992 a 125PH wind gust was recorded at Laguna Peak. In October of 2007 the high wind was 111MPH .

The Ventura County Fire Department classifies (SMM/VC) as Extreme. In fact, the Los Angeles County Local Coastal Plan states that the winds and accompanying fire danger in the Santa Monica Mountains is the highest in North America.

The Santa Ana Winds and the accompanying fire dangers in (SMM/VC) are the extreme of extremes, with often double the wind velocity of other parts of the Santa Monica Mountains.

These extreme winds usualy come in the middle of the night or early morning when residents are most vulnerable. Defensible space under these conditions is irrelevant. Survivable space, where response time is measured in minutes determines if we live or die. ESHA denies survivable space.

The first words of the California Constitution

*All people are by nature free and independent and **have inalienable rights**. Among these are... **defending life ... protecting property**, and **pursuing and obtaining safety**.*

A simple finding by the Ventura County Board of Supervisors would significantly diminish our ESHA concerns. It might read something like this:

FINDING

Because of the extreme fire conditions that exist in the Santa Monica Mountains and because of the immediate danger faced by residents, the Ventura County Board of Supervisors declare that property owners and residents possess the inalienable right to 'protect property and obtain safety' as granted in the California Constitution. Therefore, property owners are exempted from permits, fees and habitat removal limits needed to protect their homes and their lives from fire danger.

LEGAL ISSUES

Legal issues regarding the preliminary certification of Ventura County's local coastal program by the California Coastal Commission at the April 6th, 2022 public hearing. These 10 issues were presented directly to the members of the Coastal Commission via a hand out prior to the meeting. The Coastal Commission Chair allowed me two minutes during the hearing to present them. The chair then denied my request for more time after I invoked the Coastal Act provision which guarantees the public the right to fully participate to the maximum extent. Papers that more fully detail the basis of these 10 issues are part of the public record and were available to the Ventura Planning Commission and to the Ventura Board of Supervisors and to the Coastal Commission prior to public hearings. I have had no indication from any agency that anyone has read them.

Legal Issue #1. California Constitution protection - ARTICLE1

*DECLARATION OF RIGHTS - All people are by nature free and independent and **have** inalienable rights. Among these are... defending life ... protecting property, and pursuing and obtaining safety.*

Because of the extreme danger of catastrophic wildfire in the Santa Monica Mountains, wild land vegetation management is fundamental to personal safety. Ventura County's proposed ESHA is designated by Cal-Fire as a 'very high fire hazard severity zone' which is highest fire danger rating.

Ventura County's local coastal program (LCP) Amendment requires the payment crippling fees for clearing combustible vegetation around homes. Under the provisions of this amendment, home owners are forced to make a choice between fire safety and economics. Those who can afford to pay mitigation fees can clear dangerous vegetation. Those who can not are forced to live with the ever present danger of a catastrophic wildfire.

Legal issue: The legal basis for the Coastal Commission certification a Ventura County's local coastal program that restricts a citizens right to 'defend life, protect property, or deny the pursuit of safety'.

Required finding: The factual/legal basis for prioritizing the protection of vegetation when, as a consequence, that designation restricts a property owners right to pursue safety?

Issue #2. Damage to private property - The Coastal Act requires compensation to any property owner who's property is damaged or taken because of a condition of a permit.

The federal constitution provides for compensation when a person is deprived of all economic value, however the Coastal Act provides for compensation for any damage.

Ventura County's proposed mitigation fee would have the effect of reducing the value of all unimproved parcels that support ESHA by the amount of the fee. In the case of a typical single family home, the fee for vegetation clearance would range from \$275,000 (200' vegetation clearance) to \$500,000 (300' clearance).

Legal issue: Are the taxpayers of California liable to property owners as a direct result of mitigation fees in as that such fees directly effect land value and cost of construction.

Required finding: The factual/legal basis detailing the Coastal Commission's reasoning regarding California taxpayer financial liability resulting from the economic damage caused by an ESHA designation.

Legal Issue #3. Change in land use – In 2003, based on a Coastal Commission staff recommendation, (see Dixon memo) the County of Ventura planning department changed the interpretation of the sensitive habitat area (ESHA) legislative definition.

From that date forward to today, the Mediterranean ecosystem was determined by Ventura County to be a sensitive habitat. This change has had significant effect on land use.

As a result of this change, for the past 19 years, ESHA related conditions and costs have been imposed on property owners

Legal issue: The Coastal Act specifically forbids any change in a certified local coastal program that affects land use without a public hearing and without Coastal Commission certification. No such hearing was held nor was any Coastal Commission certification granted.

Therefore, were the ESHA related conditions and costs imposed during the past 19 years imposed without legal authority? Are the illegal ESHA related permit conditions and building costs incurred by property owners during the past 19 years that were based on the uncertified land use changes void?

Required finding: The factual/legal basis for allowing Ventura County to change land use policy without a public hearing or without Coastal Commission certification.

Legal Issue #4. Mitigation Fees - The Coastal Act **prohibits** the assessment of mitigation fees.

Ventura County's ESHA amendment establishes, in most cases, a minimum \$271,000 mitigation fee prior to clearing vegetation needed to build a single family home.

Legal issue: By approving Ventura County's *ESHA* amendment, which requires the payment of mitigation fees, has the Coastal Commission exceeded its legal authority.

Required findings: *The factual/legal basis for the assessment of mitigation fees.*

Legal Issue #5. Penalty date - *The proposed LCP amendment establishes the date of the Coastal Act (1976) as the date of ESHA designation.*

The designation of the Mediterranean ecosystem as ESHA has, is yet, not certified by the Coastal Commission (2022).

The proposed amendment provides for the payment of penalties of \$57,000 per acre for any sensitive vegetation removed without permits after the enactment of the Coastal Act (1976).

Legal issue: The legal basis for the assessment of penalties for vegetation removed that, at the time the vegetation was removed, was not certified as ESHA.

Required finding: The factual/legal basis for the imposition of penalties after 1976 but before ESHA designation.

Legal Issue #6. PUBLIC PARTICIPATION – ILLEGAL DENIAL

Ventura County's process of Local Coastal Plan development excluded public participation at any stage in it's development, amendment, or certification. However, the Coastal Act guarantees the **right** of the public to **fully** participate in **all** decisions on **all content** to the **maximum** extent.

Legal issue: Was the public denied the legislatively mandated right to fully participate in the amendment and certification of Ventura County's local coastal plan.

Required finding: The factual/legal basis for the apparent exclusion the public from participation.

Issue #7. Mediterranean ecosystem as ESHA - The Coastal Act provides for protection of the *habitat of sensitive/vulnerable plants and animals.*

*In 2003, after 26 years of sensitive habitat policy, the Coastal Commission expanded its interpretation of the legislative definition of sensitive habitat when it added ESHA protection for the **Mediterranean ecosystem** (coastal sage scrub and chaparral).*

This designation occurred as part of the Coastal Commissions writing of the City of Malibu's local coastal program.

Under the new interpretation, the Coastal Commission continued to provided habitat protection for sensitive plants and animals while adding protection for the Mediterranean ecosystem.

Legal issue: (1) Has the Coastal Commission exceeded its legal authority by interpreting the legislative definition of ESHA to include an ecosystem? And (2) Does the Mediterranean ecosystem conform to legislative definition of a sensitive habitat area.

Required finding: The factual/legal basis for the addition of the ecosystem as a sensitive habitat and the analysis which supports the determination that the Mediterranean ecosystem meets the legislative criteria.

Legal Issue #8. Ecosystem – mistakenly categorized. The Coastal Act identifies two categories of coastal resources that are subject to special protection: (1) Sensitive coastal resource areas which require statutory designation, and (2) sensitive resource values which do not require statutory designation. ESHA is legislatively categorized as a resource value, thus ESHA designation is exempt from the statutory designation requirement. But has the Mediterranean ecosystem been mistakenly categorized as a resource value?

The Mediterranean ecosystem seems to meet the requirements of a Sensitive coastal resource area because it is regionally significant (Coastal Santa Monica Mountains) and regional issues are legislatively categorized as resource areas. Thus the Santa Mountains coastal ecosystem is a sensitive coastal resource area and thus requires statutory designation.

Legal issue: Has the Coastal Commission exceeded its legal authority by categorizing an ecosystem as a resource value, thus circumventing the required statutory designation?

Required finding: The factual/legal basis for categorizing the Mediterranean Ecosystem as a sensitive resource value.

Legal Issue #9. Rare plant or animal habitat – The Coastal act defines a sensitive habitat area as an “an area in which plant or animal life or their habitats are rare or especially valuable”.

A critical question regarding this definition is if a legally designated ESHA can exist without first identifying a rare plant or animal or can ESHA can exist independent of an identified rare plant or animal.

The Coastal Commission's preliminary certified Ventura County's local coastal program, is based on the determination that the Mediterranean ecosystem is vulnerable because of population growth in the coastal Santa Monica Mountains and thus meets the legislative definition of an ESHA.

Thus, the identification of rare plants or animals are not required.

Legal issue: Does the legislative definition allow for an ESHA to exist independent of a rare plant or animal.

Required finding: The facts/legal analysis that justifies the designation of the Mediterranean ecosystem as an ESHA without first identifying a rare plant or animal.

Legal Issue #10. Willful ESHA destruction - The Coastal Act prohibits any disruption of sensitive habitat. However, the proposed Ventura County *LCP* Amendment permits extensive sensitive habitat destruction. Ventura County contends that the law permits them to allow the destruction of ESHA, despite the legislative prohibition, in order to avoid a 'taking'.

The LCP Amendment, in effect, rewrites the Coastal Act by removing sensitive habitat protection.

Legal issue: By approving the ESHA amendment, has the Coastal Commission exceeded its legal authority by codifying the destruction of a designated ESHA.

Required finding: The factual/legal basis for permitting the willful destruction of sensitive habitat in order to avoid a legal 'taking'.

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LEGALITY OF MITIGATION FEES

COMMENT ON PHASE 2 AMENDMENTS TO THE VENTURA COUNTY LOCAL COASTAL PROGRAM (LCP)

The California Legislature fully considered situations where businesses and individuals would adversely effect coastal resources as they pursued permitted economic and personal interests. In turn it did consider the remedy for such disruptions.

Of the 11 mentions of ‘mitigation’ in the Coastal Act, only one addresses private property.

With the exception of the following situation, the Legislature expressly prohibited mitigation fees anywhere in the Coastal Zone. This prohibition is described in 30526 (c).

Ventura County’s LCP amendment authorizes the charging of such fees.

2016 California Code

Public Resources Code - PRC

DIVISION 20 - CALIFORNIA COASTAL ACT

CHAPTER 6 - Implementation

ARTICLE 2 - Procedure for Preparation, Approval, and Certification of Local Coastal Programs

30526. (a) Because of the intensity of development contemplated, the area s steep topography and highly erodible soils, and the demonstrated impacts from development despite the utilization of mitigation measures, the imposition of Legislature finds that the threat from development to wetlands in the City of San Diego requires that a mitigation fee program be included in the city s local coastal program. Therefore, the City of San Diego shall provide in its local coastal program for payment of a reasonable fee to the State Coastal Conservancy by applicants for a coastal development permit if the proposed development has, or is reasonably expected to have, a direct and significant effect on coastal resources within a specific geographic watershed in the coastal zone which can be mitigated through the incorporation of feasible onsite and offsite mitigation measures into the proposed development and through the mitigation fee program.

(b) Fees paid by an applicant pursuant to subdivision (a) shall be deposited in an account established by the State Coastal Conservancy . None of the funds in the account

shall be appropriated for any purpose not specified in this section. Except as provided in this section, any fee paid pursuant to this section may only be used to restore, replace, or improve resources or ecological systems which are adversely affected by the proposed development and with respect to which the fee constitutes partial or total mitigation. Any fees established pursuant to this section are not required for any development that is undertaken by a public agency for the purpose of providing resource enhancement or public recreation. In the event that mitigation of all development impacts cannot be feasibly carried out within the watershed, the conservancy may, with the approval of the local government and the commission, complete the mitigation for the development outside of the watershed.

(c) This section and Section 31108.5 apply only to the Los Penasquitos Lagoon area in the City of San Diego.

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MAXIMUM OPPORTUNITIES FOR THE PUBLIC TO FULLY PARTICIPATE
COMMENT ON PHASE 2C AMENDMENTS TO THE VENTURA COUNTY LOCAL COASTAL PROGRAM (LCP)

LEGISLATIVE CITATIONS

2016 California Code

Public Resources Code - PRC

DIVISION 20 - CALIFORNIA COASTAL ACT

CHAPTER 1 - Findings and Declarations and General Provisions

Section 30006.

30006. The Legislature further finds and declares that *the public has a right to fully participate* in decisions affecting coastal planning, conservation, and development.

2016 California Code

Public Resources Code - PRC

DIVISION 20 - CALIFORNIA COASTAL ACT

CHAPTER 6 - Implementation

ARTICLE 1 - Local Coastal Program

Section 30500.

30500(c) The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, *in full consultation with the commission and with full public participation.*

30503. During the preparation, approval, certification, and amendment of any local coastal program, *the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate.*

2016 California Code

Public Resources Code - PRC

DIVISION 20 - CALIFORNIA COASTAL ACT

CHAPTER 6 - Implementation

ARTICLE 2 - Procedure for Preparation, Approval, and Certification of Local Coastal Programs

30525 (b) *Every agency subject to this section shall advise the appropriate local government of particular considerations that should be evaluated during the*

preparation of a local coastal program and which, in the opinion of such agency, may be necessary to protect identified sensitive resource values. In addition, the work undertaken pursuant to this section shall be completed in a timely manner in order to maximize the opportunity for the public, affected local governments, and the commission to consider this information fully during the preparation, review, and approval of the appropriate local coastal program.

DISCUSSION

Upon reading the California Coastal Act, it is difficult to escape the conclusion that the legislature not only intended, but emphasized, that the protection of the California Coastal resources required significant public participation. In fact, coastal legislation validates that conclusion when it uses words like -- the ‘**right**’ of the public to ‘**fully participate**’ in **all** decisions, on the **precise content**, to the **maximum** extent.

Interestingly, only **the public** is given this right.

What was Ventura County's plan for public involvement? Was it written? Has it been approved by the Planning Commission? Was the public involved in writing the plan?

Instead of following this legislative directive, Ventura County took a different path. Ventura County decided that there would be no public participation. You heard me right. NO public participation.

During a previous update to the Local Coastal Program (LCP), Planning testified that it had met the ‘public participation’ requirement by sending 4000 emails announcing a LCP update to individuals on their email list and by holding three public outreach informational meetings.

I did attend one of the informational meetings. At this meeting, the proposed LCP was reviewed by staff for one hour followed by 20 minutes of public questions. More County staff were in attendance than were members of the public. These meetings were only informational, no decisions were made.

Does Planning suggest that an informational meeting satisfies the legislative requirement of the public’s “right to fully participate”?

PUBLIC HEARINGS

Then there were the public hearings. Two by the planning commission, one by the board of supervisors and one by the Coastal commission. The planning commission allowed three minutes for individual comments, the board of supervisors allowed two minutes, and the coastal commission allowed two minutes. None of these ‘hearings’ were conducted in a manner in which afforded the public the opportunity to raise issues, present evidence in supported the issues, or the opportunity to reply to challenges.

NOTE: The Board of Supervisors hearing. Prior to the Board of Supervisors hearing, I sent a letter to the chairperson stating that I had issues that I wished to bring to their attention at the hearing. In this letter, I requested one hour to present these issues. I received no response.

The Board of Supervisors hearing was scheduled as item 50 on the days agenda and commenced at about 4PM. This hearing lasted perhaps one hour and thirty minutes, with the bulk of the time devoted to the planning departments presentation.

During the public comment period, my microphone was shut off at the two minute mark. Because this hearing was conducted over Zoom, I had no opportunity for further comment. Thus, I was denied an opportunity to invoke a “point of order” regarding Coastal Act public participation.

The Coastal Commission hearing began after lunch and lasted about thirty minutes. As with the County Board of Supervisors I was limited to two minutes. When notified that my two minutes were up, I called for a “point of order” which was granted. I then claimed my right to more time to present my ‘legal issues’ based on the finding in the Coastal Act which guarantees the public the right to fully participate. That request was denied.

MY OBSERVATION

Based on my reading of the Coastal Act, it is difficult to avoid the conclusion that the legislature was concerned that the protection of coastal resources would be hijacked by cliques – cliques of planners, cliques of technocrats, and cliques of ideologues. I have reached this conclusion because the legislature not only repeatedly emphasized the importance of public to participation, it did so using very strong language – ‘right’, ‘fully’, ‘all’, ‘maximum’, ‘widest’ ‘precise content’.

Ventura County's local coastal program demonstrates clearly that cliques will not relinquish their power without a fight. During a previous local coastal plan update, the chief planner stated to the Board of Supervisors, that the County had neither the time or resources to involve itself in a ‘give and take’ with the public.

Clearly she had not read the Coastal Act.

WHAT DOES IT MEAN TO FULLY PARTICIPATE TO THE MAXIMUM EXTENT ON ALL CONTENT?

May I suggest that to fully participate requires a seat at the table, the opportunity to direct staff, to ask questions, to seek clarifications, to offer suggestions, to vote up or down on all items being considered --- throughout the process, from beginning to end as is required by the Coastal ACT 30503 (cited above).

Key decisions requiring public participation:

1: The decision about coastal priorities: What areas of the Coastal Act needed to be addressed? What should be the priorities for the County of Ventura?

ESHA was chosen as a priority? Why? What were the problems that were identified with the existing LCP? How were those problems identified? Was the public surveyed regarding perceived needs? Why was the LCP update not focused on needs expressed by the public? Public participation is required by law in order to give direction and validity. Was the public given a “full opportunity” to participate.

And, if the public did not make these decisions who did?

Around which table were the decisions made and why were there no members of the public seated at that table? Why would the County not follow the direction given by the legislature? What did the County want to achieve that could not be better achieved by following legislative direction?

Or perhaps there was no table from which these decisions were made. Perhaps they were made by someone sitting behind a desk. If so, who might that person be and to whom is that person accountable?

2. The decision to Direct staff: Once it was determined that Ventura would focus on ESHA, was a systematic inquiry made as to the requirements of the Coastal Act ? Were staff and technical consultants and lawyers tasked with collecting information from which to make decisions?

In fact, most likely, the decision about ESHA was made elsewhere before the process even began? But, that is purely speculation on my part.

3. Decision regarding Mitigation: Ventura County decided that owners of property would be allowed to build, but only if they compensated for the loss of ESHA. Was the questionable legality of destroying certified ESHA discussed? I guess that we would have to review the minutes of the meeting. What, did you say? No minutes!

Who was sitting at the table when mitigation fees were discussed? Were members of the public there? Did the public have an opportunity to make suggestions? \$57,000 and acre sounds about right. All in favor, raise your hands!

Did any member of the public raise a hand? Did anyone raise a hand?

CONCLUSION

I have presented examples of selected points in the LCP amending process that required the full and maximum participation of the public. Many other points, too numerous to enumerate here, also required that participation,

This amended LCP would be dramatically different and in my opinion (and in the opinion of the California Legislature) better, had it been developed with the full and maximum involvement of the public. (The people's coastal plan).

Thus I contend that, important decisions had been made and public had no role in those decisions. A clear violation of the California Coastal Act.

Because the public has been denied the right to fully participate, and because of absence of public participation, the flaws of this LCP are pervasive and thus, cannot be fixed.

This LCP must be rejected, in its entirety.

Section 30006 Legislative findings and declarations; public participation

... that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation

RECOMMENDATION: Appoint a Coastal Municipal Advisory Council (MAC). Task this council with planning for Ventura County's Coastal future with the municipal council's sights set on Ventura County's coastal program becoming a model for all of California.

TAKING OR DAMAGING PROPERTY

COMMENT ON PHASE 2 AMENDMENTS TO THE VENTURA COUNTY LOCAL COASTAL PROGRAM (LCP)

Summary

Can the Coastal Commission change the provisions of the Coastal Act in order to allow the willful destruction of sensitive habitat?

Can the Coastal Commission authorize the assessment of mitigation fees?

Can the Coastal Commission obligate the taxpayers of California for the damages caused to private property value due mitigation costs?

Discussion

A review of the Coastal Act leaves the reader to the impression that the legislature made the decision that the costs of protection California's coast would be shared by all citizens of the State and not shifted to owners of coastal property. This impression was created in the mind of the reader through section 30010 where it states that any condition of a permit that takes or damages private property for public use is a basis for compensation.

The damage provision seems to be contrary to the customary practice of imposing mitigation costs on the beneficiary of a development.

My sense is that mitigation measures applicable to both coastal and non coastal development would continue to be borne by the beneficiary, however costs of permit conditions that are unique to coastal and affected land value, would be eligible for 'just compensation'.

30010 The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor.

Enter the taking provision

Section 30240 (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Because 30240 forbids development in an ESHA all economic value of affected property's is removed and under both the US constitution and under 30010 the property is considered 'taken'.

Enter mitigation

The Commission contends that case law gives it the authority to modify the Coastal Act and can permit the disruption of a designated as ESHA if the failure to modify the Coastal Act will otherwise result in a taking. (See coastal commissions staff report of Ventura County's LCP amendment for a more detailed analysis). *My sense is that the Coastal Commission exceeds its authority when it changes state law because the authority to do so is reserved for the State legislature.*

As the result of the Coastal Commission's modification of 30240, Ventura County can permit the removal of sensitive resources (ESHA) if the removal of these resources is necessary in order to avoid a taking.

However, the property must pay a mitigation fee as compensation. This fee is estimated to be as much as \$300,000 for the clearing of the area required for a typical typical home including 200 feet of fire department required vegetation removal around all structures.

Enter the damage provision

These mitigation fees which are imposed as a condition of a granting a permit directly damages the value of property, thus these fees are subject to 'just compensation' as described in 30010.

Legal issue: By approving Ventura County's ESHA amendment, has the Coastal Commission exceeded its legal authority by (1) codifying the destruction of sensitive habitat and by (2) providing for mitigation fees? Additionally, has the Coastal Commission caused damage to property via mitigation fees thus requiring just compensation?

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