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MONTEREY COUNTY



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DATE: August 11, 2021 Planning Commission meeting

TO: Honorable Chair and Members,
Monterey County Planning Commission

FROM: Wendy S. Strimling, Assistant County Counsel

SUBJECT: Big Sur Land Use Plan Update

The Monterey County Planning Commission is conducting a series of workshops on the proposed update of the Big Sur Coast Land Use Plan. Our understanding is that certain policies have been proposed relating to wildfire safety and environmentally sensitive habitat areas (ESHA). The Commission has requested legal review of those policies. The relationship of the Coastal Act and other environmental laws to wildfire safety is complex. This memo provides a general, introductory overview of ESHA policy under the Coastal Act. Our office would be happy to provide further analysis if the Commission identifies specific questions or specific draft policies for which the Commission desires further legal analysis.

Coastal Act policies “constitute the standards by which the adequacy of local coastal programs ... are determined.” Pub. Res. Code §30200(a). When the County adopts or amends a land use plan for any portion of the coastal zone, the County must submit it to the Coastal Commission for certification before such plan may take effect. Pub. Res. Code §§30510, 30514. The “certification” is a determination that the plan conforms to the policies of the Coastal Act. Pub. Res. Code §30512. Moreover, when the County adopts or amends a land use plan for the coastal zone, the County must adopt a resolution certifying that the plan “is intended to be carried out in a manner fully in conformity with” the Coastal Act. Pub. Res. Code §30510(a). So, in short, any update of the Big Sur Coast Land Use Plan must conform to the policies of the Coastal Act. While the question of whether a particular policy or set of policies conform to the Coastal Act can be complex and the subject of debate, there is no question that the standard is conformity with Coastal Act policies.

With respect to ESHA, the Coastal Act requires protection of environmentally sensitive habitat areas against significant disruption, providing:

“(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.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.” Pub. Res. Code § 30240

The Coastal Act defines “environmentally sensitive area” to mean “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. Because the Coastal Act contains this policy protective of ESHA and the local coastal program must conform to Coastal Act policies, this Coastal Act policy should be considered when developing amendments to ESHA policies in the Big Sur Coast Land Use Plan.

Our office would be happy, if the Commission desires, to do further legal research as to whether state law and regulation or case law have addressed the balance between the Coastal Act’s protection of ESHA and wildfire safety, but such research will take additional time.