

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL DE NOVO HEARING

Application number**A-3-SLO-05-072**

Applicant.....Teodora and Graciano Patague; Shaunna Sullivan, Representative

AppellantsCommissioners Meg Caldwell and Trent Orr

Local governmentSan Luis Obispo County

Local decisionApproved with Conditions (September 12, 2005)

Project locationLariat Drive (approximately 1,000 ft. north of Los Osos Valley Road in the Estero Planning Area), Los Osos, San Luis Obispo County (APN 074-222-002).

Project description.....Subdivision of a 2-acre parcel through a Conditional Certificate of Compliance.

File Documents.....County Final Local Action Notice (File # S030112C / C03-0354); Periodic Review of the San Luis Obispo County Local Coastal Program (adopted July 12, 2001); Coastal Commission appeals A-3-SLO-97-40, A-3-SLO-03-113, A-3-SLO-98-087, and A-3-SLO-99-79.

Staff Recommendation ..**Approval with Conditions**

Summary of Staff Recommendation

The applicant proposes to create a 2-acre parcel through a coastal development permit (CDP) for a Conditional Certificate of Compliance (CCOC). CCOC's are subdivisions for purposes of applying the certified LCP. The potential parcel is located outside the urban limit line of Los Osos in San Luis Obispo County. Staff recommends that the Commission approve the CDP with conditions to address LCP requirements to protect agricultural lands, maintain urban-rural boundaries, and protect groundwater resources. Although San Luis Obispo County has determined that the parcel in question was created through an illegal transaction dating back to 1964, it has issued a CCOC pursuant to the Subdivision Map Act to resolve the violation. The Commission has the discretion to approve or deny the CDP for this land division based on its consistency with the policies and standards of the LCP. As approved by the County the proposed land division is inconsistent with the requirements of the San Luis Obispo County LCP regarding



California Coastal Commission
May 09, 2007 Meeting in San Pedro

Staff: K. Morange Approved by:

minimum lot size, demonstration of adequate public services, and protection of prime agricultural soils. In particular, approval of the land division would create a new parcel comprised entirely of prime agricultural soil, albeit in an area that is zoned for low-density residential development. The parcel has been farmed in irrigated row crops in the past, and is immediately adjacent to Agriculturally-zoned properties to the north. There also are significant outstanding questions regarding the capacity of the Los Osos groundwater basin to provide a sustainable water supply for the buildout of existing lots. However, given the unique circumstances of this parcel’s transaction history, the fact that the parcel is not part of any larger surrounding ownership of the applicant, and that fact that conditions are available that will effectively address LCP requirements in light of the resource issues raised by potential development the site, Staff is recommending that the permit for the CCOC be approved.

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List of Exhibits

Click on the link below to go to the exhibits.

| Exhibit | Title |
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| A | County Final Local Action Notice (Staff Report, Findings and Conditions) |
| B | Appeal of Commissioners Meg Caldwell and Trent Orr |
| C | Location Map |
| D | Aerial Photo |
| E | Memo dated September 9, 2004 from San Luis Obispo County Agriculture Department |
| F | San Luis Obispo County LCP Land Use Designations – Estero Area |
| G | Parcel Map and Future Development Restrictions Site Plan |



| Exhibit | Title |
|----------------|--------------------------|
| H | Applicant Correspondence |

I. Project Procedural History

On September 12, 2005, the San Luis Obispo County Subdivision Review Board approved the proposed project subject to multiple conditions (see Exhibit A for the County's staff report, findings and conditions on the project). Notice of the Subdivision Review Board's action on the coastal development permit (CDP) was received in the Commission's Central Coast District Office on September 29, 2005. The Commission's ten-working day appeal period for this action began on September 30, 2005 and concluded at 5pm on October 14, 2005. One valid appeal was received during the appeal period.

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development in counties that, among other things, is not designated as the principal permitted use under the zoning ordinance or zoning district map. This project was appealable because subdivision is not listed in Coastal Table O, Part I of the Land Use Element as a principal permitted use within the Residential Suburban (RS) land use category. The two Commissioner Appellants contended that the action taken by the County of San Luis Obispo was inconsistent with the Real Property Division Ordinance (Title 21) of the LCP, which requires the County's decision on CCOCs to include specific factual findings supporting legal conclusions that the proposed development is in conformity with the certified LCP. In addition, the Appellants contended that the action was inconsistent with LCP policies and ordinances relevant to minimum parcel size, coastal agriculture, adequate services, and the preservation of the Los Osos groundwater basin (see Exhibit B for the Appellants' complete appeal document). The applicants provided a 49-day waiver on October 27, 2005. On April 11, 2007 the Coastal Commission found that the appeal raised a Substantial Issue with respect to the project's consistency with the San Luis Obispo County LCP. As a result, the Commission took jurisdiction over the coastal development permit (CDP) application and must now conduct a *de novo* review of the project's consistency with the County's LCP.

II. Staff Recommendation

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

MOTION: *I move that the Commission approve Coastal Development Permit Number A-3- SLO-05-072 pursuant to the staff recommendation.*



STAFF RECOMMENDATION OF APPROVAL: Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT: *The Commission hereby approves the coastal development permit on the grounds that the development, as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program. Approval of the coastal development permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment.*

III. Conditions of Approval

A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

- 1. Local Conditions of Approval.** San Luis Obispo County coastal permit CO4-0354 conditions 1, 2, 8 are incorporated as conditions of this coastal permit (see Exhibit A). The applicant shall provide evidence of compliance with these conditions to the Executive Director. All other conditions of the County's approval pursuant to a planning authority in addition to or other than the Coastal Act continue to apply.



- 2. Future Non-Agricultural Development.** Non-agricultural development on APN 074-222-002, including any future residential use, shall be limited to that area of the parcel located at least 585 feet south of the northern property line as generally shown in Exhibit G of this report. Residential development shall be limited to a single residential dwelling, located as close as feasible to the dedicated County right-of-way but structures shall be set back at least 10 feet from the right-of-way. Septic system components may be located outside the residential development area if deemed necessary by the County Environmental Health Department.
- 3. Agriculture Protection and Buffer.** Other than septic system components deemed necessary pursuant to Special Condition 2 above, development on APN 074-222-002 outside of the building envelope shown in Exhibit G shall be limited to agricultural or open space land uses. No structures used for human habitation shall be constructed outside the designated building envelope. Any future non-agricultural water use on the parcel shall assure that adequate water supplies are available to support irrigated agriculture on the remainder of the property.
- 4. Right-to-Farm.** By acceptance of this permit, the Permittees acknowledge and agree: (a) that the parcel is located adjacent to land used for agricultural purposes; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations including, but not limited to, dust, smoke, noise, odors, fumes, grazing, insects, application of chemical herbicides, insecticides, and fertilizers, and operation of machinery; (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittees and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural lands against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any issues that are related to the normal and necessary agricultural land use and its impact to users of the property.
- 5. Urban Services Line.** Extension or connection of urban water or sewer services to APN 074-222-002 is prohibited.
- 6. Groundwater Protection.** Any future non-agricultural water use on APN 074-222-002 shall assure no net increase in withdrawals from the groundwater basin source.
- 7. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has



authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. Recommended Findings and Declarations

The standard of review for this project is consistency with the San Luis Obispo County certified Local Coastal Program (LCP) including the Rural Area Standards of the Estero Area Plan. As discussed in these findings, the Commission has the discretion to approve or deny the project based on its consistency with the LCP. Given the unique circumstances of this parcel's transaction history, the fact that the parcel is not part of any larger surrounding ownership of the applicant, and that fact that conditions are available that will effectively address LCP requirements in light of the specific resource issues raised by potential development the site, the Commission finds that as conditioned, the project may be approved.

A. Project Description and Location

The County approved project is for one Conditional Certificate of Compliance (CCOC) for a 2-acre parcel (APN 074-222-002) in Los Osos. The County has determined that the parcel was not legally created and that therefore, a CCOC was required pursuant to the Subdivision Map Act. The proposed parcel is undeveloped and has historically been in agricultural use in conjunction with surrounding properties. The parcel is located at the northern end of Lariat Drive at Latigo Lane in Los Osos, approximately 1,000 feet north of Los Osos Valley Road, in San Luis Obispo County (see Exhibits C and D). The parcel is bounded by Latigo Lane on the south and by agricultural land on all other sides. According to the County record, at the time of the illegal transaction that created the violation in this case (1964) the parcel was in the Agriculture land use category. Los Osos Creek, which defines the eastern boundary of the South Bay Urban Area, lies approximately 270 feet to the west of the parcel. The site is currently zoned Residential Suburban (RS) with a minimum parcel size of 5 acres. Surrounding land use includes agriculture to the north, east, and west, with single-family residential development located to the south. The zoning of this surrounding land is Residential Suburban, except to the north, which is Agriculturally-zoned land (see Exhibit F). The site is located outside both the Urban Service Line (USL) and Urban Reserve Line (URL).



B. Project Background

Subdivision Map Act and Coastal Act

The Subdivision Map Act provides for the approval of Certificates of Compliance (COCs) and CCOCs (Government Code Section 66499.35). Certificates of Compliance are granted to confirm the legality of an existing parcel that was created consistent with the rules for land divisions in effect at the time the parcel was created. A CCOC is granted to *legalize* a parcel that was *not* created pursuant to the rules in place at the time of its creation. From a land use standpoint, COCs do not create new parcels; they are simply a procedure for recognizing an existing, legal parcel. Conditional Certificates of Compliance do, however, create *new* parcels at the time they are awarded and, under the Map Act, may be conditioned to bring these parcels into conformity with either the current land use regulations regarding subdivisions if the illegal subdivider is still the owner, or the rules that were in effect when the current owner (the successor to the illegal subdivider) purchased the property (Subdivision Map Act Section 66499.35(b)).

Independent of the Subdivision Map Act requirements, the creation of new parcels through a CCOC constitutes development under the Coastal Act (Public Resources Code Section 30106) and must also therefore be found consistent with the policies and implementing ordinances of the LCP by obtaining a Coastal Development Permit (see CZLUO Section 21.08.030(a) cited below). The Coastal Commission may approve or deny a CCOC pursuant to this authority, and is not constrained by the Map Act in this regard.

San Luis Obispo County LCP

Title 21 of the County's LCP includes the following ordinances that identify the process and standards for authorizing subdivisions through the issuance of a CCOC:

Section 21.01.010 - Title--Purpose. (d) *It is further the purpose of this title to implement the county general plan and certified local coastal program. Approval of a lot line adjustment, tentative parcel map, tentative tract map, vesting tentative map, reversion to acreage, determination that public policy does not necessitate the filing of a parcel map, modification of a recorded parcel or tract map, or conditional certificate of compliance under Government Code section 66499.35(b) shall constitute approval of a coastal development permit as a local government equivalent in accordance with the certified local coastal program and the California Coastal Act of 1976. [Added 1988, Ord. 2343; Amended 1992, Ord. 2582]*

Section 21.02.020 - Certificates of compliance and conditional certificates of compliance. *Certificates of compliance and conditional certificates of compliance are issued under the provisions of Government Code section 66499.35. A certificate of compliance application is filed to request the county to determine as a matter of record whether the real property which is the subject of the application is a legally created parcel which complies with the provisions of the Subdivision Map Act and this title. If the*



county determines that the parcel of real property is not legally created in compliance with the provisions of the Subdivision Map Act and this title, it shall issue a certificate of compliance or a conditional certificate of compliance in accordance with the provisions of Government Code section 66499.35(b). If the applicant is the original subdivider of the subdivision which was not in compliance with the law, conditions may be imposed which would be applicable to a current division of the property. If the applicant is a subsequent purchaser from the subdivider of the subdivision which was not in compliance with the law, conditions may be imposed which would have been applicable at the time the applicant acquired his or her interest in the property. When a certificate of compliance or a conditional certificate of compliance is requested, application preparation and processing shall include the following:

(a) Application. Certificate of compliance and conditional certificate of compliance applications shall include four copies of a completed application form as required by the planning department in addition to the information listed in subsection (b) below.

(b) Content. Except as otherwise provided, certificate of compliance and conditional certificate of compliance applications shall include all of the following:

(1) Chain of title. Provide legible copies of all deeds affecting the property beginning with the deed that described the property prior to its current configuration from that time to the present, unless the parcels were created through a recorded tract map, parcel map, or official map or unless waived by the planning director. A typed copy of all handwritten deeds shall be prepared by the applicant along with all copies of handwritten deeds and copies of earlier deeds in the chain of title or deeds describing adjacent property shall be submitted by the applicant if requested by the planning director. [Amended 1993, Ord. 2602]

(2) Preliminary title report. Two copies of a preliminary title report concerning the property, showing current property owners, and which is not more than six months old.

(3) Other information. Any maps or other supporting documents to support and clarify when and how the parcel in question was created.

(4) Coastal zone. For conditional certificates of compliance within the coastal zone, include two copies of a list of names and addresses of all residents and property owners within one hundred feet of the exterior boundaries of property. The names and addresses shall be typed on gummed labels, and submitted to the planning department. [Added 1992, Ord 2582]

(c) Review and approval. The planning director is delegated the authority to approve and issue certificates of compliance. The subdivision review board is delegated the authority to approve and issue conditional certificates of compliance. The decision of the planning director or subdivision review board shall be final unless appealed to the board of



supervisors pursuant to Section 21.04.020 of this title. [Amended 1993, Ord. 2602]

(1) Staff report. The planning department shall prepare a staff report for each application that includes the following:

(i) A description of the history of the creation of the parcel;

(ii) A reference to applicable state law and county ordinances and regulations; and

(iii) In the case of a conditional certificate of compliance, recommend appropriate conditions to be imposed.

(2) Notice and hearing. Except for notice to the applicant prior to action by the planning director, notice of hearing is not required to be given for certificates of compliance under Government Code section 66499.35(a) because the issuance of such certificates of compliance is ministerial. The planning director shall schedule applications for conditional certificates of compliance under Government Code section 66499.35(b) on the public hearing portion of the subdivision review board agenda. Notice of hearing shall be given pursuant to Section 21.04.010 for all conditional certificates of compliance under Government Code section 66499.35(b); provided, however, for conditional certificates of compliance for properties located within the coastal zone, notice and hearing requirements shall be as set forth in Sections 21.04.010 and 21.08.020 of this title. [Added 1992, Ord. 2582; Amended 1993, Ord. 2602]

(3) Approvals within the coastal zone. For conditional certificates of compliance applications located within the coastal zone that are appealable to the coastal commission, approval shall not be final until either all appeal periods have expired and no appeal has been filed, or the coastal commission has approved the application. [Added 1992, Ord. 2582]

(d) Recordation. After a decision to issue a certificate of compliance or conditional certificate of compliance becomes final, such certificate or conditional certificate shall be recorded in the office of the county recorder upon payment by the applicant of the required recording fee.

21.08.020(a) Subdivision development defined. *For purposes of Sections 21.08.020 through 21.08.038, inclusive, subdivision development means lot line adjustments, tentative parcel maps, tentative tract maps, vesting tentative maps, reversions to acreage, determinations that public policy does not necessitate the filing of a parcel map, modifications of a recorded parcel or tract map, conditional certificates of compliance under Government Code section 66499.35(b), when located in the coastal zone of the county.*



Section 21.08.030 - Finality of county action. A county decision on an application for subdivision development shall not be deemed final until: (a) The county 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 California Coastal Act of 1976.

The ordinances cited above provide a procedure for considering CCOCs that includes notice, hearing, and appeal provisions. Action on CCOCs for property located in the coastal zone appeal jurisdiction is appealable to the Coastal Commission (Title 21 Real Property Division Ordinance Section 21.02.020). Section 21.01.010(d) of Title 21 provides that action on a CCOC constitutes action on a Coastal Development Permit as well. In order to approve a Coastal Development Permit, the decision making body must find that the project is consistent with the policies and implementing ordinances of the LCP.

Original Creation of the Parcels/Deed History

As detailed in the County staff report, the subject parcel was created by a series of conveyances beginning with the original Subdivision of Ranchos Canada de Los Osos and La Laguna. The first three of these conveyances complied with the relevant law at the time they were accomplished. In 1964, however, a previous owner, Morro Los Osos Land and Investment Co., conveyed a parcel to Los Osos Valley Memorial Park Inc. (APN 074-222-011) without complying with the requirements of the County's Lot Division Ordinance and the Subdivision Map Act in effect at that time. Subsequent conveyances resulted in the present parcel configuration. The applicant purchased the property in 1971 and does not own any other surrounding property (Please See Exhibit A County staff report, pages 3 through 5 for a deed history and discussion).

Violation

As described above, the subject parcel was created in 1964 without first having a subdivision approved by San Luis Obispo County. Lots less than three acres in size could not be created after October 12, 1960 without first having a subdivision approved by the County, and a tract or parcel map was required to be approved to create parcels at that time. Therefore, according to the County, the parcel was not legally created (See Exhibit A, p.9). A Notice of Intention to Record a Notice of Violation for this property was recorded on August 22, 1979 (2179 OR 779), and a Notice of Violation was recorded on November 19, 1979 (2203 OR 902). This CCOC has been requested to release the Notice of Violation that was filed against the property in 1979.

D. Coastal Development Permit Findings



1. Land Use Density

Relevant LCP Provisions

Under the certified zoning ordinance, the minimum parcel size in the Residential Suburban category is 1 acre if certain site tests are met (CZLUO 23.04.027). However, in this case, pursuant to CZLUO 23.04.021(a)(1), Estero Area Plan Residential Suburban Standard 1 is controlling and states:

1. Minimum Parcel Size – Lots Adjoining Agricultural Area North of Tapidero Road.
Minimum parcel size for lots adjoining the agricultural land use designation to the north shall be 5 acres.

Consistency Analysis

The 2-acre site designated Residential Suburban is located north of Tapidero Road in the Estero Planning Area, and is adjacent to Agriculture designated land to the north. The proposed creation of a new 2-acre site results in a parcel that does not conform to the 5-acre minimum required by the LCP. In general, the creation of parcels that are inconsistent with minimum parcel sizes undermines the primary way in which the LCP plans and regulates development densities. Managing development density is a critical tool for ensuring adequate public services and protecting coastal resources. This is particularly important in areas such as Los Osos, where there are significant concerns about the adequacy of water supplies wastewater treatment methods, the preservation of agriculture, and where the biological continuance of numerous rare and sensitive species is threatened by development.

In this case, the development densities established by the LCP also provide a means to manage the transition of urban to rural, thereby protecting the agricultural, scenic, and habitat values of coastal open space. The proposed new parcel is located in an area where the urban environment of Los Osos transitions to a rural agricultural area. A primary concern with reducing the size of the parcels in this area is the potential to impact the long-term viability of agricultural resources and operations. An increase in the number of small substandard parcels can significantly increase non-agricultural development, in turn increasing conflicts between residential and agricultural uses, increasing the physical extent of land converted by residential development, and potentially altering the economics of the region to decrease the viability of agriculture as a predominant use.

On its face, the proposed project is inconsistent with LCP density standards because it will create a 2-acre lot that does not conform to the 5-acre minimum parcel size established by the Estero Area Plan. Normally, a proposed subdivision that would create a non-conforming parcel would not be approvable. However, the specific and unique circumstances of this parcel's transaction history and ownership pattern, as well as other factors discussed in subsequent findings support a finding of consistency in this case. As is discussed in Finding B above, the applicant acquired the land in 1971, before the passage of the Coastal Act and certification of the County's LCP.



Moreover, according to the applicant, they were unaware of any illegal transactions underlying the parcel creation at the time of their purchase. Thus, although the illegal transaction in question occurred in 1964, the County of San Luis Obispo did not record a notice of violation on the property until 1979. Although not directly relevant to the Commission's responsibilities under the Coastal Act, the applicant has also made a variety of arguments under the Subdivision Map Act that the parcel was not, in fact, illegally created (see Exhibit H). Nonetheless, the County has made a determination that the applicant's land is an illegal parcel, which is the basis for the issuance of a CCOC in the first place.

In addition to the long transaction history of the parcel, the Commission recognizes that the applicant does not own any other surrounding property from which this property is being "subdivided." Thus, in distinction to other cases where the Commission has denied a CCOC that was creating a new parcel from a larger parcel owned by the same applicant (see, for example, A-3-SLO-01-1-08, Schoenfield, creating two parcels from a single ownership), the end result of this CCOC would be the creation of a single parcel in the applicant's ownership, not multiple parcels. In the alternative, if the Commission were to deny this CCOC, which it has the discretion to do under the certified LCP, the applicant's alternatives for future land uses on the property would be limited to keeping the parcel solely in agricultural use, providing for typical Residential Suburban land uses by combining the land with adjacent acreage so that a conforming parcel of at least five acres could be created, or pursuing resolution of the violation with parties to the original transaction in 1971 and/or the owners of the adjacent land from which this parcel originates. Given the illegality of the parcel, and the fact that these alternatives are available, denial of the CCOC would not appear to raise any constitutional takings issues. However, in light of the transaction history of the land, particularly the applicant's assertions that they were bona fide purchasers, unaware of any violations, it may be unreasonable to require the pursuit of these alternatives. The Commission elsewhere has recognized that the circumstances of a land purchase may be an appropriate overriding factor in considering minimum parcel size requirements in order to prevent hardship to a good-faith purchaser who was not part of the original illegal transaction (see, for example, CDP 4-04-121 (Miran); CDP 4-04-032 (Hannon); also, CDP 4-05-141 (Biebuyck)).

Separate from the factors above, in this case the specific potential resource protection issues raised by creation of the parcel, as well as the underlying intent of the minimum parcel size in this area can be effectively addressed through imposition of special conditions. The zoning in this case is meant to reflect the transitional nature of the area from more urban, residential uses to agricultural uses. The existing pattern of development surrounding the proposed parcel is mixed, and there are already many legal non-conforming parcels with residential uses. In addition, as discussed in subsequent findings, conditions are available that will address agricultural protection concerns that the minimum parcel size/density requirements are intended to address, as well as groundwater resource protection and other issues related to density. Moreover, there are no environmentally sensitive habitat, visual, or other coastal resource issues raised by the potential creation of a non-conforming lot for residential use that would more clearly dictate a denial of the subdivision. For example, regardless of underlying zoning, the



LCP does not allow the creation of parcel that would consist entirely of ESHA. Such is not the case here. Therefore, the Commission finds that given the particular set of facts in this case, and in light of the specific transaction history, approval of the certificate of compliance, notwithstanding the minimum parcel size requirement, is appropriate.

2. Public Service Capacities

Relevant LCP Provisions

The LCP contains the following policy relevant to the provision of public or private public services for new development:

Policy 1: Availability of Service Capacity - New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable. Permitted development outside the USL (Urban Services Line) shall be allowed only if it can be serviced by adequate on site private water and waste disposal systems.

The Applicant shall assume responsibility in accordance with county ordinances or the rules and regulations of the appropriate service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.021 (c) OF THE CZLUO]

Coastal Watershed Policy 1: Preservation of Groundwater Basin - The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD].

Consistency Analysis

The policies cited above ensure that new development, including land divisions, will not be approved unless it can be shown that adequate services are available to support the additional development. For projects like this one that are located outside both the USL and URL, Policy 1



requires that the applicant must demonstrate that the new development can be adequately served by private onsite water and waste disposal systems as the use of municipal services are not permitted beyond the USL.

Accordingly, applicants for new development outside the USL must demonstrate that a well and septic system that meet county health standards could be installed on the site. The mitigated negative declaration prepared for the project indicates that the project proposes to use an onsite shared well as its water source for the development of a maximum of one primary and one secondary dwelling unit, resulting in a reasonable “worst case” indoor water usage of approximately 1.18 acre feet per year (afy). The project was subsequently conditioned by the County to require a shared well agreement, well completion report, pump tests, and a full water quality report. The mitigated negative declaration also indicates that wastewater needs on the site will be served by an onsite septic system, which the County indicates will be evaluated in greater detail prior to the issuance of future building permits.

While the County approval indicates that it is possible to utilize the existing well on the site, no evidence is provided as to the adequacy or long-term sustainability of the well or septic system, as required by Policy 1. The certified Estero Plan (1988) states “*growth in the South Bay area will be limited until alternative water supplies are available*” (page 5-4). In the 19 years since the Estero Plan was certified, no new water sources for the South Bay have been found. The November 1998 Draft Estero Plan Update states that a Resource Management Level III (the most severe constraint) on water capacity will be reached when the population is over 12,660 people (Estero Area Plan, page 3-5). The population of Los Osos area as of 1996 is given in the draft plan as 14,568, well above the figure triggering a Level III of severity.

Indeed, the County, the Los Osos Community Services District (LOCSD), the Coastal Commission, and the Central Coast Regional Water Quality Control Board have all identified significant outstanding issues regarding the adequacy of the public infrastructure needed to serve existing lots (let alone new lots) in the Los Osos area. In particular, the Coastal Commission’s concerns regarding the safe-yield of the Los Osos Groundwater Basin and the environmental problems created by the current practice of using septic systems to dispose of wastewater have been thoroughly documented in the Commission’s *Periodic Review of the San Luis Obispo County Local Coastal Program* (adopted July 12, 2001) and in Commission staff reports regarding the wastewater treatment facilities proposed for the area (Coastal Development Permit Appeals A-3-SLO-97-40 and A-3-SLO-03-113). In light of these critical outstanding issues, the Commission has denied requests to subdivide existing parcels within Los Osos (Coastal Development Permit Appeals A-3-SLO-99-79 and A-3-SLO-98-087).

In this case, the proposed project would create a new legal parcel that is currently undeveloped. The creation of a new parcel will place additional demands on local water supplies by increasing the number of parcels in the Los Osos area available for future development. Whether water for such development is provided by a private well or by connecting to the municipal system, it represents an additional withdrawal from the highly constrained Los Osos groundwater basin.



Because existing withdrawals exceed the safe yield of the groundwater basin estimated by the certified LCP, it cannot generally be found that there are adequate water supplies to support the creation of new legal parcels at this time.

The problems of maintaining a sustainable water supply would be exacerbated by the project, not only because it would create a new parcel that places additional demands on extremely limited water resources, but because these demands would be in excess of the level of development allowed by the LCP. Density standards established by the LCP provide the fundamental means by which levels of development are balanced with available services and resource constraints. The proposed project creates the potential for up to two residences to be developed on a site that can only be developed with one residence in accordance with existing LCP density standards. Thus, the project results in a level of development beyond that allowed by the LCP or that can be supported by existing water supplies and other environmental resources as further discussed below.

The additional wastewater that would be generated by future development is also of concern. Although the proposed parcel is outside of the septic tank prohibition area established by the Regional Water Quality Control Board, there has been no evidence provided that the geologic conditions of the site would accommodate future development dependent upon a septic system in a manner that would effectively protect coastal water quality and aquatic habitats. This concern is heightened by the close proximity of the proposed parcel to Los Osos Creek. A precautionary approach must be followed given the significant outstanding issues regarding the impact that septic systems are having on the coastal resources and water supplies of Los Osos.

Public Service Conclusion

There are significant outstanding issues regarding the adequacy of Los Osos water supplies and the impacts of septic systems in this area. The creation of a new lot with future development potential would place additional demands on limited water supplies. In addition, the increase in septic system discharges pose additional adverse impacts to the groundwater basin. Ordinarily these circumstances would be grounds for denial of a new subdivision. However, given the unique circumstances of this case, as discussed in Finding 1 above, these potential impacts can be effectively addressed through Special Conditions that: (1) limit future residential use of the parcel to a single residential dwelling; (2) require full compliance with County Environmental Health Department standards for quality and quantity of domestic water supplies and feasibility of wastewater disposal; (3) require that any future residential water demand from the underlying groundwater basin is completely offset, through retrofitting of existing groundwater uses or other equivalent mechanism; and (4) prohibit the extension of urban services to the property. As discussed in the next finding, water supplies also must continue to be available for existing and potential agricultural use of the property.

3. Agriculture



LCP Provisions

Policy 2: Divisions of Land - Land divisions in agricultural areas shall not limit existing or potential agricultural capability. Divisions shall adhere to minimum parcel sizes set forth in the Coastal Zone Land Use Ordinance. Land divisions for prime agricultural soils shall be based on the following requirements:

- a. *The division of prime agricultural soils shall be prohibited unless it is demonstrated that existing or potential agricultural production of at least three crops common to the agricultural economy will not be diminished.*
- b. *The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.*
- c. *Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability.*

Land divisions for non-prime agricultural soils shall be prohibited unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agriculture would not be diminished. Division of non-prime agricultural soils shall be reviewed on a case-by-case basis to ensure maintaining existing or potential agricultural capability.

(This may lead to a substantially larger minimum parcel size for non-prime lands than identified in the Coastal Zone Land Use Ordinance. Before the division of land, a development plan shall identify parcels used for agricultural and non-agriculture use if such uses are proposed. Prior to approval, the applicable approval body shall make a finding that the division will maintain or enhance agriculture viability.) [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD].

Consistency Analysis

The subject parcel is undeveloped, has a history of being in agricultural production, and is surrounded on three sides by agricultural land uses. However, only land to the north is zoned Agriculture; other surrounding land and the subject parcel is zoned Residential Suburban (see Exhibit F). The mitigated negative declaration prepared for the project states that irrigated row crops on prime soils are grown on the project site, farmed in conjunction with approximately two acres west of the site. The San Luis Obispo County Agricultural Commissioner determined that the subject parcel is not of adequate size to support production of agriculture by itself, but indicated that development of the parcel with non-agricultural uses would result in the conversion of prime soils (see Exhibit E). The Commissioner also recommended, based on the Agricultural zoning in place in 1971, that the parcel be merged with surrounding acreage to create a minimum of 20 acres to support farming.

The subject parcel is undeveloped and surrounded on three sides by agricultural land uses, and is outside the established URL and USL. The proposed lot is intended to accommodate a



residential use, and will therefore result in the conversion of viable agricultural land. Agricultural use of the parcel is not limited by conflicts with urban uses and the proposed division could diminish the productivity of adjacent prime agricultural land by emphasizing residential development over other uses. The subsequent increase in residential development that will result from the creation of a new lot may result in conflicts with adjacent agricultural uses and increase the pressure to convert remaining agricultural lands.

A fundamental way in which the LCP protects agricultural land is by prohibiting land divisions that create new development potential within agriculturally-productive areas. LUP Agriculture Policy 2 regulates land divisions, including CCOCs, in all agricultural areas. Although the project site is designated as Residential Suburban rather than Agriculture by the LUP, the site has been historically farmed, is comprised entirely of prime soils, and is surrounded on three sides by agricultural uses. Thus, irrespective of its land use designation, it is clearly within an agricultural area and subject to compliance with Agriculture Policy 2, which regulates the subdivision of prime agricultural soils.

Under LUP Agriculture Policy 2, subdivision development must not compromise the long-term viability of agricultural lands. This policy requires that agricultural lands be maintained in, or available for, agricultural production. Subsections a, b, and c of Policy 2 specifically prohibit the division of prime agricultural soils unless it is demonstrated that existing or potential production of at least three crops will not be diminished; prohibits the creation of new parcels whose only building site is on prime soils; and requires proof of adequate water supplies to serve the proposed development and support existing agricultural viability.

Other than the Agriculture Department report, which shows the land to be viable prime soils, the County record for the project does not include evidence of the viability of existing or potential agricultural production on the subject parcel beyond a statement that the parcel is not of adequate size to support agriculture. According to the applicant, a recent farmer grew green beans, squash, tomatoes, and sugar peas on the site, and sold them at local farmer's markets. No evidence exists in the record to indicate that removal of this land from agricultural production will not diminish the production of at least three crops common to the agricultural economy other than a claim by the applicant that farming of the site is unprofitable. Because the site has been farmed in the recent past, the Commission is not able to find that the existing or potential production of at least three crops will not be diminished with the division of this land unless the project is conditioned to minimize encroachment onto agricultural soils, maximize preservation of the agricultural potential of the parcel, including water supplies for agriculture, and assure adequate buffering and acknowledgement of surrounding agricultural operations.

Agriculture Policy 2 also specifically prohibits the creation of new parcels whose only building site would be on prime soils. Accordingly, a critical step in evaluating the project's consistency with LCP agriculture standards is to evaluate whether the new 2-acre lot that would be created by the requested CCOC contains a location that could support future development outside of prime soils. Although it appears from the County record that the entire parcel is prime soils,



given specific circumstances of this case discussed in Finding 1, as well as the fact that this property is zoned Residential Suburban, it is appropriate to allow the creation of a minimal non-agricultural development immediately adjacent to the access road to the property on the southern boundary (see Exhibit G). As conditioned, non-agricultural development would be limited to an approximate 10,000 square foot area to the south of an agricultural buffer area. This envelope would provide for a reasonable residential development, including area for the access road dedication and development required by the County and appropriate setbacks from the road. Pursuant to LCP ordinances 23.04.104(c) and 21.02.010, normally-required residential setbacks of 25 feet may be reduced in the case of a specific land division. Therefore, the Commission finds that the front yard setback of any future development on the parcel may be reduced to 10 feet if necessary.

Special conditions also establish a buffer area that would serve to buffer adjacent agricultural uses, and provide for on-going potential agricultural uses in the buffer. No habitable structures would be allowed in this buffer area. Although the Commission has recently required more affirmative obligations to maintain agricultural uses on properties where non-agricultural development is being proposed (see, for example, A-2-SMC-04-009, Waddell), such requirement is not warranted here, where the property is zoned Residential Suburban and in a transitional area. However, given the prime soils on the property and the history of farming on the site, it is appropriate to minimize the non-agricultural use of the prime soils and maintain their maximum future production capability.

The applicant has also not provided proof of adequate water supplies to serve the creation of a new legal lot and support existing agricultural viability. Agriculture Policy 2 subsection (c) requires that adequate water for existing agricultural viability are available. Special Condition 3 therefore requires that this showing be made prior to approval of any non-agricultural water use on the parcel.

Finally, to address potential conflicts between future residential use and surrounding agricultural uses, Special Condition 4 requires that the applicant acknowledge and (a) that the parcel is located adjacent to land used for agriculture; (b) users of the property may be subject to inconvenience, discomfort or adverse effects arising from adjacent agricultural operations (c) users of the property accept such inconveniences and/or discomforts from normal, necessary farm operations as an integral part of occupying property adjacent to agricultural uses; (d) to assume the risks to the Permittees and the property that is the subject of this permit of inconveniences and/or discomforts from such agricultural use in connection with this permitted development; and (e) to indemnify and hold harmless the owners, lessees, and agricultural operators of adjacent agricultural lands against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any issues that are related to the normal and necessary agricultural land use and its impact to users of the property.

Agriculture Conclusion



The requested CCOC would create a new 2-acre parcel comprised entirely of prime agricultural soils. Future non-agricultural development of the proposed 2-acre parcel could adversely impact the continuance of agricultural production on the site and diminish the productivity of adjacent prime agricultural land. As approved by the County, the project is therefore inconsistent with the LCP standards. However, as conditioned, and recognizing the unique circumstances of this parcel's transaction history and current ownership pattern, the Commission finds that the CCOC is consistent with the LCP's agriculture policies.

V. California Environmental Quality Act

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. San Luis Obispo County, the lead agency for the project, determined that there is no substantial evidence that the project may have a significant effect on the environment, and therefore issued a Mitigated Negative Declaration for the project on August 4, 2005.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. This staff report has also considered alternatives to the project, including the project as approved by the County, and has recommended mitigation measures for the identified environmental effects. Finally, this report has considered the cumulative impacts of the project, particularly concerning the potential residential development of this non-conforming parcel on agricultural and groundwater resources, and concluded that as conditioned, effects on the environment are less than significant. Therefore, based on these findings above, which are incorporated into this CEQA finding by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

