

## CALIFORNIA COASTAL COMMISSION

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Appeal filed:	6/4/2010
Substantial issue found:	7/7/2010
Staff report prepared:	10/27/2010
Staff report prepared by:	J. Bishop
Staff report approved by:	D. Carl
Hearing date:	11/18/2010

## APPEAL STAFF REPORT - DE NOVO HEARING

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**Appeal number** .....A-3-SLO-10-028, Warren LLA

**Applicant**.....Willis C. Warren Trust

**Appellants** .....Coastal Commissioners Mary Shallenberger and Sara Wan

**Local government** .....San Luis Obispo County

**Local decision** .....Coastal Development Permit (CDP) Application Number SUB2008-00104/COAL 09-0018 approved by the San Luis Obispo County Subdivision Review Board on May 3, 2010.

**Project location** .....San Simeon Creek Road (1.5 miles north of the community of Cambria and roughly ½ mile east from the intersection at Highway One), San Luis Obispo County (APNs 013-062-03 and 031-062-05).

**Project description**.....Lot-line adjustment between two parcels of approximately 318 and 1.1 acres each, resulting in 2 parcels of approximately 316.5 and 2.6 acres each.

**File documents**.....Final Local Action Notice for San Luis Obispo County CDP Number SUB2008-00104/COAL 09-0018; San Luis Obispo County certified Local Coastal Program (LCP).

**Staff recommendation** ...**Denial**

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### A. Staff Recommendation

#### 1. Staff Note

San Luis Obispo County's approval of a CDP for the proposed project was appealed to the Coastal Commission on June 4, 2010. On July 7, 2010, the Commission found that a substantial issue existed with respect to the grounds on which the appeal was filed, and the Commission took jurisdiction over the CDP application. Thus, the Commission is hearing the CDP application for the proposed project de novo, and this staff report and recommendation is with respect to the application for a CDP for the proposed lot-line adjustment and not the County's action on it.



## 2. Summary of Staff Recommendation

The Applicant proposes a lot-line adjustment (LLA) between two parcels of 318 and 1.1 acres, resulting in two parcels of 316.5 and 2.6 acres (roughly 1.5 acres taken from the larger parcel and added to the smaller parcel). The project also includes the establishment of a 6,000 square foot residential building envelope on the new 2.6 acre parcel. The parcels are in the LCP's Agriculture (AG) land use category and are located north of the community of Cambria, roughly ½ mile east from the intersection of Highway 1. The standard of review for the proposed project is the San Luis Obispo County certified LCP.

The San Luis Obispo County LCP requires the protection of coastal agriculture, including requiring that land suitable for agriculture be maintained in or available for agricultural production. The County's CDP decision allows for the adjustment of lot lines between two parcels and the designation of a new 6,000 square foot residential building envelope on the new 2.6 acre parcel, facilitating conversion of suitable agricultural land to non-agricultural residential use that adversely impacts agriculture both individually and cumulatively. The proposed project meets none of the LCP tests that would allow conversion of such agricultural land to residential use and development. Moreover, the proposed new parcel configurations do not meet the minimum parcel sizes for agricultural properties prescribed in the certified LCP. As a result, the project cannot be approved consistent with the LCP's agricultural protection policies for these reasons.

In addition, as the Commission has found in other recent similar cases in the County, the proliferation of non-agricultural residential development in agricultural areas results in increased conflict between land uses, land speculation and increased costs for agriculture, and other adverse impacts that affect agricultural protection more broadly in the County. Specific to this case, construction of a larger-scale residence at the center of the new 2.6-acre parcel would permanently shift the land use of the property away from agriculture to residential. The real estate market value of the property would reflect the new residential development, and future purchases of the property would tend to be made by individuals or entities with a primary interest in the residential use, and with the financial resources to acquire the property at its heightened real estate market price. Farmers or farming businesses with the primary aim of agricultural crop production or cattle grazing would be much less able to acquire the property for agricultural use, thereby failing to protect the basis for the county's agricultural economy and inhibiting potential agricultural capability in this area. There would also be the prospect that a future purchaser of the property would find the agricultural operation (onsite and adjacent), with its dust, noise, odors, pesticide use, etc., not sufficiently compatible with optimum rural residential living. Thus, even if the project could be found consistent with the LCP's conversion and minimum parcel size requirements, which it cannot, it would lead to adverse agricultural impacts to the property and surrounding agricultural properties that also cannot be found consistent with the LCP.

Thus, the proposed lot-line adjustment and establishment of a new residential building envelope would be significantly out of conformance with core LCP coastal agriculture protection requirements. Staff is unaware of any modifications that could make the new lot configuration and establishment of a new residential building envelope consistent with the agriculture protection standards of the LCP. As a result, Staff recommends that the proposed lot-line adjustment development be denied.



In addition, the LCP has multiple provisions that require new development to be sited and designed to ensure protection of significant visual and scenic resources. Such development standards specifically protect areas having public importance for their natural beauty and prohibit the placement of new permanent structures which would be highly visible within such public viewsheds. The two lots proposed for adjustment are located in a highly scenic area in close proximity to San Simeon State Beach and Campground, both popular public recreation areas. The proposed project site is visually prominent for those traveling along rural San Simeon Creek Road. Given the topography of the project site and the size and location of the proposed residential development envelope, the proposed project will have a significant detrimental impact on the natural setting and public viewshed. In addition, under the LCP, lot-line adjustments that locate building sites on highly visible slopes, as is proposed here, are prohibited. As such, the proposed development is inconsistent with the LCP's visual resource policies as well, including those specific to new lot-line adjustments.

Finally, one of the primary subdivision/LLA tests under the LCP is whether a proposed LLA creates a "better or equal" position with respect to conformance with the LCP. In this case, as described above in terms of both agricultural and public viewshed/character protection, the proposed LLA will have greater negative impacts to coastal resources than that associated with the current parcel configuration. Because the proposed LLA "worsens" the overall situation in terms of conformance with the LCP, the project is inconsistent with this aspect of the LCP as well.

**Staff recommends that the Commission deny the CDP for the proposed development due to fundamental inconsistencies with the certified LCP.** The motion and resolution for this recommendation are found directly below.

### 3. Staff Recommendation on CDP Applications

Staff recommends that the Commission, after public hearing, deny a coastal development permit for the proposed development.

**Motion.** I move that the Commission approve Coastal Development Permit Number A-3-SLO-10-028 for the development proposed by the Applicant.

**Staff Recommendation of Denial.** Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution To Deny The Permit.** The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the San Luis Obispo County Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.



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Click on the link at left to go to the exhibits.

## B. Findings and Declarations

The Commission finds and declares as follows:

### 1. Project Location

The proposed project is located on the north side of San Simeon Creek Road in the North Coast Area of San Luis Obispo County.

#### Regional Setting

San Simeon Creek Road is located in northern San Luis Obispo County between the unincorporated coastal communities of Cambria and San Simeon (see Exhibit 1). This stretch of coastline is known worldwide as the home of the famous Hearst Castle, but those who live here or have visited probably appreciate it more for its rugged coastal vistas, sprawling agricultural lands, and pleasant pastoral atmosphere. The coastal scenery of this mostly rural stretch of coast is stunning, and the natural environment remains the focus of the countryside, including that associated with fairly significant wildlife activity, particularly along the creeks and streams. The area also supports a vibrant tourist industry sustained by its abundance of recreational activities (most notably camping, hiking and biking) as well as the beautiful San Simeon State Park, one of the oldest units of the California State Park system.



### San Simeon Creek Road/Project Area

San Simeon Creek Road generally parallels San Simeon Creek as it flows down through the San Simeon Creek Valley towards the Pacific Ocean. San Simeon Creek Road is a rural road that extends a distance of approximately 5.5 miles from Highway One (and the entrance to San Simeon Beach State Park) along the valley floor before it begins to climb, and the public portion of the road ends at a locked gate approximately 8.2 miles inland. The road area up to the locked gate is mostly paved and narrow, ranging in width from 15 to 30 feet, with the narrowest portions at cattle gates. San Simeon Creek Road is a rural road that is traveled primarily by residents who live in the vicinity and by farm workers associated with the various agricultural operations. The creek and valley also attract recreationalists who enjoy a variety of interests in the area, including bicycling, hiking, and dog walking along the road up to the locked gate, nature and landscape painting, bird watching, fishing, sight seeing, and in a few rare high water instances, kayaking.<sup>1</sup> There are about a dozen residences and a few agricultural operations that depend on San Simeon Creek Road for access.

### Proposed Development Site

The proposed lot-line adjustment is located on the north side of San Simeon Creek Road roughly ½ mile inland from its intersection at Highway One and involves two parcels of approximately 1.1 (Parcel 1) and 318 (Parcel 2) acres respectively. Both parcels, and most surrounding parcels, are in the LCP's Agriculture (AG) land use category, although San Simeon State Park, which is zoned for Recreation (REC), is in close proximity to the proposed development site. Several adjoining properties are utilized for various agricultural activities. Properties to the west are grazed, a large avocado operation exists to the north, and properties to the east and southeast are also grazed and have fields that are utilized for the production of hay as well as irrigated row crops. The property immediately to the south is owned by the Cambria Community Services District (CCSD) and is the site of a number of municipal water wells.

Parcel 1 was enlarged from 4,300 square feet to 1.1 acres in 2007 through a prior lot-line adjustment (CDP SUB 2004-00218/COAL 04-0587). At that time, as is the case now, Parcel 1 was developed with a historic single-family residence.<sup>2</sup> As part of the previous lot-line adjustment, agricultural buffers and development restrictions were required to be applied to Lot 1 to minimize the potential for incompatibilities between residential development on the parcel and adjoining agricultural lands.

Parcel 2 (roughly 318 acres) is primarily zoned AG under the LCP, although an approximately 30-acre portion is zoned REC. Parcel 2 currently hosts a variety of uses including three single-family residences, equestrian facilities, agricultural accessory structures (e.g., barns and heavy equipment storage), mining operations, and substantial stockpiling of construction related/graded materials.

See Exhibits 1 and 2 for a location maps and photos of the project area.

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<sup>1</sup> Because of the limited road width and the lack of off-road area to park, pursuit of such public access opportunities along the road itself is made difficult.

<sup>2</sup> The single-family residence is a historic schoolhouse that has been converted to residential use.



## 2. Project Description

The Applicant proposes to reconfigure the two parcels as follows:

Existing Parcel Sizes (Acres)	Proposed Parcel Sizes (Acres)
Parcel 1: <b>1.1</b> +/-	Parcel 1: <b>2.6</b> +/-
Parcel 2: <b>318</b> +/-	Parcel 2: <b>316.5</b> +/-

As shown in the table above, the Applicant proposes to shift about 1.5 acres of land from the larger agricultural parcel (Parcel 2) to the smaller parcel (Parcel 1) to create a 2.6 acre smaller parcel and a 316.5 acre larger parcel. In addition, the Applicant proposes a 6,000 square foot residential building envelope on the new 2.6-acre parcel (Parcel 1). The Applicant indicates that the intent of the proposed project is to locate a new residential building envelope in a location where a residence could be built that could comply with other County regulations.<sup>3</sup> See Exhibit 3 for the proposed project site plan detailing the before and after parcel configuration and the residential building envelope.

## 3. Coastal Development Permit Determination

The standard of review for this CDP application is the San Luis Obispo County certified LCP.

### A. Agriculture

#### 1. Significance of Agricultural Land in San Luis Obispo County

Agriculture historically has been and continues to be an important resource in San Luis Obispo County. At the time of LCP development, the coastal valleys of the region yielded among the highest crop value per acre in the nation.<sup>4</sup> The North County region of the County primarily supported cattle grazing outside of the urban and village areas, and contained some of the best dry-land range in the County. Hearst Ranch, covering 77,000 acres, an estimated 48,732 of which are in the coastal zone, is the primary agricultural land holding in the North Coast area. In the Estero Area, agriculture is also the dominant land use and is a cornerstone of the local economy.<sup>5</sup> Agriculture is also the primary land use in over two thirds of the South County Planning Area.<sup>6</sup>

Agriculture continues to be an important resource throughout the County, including in the coastal zone. Between 1978 and 1998, the value of agricultural products county wide increased by \$230,661,000 (180%) in unadjusted dollars.<sup>7</sup> Agricultural product values in San Luis Obispo County have continued

<sup>3</sup> According to the County, the Applicant previously pursued similar such residential development on Parcel 1 after the 2007 lot-line adjustment. However, the required buffers, restrictions, and related constraints precluded such development on Parcel 1, and the Applicant subsequently applied for the current project as a means of facilitating such alternative residential development.

<sup>4</sup> San Luis Obispo County Planning Department. Coastal Agriculture Study (LCP Work Task 209.1). December 1979.

<sup>5</sup> San Luis Obispo LCP Estero Area Plan.

<sup>6</sup> San Luis Obispo LCP South County Area Plan.

<sup>7</sup> Annual reports from San Luis Obispo County Department of Agriculture (1985, 1988, 1990, 1992, 1994, 1996, 1998). It should be noted that when adjusted for inflation, though, this increase would not be as great.



to increase overtime. In 2009, total agricultural proceeds were estimated at \$623,095,000, a 3% increase in value from 2008.<sup>8</sup> According to the County Department of Agriculture, San Luis Obispo County is ranked 15th out of all 58 California Counties in value of crops produced.<sup>9</sup>

Over the past several decades, the overall value of vegetable, fruit and nut, and seed and nursery crop in San Luis Obispo County has increased, while animal husbandry and field crop values have declined. A general trend noted in the County appears to be towards more water-intensive crops. Nursery products have expanded since 1988, as have avocados, lemons, and oranges.<sup>10</sup> The growth in citrus crops is particularly evident in the coastal zone due to the climate needs for these crops. According to the 2009 Annual Report, strawberries continue to climb in value and are now the number two crop in the County, passing up both broccoli and cattle.

Perhaps the biggest change in agriculture in the County has been the growth in vineyards. This growth has occurred on land that was historically used for dry land farming, which produced crops with a substantially lower value than could be obtained from grapes. According to the 2009 Annual Report, wine grapes continue as the number one crop in San Luis Obispo County, representing 27% of the total proceeds.<sup>11</sup> As this trend grows in the coastal zone, there is an increasing potential for the conversion of existing agricultural lands, particularly existing pasture lands, to more profitable vineyards. As with the expansion of other crops noted above, the expansion of vineyards raises significant concerns about water availability and use, including protection of groundwater basins, as well as the proliferation of exotic pests, pesticide use, and landform alteration. In addition, vineyards sometimes bring with them wineries, including larger scale retail wineries, that can introduce more urban uses into rural farming areas where such uses can lead to additional pressure on coastal agriculture, making it difficult to maintain urban-rural boundaries, and to keep rural areas rural.

Agriculture is also an important aspect of the character of the County, providing open space, and a scenic, rural nature that is a defining quality of San Luis Obispo County and, in addition, that is an important component of the region's growing tourism economy.

## 2. LCP Applicable Policies and Summary

LCP agricultural land use policies, ordinances, and Area Plan standards applicable to the project include:

***Agriculture Policy 1: Maintaining Agricultural Lands.*** Prime agricultural land shall be maintained, in or available for, agricultural production unless: 1) agricultural use is already severely limited by conflicts with urban uses; or 2) adequate public services are available to serve the expanded urban uses, and the conversion would preserve prime agricultural land or would complete a logical and viable neighborhood, thus contributing to the establishment of a

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<sup>8</sup> San Luis Obispo County Department of Agriculture. Annual Report 2009.

<sup>9</sup> Ibid.

<sup>10</sup> Robert Hopkins, San Luis Obispo County Agriculture Commissioner. Personal Communication May 5, 2000.

<sup>11</sup> It should be noted that these numbers only reflect the value of the grapes produced and does not value the wine produced out of the 300+ wineries in the County.



*stable urban/rural boundary; and 3) development on converted agricultural land will not diminish the productivity of adjacent prime agricultural land.*

*Other lands (non-prime) suitable for agriculture shall be maintained in or available for agricultural production unless: 1) continued or renewed agricultural use is not feasible; or 2) conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development; and 3) the permitted conversion will not adversely affect surrounding agricultural uses.*

*All prime agricultural lands and other (non-prime) lands suitable for agriculture are designated in the land use element as Agriculture unless agricultural use is already limited by conflicts with urban uses.*

*Permitted uses on Prime Agricultural Lands. Principal permitted and allowable uses on prime agricultural lands are designated on Coastal Table O – Allowable Use Chart in Framework for Planning Document. These uses may be permitted where it can be demonstrated that no alternative building site exists except on the prime agricultural soils, that the least amount of prime soil possible is converted and that the use will not conflict with surrounding agricultural land and uses.*

*Permitted Uses on Non-Prime Agricultural Lands. Principal permitted and allowable uses on non-prime agricultural lands are designated on Coastal Table O – Allowable Use Chart in Framework for Planning Document. These uses may be permitted where it can be demonstrated that no alternative building site exists except on non- agricultural soils, that the least amount of non-prime land possible is converted and that the use will not conflict with surrounding agricultural land and uses.[THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

***LCP Agriculture Policy 2: Divisions of Land.*** *Land division in agricultural areas shall not limit existing or potential agricultural capability. Divisions shall adhere to the 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 within a parcel shall be prohibited unless it can be demonstrated that existing or potential agricultural production of at least three crops common to the agricultural economy would 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 any 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 the 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.]*

***LCP Agriculture Policy 3: Non-Agricultural Uses.*** *In agriculturally designated areas, all non-agricultural development which is proposed to supplement the agricultural use permitted in areas designated as agriculture shall be compatible with preserving a maximum amount of agricultural use. When continued agricultural use is not feasible without some supplemental use, priority shall be given to commercial recreation and low intensity visitor-serving uses allowed in Policy 1.*

*Non-agricultural developments shall meet the following requirements:*

- a. No development is permitted on prime agricultural land. Development shall be permitted on non-prime land if it can be demonstrated that all agriculturally unsuitable land on the parcel has been developed or has been determined to be undevelopable.*
- b. Continued or renewed agricultural use is not feasible as determined through economic studies of existing and potential agricultural use without the proposed supplemental use.*
- c. The proposed use will allow for and support the continued use of the site as a productive agricultural unit and would preserve all prime agricultural lands.*
- d. The proposed use will result in no adverse effect upon the continuance or establishment of agricultural uses on the remainder of the site or nearby and surrounding properties.*
- e. Clearly defined buffer areas are provided between agricultural and non-agricultural uses.*
- f. Adequate water resources are available to maintain habitat values and serve both the proposed development and existing and proposed agricultural operations.*
- g. Permitted development shall provide water and sanitary facilities on-site and no extension of urban sewer and water services shall be permitted, other than reclaimed water for agricultural enhancement.*
- h. The development proposal does not require a land division and includes a means of securing the remainder of the parcel(s) in agricultural use through agricultural easements. As a condition of approval of non-agricultural development, the county shall require the applicant to assure that the remainder of the parcel(s) be retained in agriculture and, if*



*appropriate, open space use by the following methods:*

*Agricultural Easement. The applicant shall grant an easement to the county over all agricultural land shown on the site plan. This easement shall remain in effect for the life of the non-agricultural use and shall limit the use of the land covered by the easement to agriculture, non-residential use customarily accessory to agriculture, farm labor housing and a single-family home accessory to the agricultural use.*

*Open Space Easement. The applicant shall grant an open space easement to the county over all lands shown on the site plans as land unsuitable for agriculture, not a part of the approved development or determined to be undevelopable. The open space easement shall remain in effect for the life of the non-agricultural use and shall limit the use of the land to non-structural, open space uses.*

*Development proposals shall include the following:*

- a. A site plan for the ultimate development of the parcel(s) which indicates types, location, and if appropriate, phases of all non-agricultural development, all undevelopable, non-agricultural land and all land to be used for agricultural purposes. Total non-agricultural development area must not exceed 2% of the gross acreage of the parcel(s).*
- b. A demonstration that revenues to local government shall be equal to the public costs of providing necessary roads, water, sewers, fire and police protection.*
- c. A demonstration that the proposed development is sited and designed to protect habitat values and will be compatible with the scenic, rural character of the area.*
- d. Proposed development between the first public road and the sea shall clearly indicate the provisions for public access to and along the shoreline consistent with LUP policies for access in agricultural areas.*

*[THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.050 OF THE CZLUO.]*

***LCP Agriculture Policy 4: Siting of Structures.*** *A single-family residence and any accessory agricultural buildings necessary to agricultural use shall, where possible, be located on other than prime agricultural soils and shall incorporate whatever mitigation measures are necessary to reduce impacts on adjacent agricultural uses. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.050a OF THE CZLUO.]*

***LCP Agriculture Policy 6: Lot Consolidation.*** *In some portions of the coastal zone where historical land divisions created lots that are now sub-standard, the Land Use Element shall identify areas where parcels under single contiguous ownership shall be aggregated to meet minimum parcel sizes as set forth in the Coastal Zone Land Use Ordinance. This is particularly important for protection of prime agricultural lands made up of holdings of small lots that would*



*not permit continued agricultural use if sold individually. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

In addition, the LCP's Coastal Zone Land Use Ordinance (CZLUO) contains provisions specific to land divisions and non-agricultural land uses in the Agriculture land use category. Sections 23.04.024 (e) and (f) and 23.04.050 state in applicable part:

***e. Overriding requirements for division on prime-agricultural soils.*** *Land divisions on prime agricultural soils as defined by this title shall be subject to the following requirements:*

- (1) 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.*
- (2) The creation of new parcels whose only building site would be on prime agricultural soils shall be prohibited.*
- (3) Adequate water supplies are available to maintain habitat values and to serve the proposed development and support existing agricultural viability.*

***f. Overriding requirements for division on non-prime agricultural soils.*** *Land divisions on non-prime agricultural soils as defined by this title shall be subject to the following requirements:*

- (1) Mandatory findings. A proposed land division shall not be approved unless the approval body first finds that the division will maintain or enhance the agricultural viability of the site.*
- (2) Application content. The land division application shall identify the proposed uses for each parcel*

***CZLUO Section 23.04.050 – Non-Agricultural uses in the Agriculture Land Use Category: Sighting of Structures.*** *A single-family dwelling and any agricultural accessory buildings supporting the agricultural use shall, where feasible, be located on other than prime soils and shall incorporate mitigation measures necessary to reduce negative impacts on adjacent agricultural uses.*

Thus, the San Luis Obispo County LCP includes strong agricultural protection policies and standards to implement the Coastal Act requirement to maintain the “maximum amount of prime land” (Coastal Act Section 30241) and to limit the conversion of agricultural land to non-agricultural uses except where agriculture is no longer feasible or such conversion would preserve prime land or concentrate development in existing urban areas (Coastal Act Section 30242). As summarized in the LUP:

*To carry out the goals of the Coastal Act, the Local Coastal Program delineates long-range urban/rural boundaries to support long-term agricultural use free from urban encroachment. The Coastal Zone Land Use Ordinance contains standards for minimum parcel size, limits on*



*non-agriculture uses and other regulations consistent with preservation of agricultural lands.*<sup>12</sup>

Most important, LCP agricultural policies establish strict basic requirements to achieve the broad intent of Coastal Act Sections 30241 and 30242. The San Luis Obispo County LCP currently implements these policies by requiring that existing agricultural land remain in agricultural uses, and by limiting the conversion of agricultural lands to non-agricultural uses. When non-agricultural uses are allowed to supplement continued agricultural uses, the LCP requires that remaining agricultural lands be placed in protective easements. A major goal of the LCP is to “encourage the protection of commercial agriculture land, both prime and non-prime soils, for the production of food, fiber, and other agriculture commodities.”<sup>13</sup>

Policy 1 requires that agricultural lands be maintained, and limits conversions of such land to the circumstances enumerated by the Coastal Act. Other land (non-prime) suitable for agriculture must be maintained in or available for agricultural production unless, among other reasons, its conversion will not adversely affect surrounding agricultural uses. Allowable non-agricultural uses on agricultural lands may only be permitted where the least amount of agricultural land is converted. LCP Policy 1 also distinguishes between prime and non-prime agricultural lands. While both are protected, the development constraints and requirements differ depending on whether land is “prime” or “non-prime”.<sup>14</sup> Thus, the intent of Policy 1 is that agricultural lands will be maintained as such unless there are circumstances in and around existing urban areas that make agriculture infeasible or that would make conversion of the land to a non-agricultural use a logical land use change to better protect agricultural lands and strengthen the urban-rural boundary. Policy 1 also establishes a presumption that all of the lands designated for Agriculture in the coastal zone are conclusively suitable for agriculture:

*All prime agricultural lands and other (non-prime) lands suitable for agriculture are designated in the land use element as Agriculture unless agricultural use is already limited by conflicts with urban uses.*

LUP Agriculture Policy 2 and Section 21.08.020(a) of Title 21 Real Property Division Ordinance of the County LCP are the primary LCP standards that regulate land divisions, including lot-line adjustments.<sup>15</sup> Together these LCP development standards require that lot-line adjustments must not compromise the long-term viability of agricultural lands. Thus, Policy 2 strictly limits land division of agricultural lands; requiring that any such division be premised on its being done to facilitate agricultural viability (as opposed to some non-agricultural use and development).

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<sup>12</sup> County of San Luis Obispo. “Coastal Plan Policies.” March 1, 1988, Revised April 2007. Page 7-12.

<sup>13</sup> LCP Framework for Planning goal.

<sup>14</sup> Under the LCP, prime soils are defined as: 1) land rated as class I or II in the Soil Conservation Service classifications; 2) land rated 80-100 in the Storie Index rating; 3) land which supports livestock for food/fiber and has annual carrying capacity of at least one animal/unit per acre (defined by USDA) ; or 4) land planted with fruit or nut bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which yields at least \$200/acre. Non-prime soils are other soils classified in the Agricultural land use category of the Land Use Element.

<sup>15</sup> Under Section 21.08.020(a), subdivisions include lot line adjustments. This section specifically includes lot line adjustments as a type of development that requires a coastal development permit and is subject to the provisions of the certified LCP.



LUP Policy 3 strictly limits non-agricultural uses of agricultural land that may be proposed to supplement agricultural production. Such uses are only allowed if it is conclusively demonstrated that maintaining agriculture is not feasible without such uses, and only 2% of the total acreage may be allocated to such non-agricultural uses. In addition, such non-agricultural use is only allowed if it does not require a subdivision. Policy 3 also requires an open space/agricultural easement over the remaining 98% of the land in order to allow the non-agricultural use.

The overall importance of LCP agricultural policies is that agricultural lands should not be subdivided unless such division would maintain or enhance agriculture, and that non-agricultural uses should not be allowed except under limited circumstances, including in terms of supplemental non-agricultural uses where supplemental income is required for the continuation of agricultural use and 98% of the land is still restricted for and maintained in agriculture.

In short, the County's LCP is premised on maintaining its existing agricultural lands as agricultural lands, and includes significant policy direction to implement this objective, including exacting criteria that must be met to allow non-agricultural uses and development on such properties. This extremely protective approach is underscored by other provisions of the LCP as well. For example, the LCP's Framework for Planning document enumerates the purposes of the agricultural land use designation as including the following:

- b. To designate areas where agriculture is the primary land use with all other uses being secondary, in direct support of agriculture.*
- c. To designate areas where a combination of soil types, topography, water supply, existing parcel sizes and good management practices will result in the protection of agricultural land for agricultural uses, including the production of food and fiber.*
- d. To designate areas where rural residential uses that are not related to agriculture would find agricultural activities a nuisance, or be incompatible.*
- e. To protect the agricultural basis of the county economy and encourage the open space values of agriculture to continue agricultural uses, including the production of food and fiber.<sup>16</sup>*

These purposes are underscored with a description of the character of agricultural lands as including:

- b. Areas for agricultural processing and its support services.*
- c. Areas where the residential uses allowed are for property owners or employees actively engaged in agricultural production on the same property.*
- f. Areas where existing land uses are mainly truck crops, specialty crops, row and field crops, irrigated crops and pasture, irrigated vineyards and orchards, dry farm orchards and vineyards, dry farm and grain, grazing and rangeland.*

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<sup>16</sup> County of San Luis Obispo. "Framework for Planning." March 1, 1988, Revised June, 2001. Page 6-13.



- g. Areas where parcel sizes and ownership patterns are sufficiently large to make agricultural operations economically viable, given other features such as soil types, water supply, topography and commercial potential through optimum management.*
- h. Areas with an existing pattern of smaller parcels that cannot support self-sustaining agricultural operations, but where physical factors of soil, water supply and topography would support agricultural production.*

The limitation on land uses in agricultural areas is also expressed in Table O of the LCP, which identifies the principally-permitted uses for each land use category. Significantly, there are only two land uses designated as a principally-permitted use, without qualification, on either prime or non-prime lands: “crop production and grazing” and “coastal accessways.”

In addition to the LCP’s agricultural protection provisions, the proposed LLA is a subdivision that must meet the LCP’s minimum lot area requirements, and is subject to the LCP’s Title 21 Real Property Division Ordinance “equal to or better than” test. LCP Section 21.08.020(a) states:

***Section 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. (emphasis added)*

***Section 21.02.030(c) Criteria to be considered.*** *A lot-line adjustment shall not be approved or conditionally approved unless the new parcels resulting from the lot-line adjustment will conform with the county’s zoning and building ordinances. The criteria to be considered includes, but is not limited to, standards relating to parcel design and minimum lot area. These criteria may be considered satisfied if the resulting parcels maintain a position with respect to said criteria which is equal to or better than such position prior to approval or conditional approval of the lot-line adjustment.*

In sum, the LCP clearly protects agricultural lands for agriculture, including explicitly when subdivision is considered, and limits such subdivision and related development to that which promotes agricultural viability. Maintaining the viability of agricultural lands is a function of many factors, including complex economic and climatological variables beyond the control of land use planning. It is important, therefore, to assure that agricultural parcel sizes and configurations are maintained so as to maximize their support for agricultural uses. For example, maintaining minimum parcel sizes is an important component of assuring the long-term viability of agricultural lands. It is also important to rigorously analyze proposed adjustments to parcel lines, and potential non-agricultural development, including on non-conforming parcels, to protect against the incremental incursion of non-agricultural uses into rural agricultural areas. While lot-line adjustments alone do not necessarily remove lands from agricultural production, they can affect the long-term use of the land to the detriment of agriculture. For example, lot-line adjustments can alter land use patterns, emphasizing residential development over other uses,



and can create parcels too small to be economically viable for long-term agricultural use. When lot-line adjustments lead to an increase in residential or urban development (such as the case here), including through designation of non-agricultural uses (again, as in the case here), conflicts between urban and agricultural uses increase, and the pressure to convert remaining agricultural lands also increases.

### 3. Recent Development Trends on Agricultural Land

As discussed above, a core policy concern of the Coastal Act and the LCP is the protection of coastal agriculture through the limitation of non-agricultural land uses on agricultural lands. When the LCP for San Luis Obispo was certified, the Commission evaluated these issues within the specific context of the County. The LCP thus reflects a specific concern for the problem of maintaining agricultural land in production given the pressures of urban development and land speculation. The Commission and the County have had some success protecting the rural agricultural lands of the San Luis Obispo County coastal zone, particularly through the extremely protective land use category and protective development standards. Nonetheless, concerns remain. The Commission has addressed the concern for the trend towards development of large rural residential projects in the County through its 2001 Periodic Review of the San Luis Obispo County LCP by adopting recommendations to the County that the LCP be amended to establish stronger standards for nonagricultural residential development on agricultural lands, including performance standards for the size of development envelopes and other constraints that would better maintain land in agricultural production.<sup>17</sup>

In contrast to residential development that is incidental to and/or in support of agricultural production (such as farmer and farm labor housing), the development of non-farming related single-family homes on agricultural lands is contrary to the goal of the keeping agricultural lands in, or available for, agricultural production. In addition, given increasingly high housing costs, agricultural use cannot compete with the use of land for residential development even on a large un-subdivided farm parcel or ranch on the San Luis Obispo County coast. The recent trend to develop large expensive homes on such properties exacerbates this problem by increasing the speculative value of these large parcels in the scenic rural areas as sites for such homes. The development resulting from these pressures is widely recognized as contributing to the loss of agricultural production on agricultural land in conflict with the LCP requirement to maintain the maximum amount of agricultural land in agricultural production.

The loss of available lands for farming to residential development is now being recognized as a national trend and many states, including California, have recently taken actions in attempt to curb this “rural sprawl.” The American Farmland Trust views rural residential sprawl as a major threat to farm production stating:

*The majority of the Central Valley’s population lives in urban areas totaling more than 1,236 square miles. Yet that number does not tell the full story. What are not counted are the rural residential parcels. These residences, also known as “ranchettes,” dot the rural landscape and affect everything from routine farming practices... a ranchette removes more farmland from agriculture than any higher density suburban dwelling.*

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<sup>17</sup> See Recommendation 5.8 of Commission’s adopted periodic review of the County LCP.



And:

*The subdivision of land into ranchettes fuels speculation that drives up the cost of land and eventually makes it unaffordable for commercial agricultural production. The proliferation of rural residences throughout agricultural areas also poses a very real risk, right-to-farm laws notwithstanding, that agricultural insurance premiums will rise and that farming practices may be further regulated to protect public health and safety. Thus, agricultural policy should also address the need to significantly reduce scattered, rural development.*

*Greater certainty about land use expectations is critical to both farmers and developers. Places to farm and places to build should be clearly delineated, mutually exclusive and consistently enforced...[This] will also insulate agricultural production from speculation and other pressures exerted by urban proximity, and encourage reinvestment in California agriculture to meet the demands of a changing global marketplace.*

Measures identified to address this issue include: (1) prohibiting all non-farm dwellings on agricultural lands, (2) requiring passive agricultural conservation easements or deed restrictions that ensure that land remains available for agricultural use; and (3) requiring affirmative agricultural easements that ensure that agricultural land remains in production. These measures have been adopted or are currently under consideration by many jurisdictions throughout the state and nation.

Between 1988 (LCP certification) and 1999 (Periodic Review), the Commission received notice of an estimated 212 permits processed by the County for development on agriculturally zoned lands. Based on the Commission's review of these local notices, at least 38 permits were issued for what strictly might be termed "agricultural" development, generally defined as barns and other agriculture accessory structures, such as mobile homes for farm worker housing. An additional seven permits were granted for agriculturally-related commercial development, including nurseries, greenhouses, wineries, and roadside stands. The remaining permits were granted for various projects such as public works projects, residential development, subdivisions and lot-line adjustments, water wells, several recreation or visitor-serving projects, and other non-agricultural commercial development. In these same years, the Commission acted on seven appeals of local government actions raising agricultural issues. In four of the appeals, the Commission found that the County was not implementing its LCP in a manner that protected agricultural resources. These appeals dealt with non-agricultural uses on agricultural land and the adequate preservation of agricultural land.<sup>18</sup>

More recently, the Commission has also addressed issues surrounding large residential development on properties zoned for agriculture, including lot-line adjustments and other subdivisions that facilitate the trend, in San Luis Obispo County in numerous appeals including: A-3-SLO-00-040 (Schneider), A-3-SLO-04-056 (Henderson), A-3-SLO-08-053 (Staller), A-3-SLO-09-045 (Hearst Holdings), and A-3-SLO-10-031 (Goodan).

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<sup>18</sup> For example: A-3-SLO-98-025 (Scoggins); A-3-SLO-99-014 and A-3-SLO-00-032 (Morro Bay Limited); and A-3-SLO-95-069 (CCSD).



In addition to the previously approved and developed residences on AG zoned land, Commission staff is aware of at least one pending San Luis Obispo County coastal development permit application involving the proposed construction of residential development or lot-line adjustment/subdivision on rural agricultural lands.<sup>19</sup> As noted previously, the Commission has also recently acted on three appeals involving large residential development on agricultural lands in San Luis Obispo County (A-3-SLO-00-040 (Schneider), A-3-SLO-04-056 (Henderson), and A-3-SLO-10-031 (Goodan)). Thus, the issues surrounding conversion of rural agricultural land from agricultural use to residential use are not limited to the proposed project. The growing trend toward developing large residences on rural agricultural lands, piecemeal development of domestic wells and conversions of agricultural wells to domestic use on agricultural lands in advance of large residential development applications, and lot-line adjustment/subdivision of agricultural land in San Luis Obispo County is clearly evident in the number of previous and pending applications for these uses, thus further highlighting the significance of cumulative adverse impacts associated with development pressures that threaten the continued productivity and viability of agricultural lands in San Luis Obispo County.

Finally, the County has also specifically acknowledged this trend. In fact, the County has recently begun to revisit the implementation of an agricultural lands cluster division ordinance in the coastal zone, due in part to criticism that previous ordinances have not necessarily protected agricultural land but rather have facilitated the subdivision of such land to the detriment of rural agricultural land values.<sup>20</sup> Problems identified include that cluster divisions have not resulted in clustered development patterns, that agricultural lands are used for buffers, including removal of crops to create buffer areas, that homes have received priority for water, that intensive crops have been planted to increase allowable densities, and that homes have been used primarily for expensive rural homesites for non-agricultural residences.<sup>21</sup>

#### 4. Project Impacts on Agricultural Land

The project site is entirely made up of agricultural land protected by the LCP, some of which is delineated as prime agricultural land and some of which is not if one looks solely to soil characteristics.<sup>22</sup> All of this land, however, may qualify as prime grazing land overall, including if viewed in conjunction with neighboring parcels (some of which are under the same ownership) or as part of a larger grazing operation. As described in the LCP policy description above, though, all agricultural land is protected under the LCP, and the prime versus non-prime question only becomes important if the project can somehow meet the requirements for a lot-line adjustment of agricultural land. The proposed project cannot meet such requirements.

The proposed project is explicitly designed to facilitate residential, as opposed to agricultural, use and development, and it explicitly identifies an area within which alternative residential development would

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<sup>19</sup> San Luis Obispo County CDP application COAL 01-0001/S000161 (Pierson).

<sup>20</sup> That is, inland of the coastal zone where these ordinances have been in place for several years.

<sup>21</sup> See, for example, memo from Chuck Stevenson to San Luis Obispo County Planning Commission, April 10, 2008.

<sup>22</sup> The soils on the subject parcels are diverse and include over 50 acres of prime soil, 60 acres of soils of statewide importance, and a mix of other soil types that are not considered prime, with all of existing Parcel 1 and proposed expanded Parcel 1 consisting of non-prime soils (roughly equal portions of non-prime 164 (Los Osos Diablo Complex) and non-prime 194 (Riverwash) soils).



take place. In short, the proposed project is not designed to facilitate agricultural viability, and it converts an area of agricultural land to residential use. As described above, whether prime or not, the LCP requires that agricultural land be maintained in or available for agricultural production unless continued or renewed agricultural use is not feasible or the conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve the additional development. In this case, the proposed project meets none of these tests.

First, there is no indication that continued or renewed agricultural use of the land in question (that would be shifted to Parcel 1) is not feasible. On the contrary, grazing is the primary agricultural use on Parcel 2, and there is no indication that continued use is problematic. As the County Agricultural Department found, the use of the land in question for residential use and development as proposed would “represent continued incremental loss of a highly productive rangeland soil.” Furthermore, even if its continued agricultural use were somehow not possible, there is no indication that renewed use would not be possible. On the contrary, and including because the property has a water agreement with the CCSD that entitles it to receive substantial wastewater for beneficial reuse as an irrigation supply for agricultural crops, the County Agriculture Department found that “it can be reasonably expected that the agricultural use of the property will intensify in the future.” As such, continued agricultural use of the property is not only feasible, but continued and potentially different agricultural use is feasible as well.

Second, the proposed project does not preserve prime agricultural land or concentrate urban development as required by the LCP. Instead, its purpose is to convert agricultural land to residential use and development. Even if the land in question is considered non-prime, the project does not serve to preserve any agricultural land, prime or not; it only converts agricultural land. Further, the project is located outside of the urban-rural boundary in an area that is not contiguous to an existing urban area, and thus it cannot meet the test for allowing subdivisions of agricultural land.

Even if the proposed project could meet the threshold tests of LUP Policy 1, which it cannot, the proposed project will only increase potential impacts on agricultural viability associated with adjacency issues (the concluding portion of the applicable Policy 1 tests, and as referenced in the CZLUO Section 23.04.050 requirements). As indicated, the proposed project facilitates residential development on an agricultural parcel that is also adjacent to other agricultural parcels. As described above, typical incompatibility issues raised at the residential-agricultural land use interface include: noise, dust, and odors from agricultural operations and animals; road-access conflicts between agriculturally related machinery and/or animals and private automobiles; limitations on pesticide application; and residential garden pest/exotic plant species transfer, to name a few. Such incompatibilities can threaten continued or renewed agricultural operations when standard agricultural practices (such as chemical spraying and fertilizing) or ongoing agricultural by-products (such as animal wastes, dust and noise from machine operations – cultivating spraying, harvesting, et al) are seen as a threat to residential use and enjoyment of the property. The proposed project only increases the potential for such agricultural-residential incompatibility issues, thus further impacting agricultural viability in relation to the existing condition.

As a result, the proposed project is inconsistent with LUP Policy 1 and related CZLUO requirements.



As to LUP Policy 2 (and CZLUO Section 23.04.024), again even the threshold question cannot be resolved consistent with the LCP. Namely, the proposed project cannot be found to “maintain or enhance agricultural viability” or to maintain “existing or potential agricultural productivity” or to maintain “existing or potential agricultural capability” when it directly removes an area of agricultural land from agricultural use. By definition, the acreage transferred and used for residential use is not maintained in agriculture, but rather is converted from agricultural to residential use and development. Even if one considers the loss of agricultural land small in comparison to the larger remainder parcel leftover, it is a loss nonetheless, and existing and potential viability, productivity, and capability is incrementally diminished.

Furthermore, LUP Policy 2 and the CZLUO require that land divisions meet certain minimum parcel sizes. The LCP requires that agricultural parcels be at least 20 acres in size or larger depending on the type of agricultural use on the parcel.<sup>23</sup> In this case, the new 2.6 acre parcel (Parcel 1) fails to meet any of the LCP minimum parcel size criteria (ranging from 20 to 320 acres), and the new 316.5-acre parcel (Parcel 2) fails to meet the LCP’s 320-acre minimum parcel size for grazing lands. As a result, the proposed project cannot be found consistent with this aspect of LUP Policy 2. Even if a variance of such minimum parcel sizes were to be considered in a CZLUO context, such variance cannot “reach back” into the LUP to undo this inconsistency. More broadly, although it is true that neither of the existing parcels currently meets the LCP’s minimum parcel size requirements, and thus are non-conforming, continuing such non-conformities (and making one worse) cannot be found LCP consistent. In addition, and if understood in the context of the LCP’s agricultural objectives, the only reason to allow such variance would be if it met the variance tests (which it does not) and if it somehow furthered protection of agriculture. As indicated previously, the sole purpose of the project is to facilitate residential development, not agricultural protection. Even if alternative parcel configurations were considered,<sup>24</sup> this LCP inconsistency cannot be avoided. In fact, the LCP more appropriately identifies and contemplates consolidation as the LCP consistent process for historic lots that are substandard (see LUP Policy 6).

As a result, the proposed project is inconsistent with LUP Policy 2 and related CZLUO requirements.

In addition, and specific to the land division component, LUP Policy 3 only allows non-agricultural use and development subject to exacting requirements (none of which are met here), and only if it does not require a land division (subsection h). The whole purpose of the proposed project is to create a more

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<sup>23</sup> The minimum parcel size based on existing use for irrigated row crops is 20 acres, for irrigated pasture land is 30 acres, for dry farm orchards and vineyards is 40 acres, for dry farm field crops is 80 acres, for dry farm grain and hay is 160 acres, and for grazing land is 320 acres (CZLUO Section 23.04.024(b)). The minimum parcel size based on land capability for Class I soil is 20 acres, for Class II soil is 40 acres, for Class III soil is 80 acres, for Class IV-V soil is 160 acres, and for Class VII-VIII soil is 320 acres (CZLUO Section 23.04.024(c)).

<sup>24</sup> For example, the Applicant has submitted a potential alternative parcel configuration for consideration that would add 8,300 square feet of irrigated pasture to Parcel 2 (taking it from Parcel 1), while maintaining the 6,000 square foot building envelope on Parcel 1 as proposed. While this alternative may be marginally better from a potential economic viability perspective for Parcel 2 than that which was originally approved by the County (and marginally worse for Parcel 1), it still fails to meet the core agricultural protection standards of the LCP, which is to keep viable agricultural land in or available for agriculture. Establishing a new building envelope at the center of the parcel on viable agricultural land is in direct conflict with the intent of the agricultural zoning here.



desirable residential development envelope, and the only means to achieve that is the proposed land division. As a result, the proposed project is inconsistent with LUP Policy 3.

In terms of CZLUO Section 21.02.030(c), the lot-line adjustment does not result in a parcel configuration that is equal to or better than the existing parcel configuration. Yes, the smaller parcel becomes slightly less non-conforming, but the larger parcel likewise becomes slightly more so. And the project results in more impacts to agricultural land than does the existing configuration, as described in the preceding findings. As a result, the proposed project is inconsistent with CZLUO Section 21.02.030(c).

Finally, if the lot-line adjustment and residential building envelope were consistent with the LCP and were approved in this case, and to the extent such an approval set a precedent for LCP policy interpretation, it is reasonable to presume that other projects like it could also be approved, leading to a potential proliferation of non-agricultural residential use and development in this rural agricultural area (and others in the County). This could lead to cumulative adverse rural and agricultural impacts of the type identified for this specific case. In short, it is not LCP consistent to reconfigure agricultural property lot lines for the purpose of facilitating residential use, and individual cases will lead to cumulative impacts of this type of conversion if it takes place on a broader scale.<sup>25</sup>

### 3. Agriculture Conclusion

The proposed lot-line adjustment is designed to facilitate residential development of an agricultural property in rural San Luis Obispo County. As described above, such a project runs directly counter to core LCP objectives for agricultural protection. In fact, the purpose of the project is clearly residential, and not agricultural. Such a project will reduce agricultural land through direct conversion, will permanently alter agricultural use of the property, and will facilitate potential conflicts of the type described above associated with agricultural operations adjacent to residential development.

In addition, the LCP requires that such land be maintained in or available for agricultural production unless: continued or renewed agricultural use is not feasible; or if conversion would preserve prime agricultural land or concentrate urban development within or contiguous to existing urban areas which have adequate public services to serve additional development, and such conversion will not adversely affect surrounding agricultural uses. In this case there is no evidence that use of the land for agricultural purposes is infeasible. The proposed conversion will reduce lands available for agriculture and will adversely affect surrounding agricultural use, both by direct loss of agricultural land from such uses and in terms of increased potential for urban-agricultural conflicts.

Further, the agricultural productivity for both parcels would be diminished. In the case of the larger parcel, because it would be reduced in size and an additional residential use introduced at its border. For the smaller parcel, because it would have a new residential building site established at its center, further

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<sup>25</sup> It should be noted that the smaller existing 1.1-acre parcel is currently for sale with a listing price of \$495,000. The Applicant has also indicated that there is interest in purchasing the property should the current project get approved (personal communication between Coastal Commission coastal planner Jonathan Bishop and Clyde Warren on October 26, 2010).



fragmenting the already substandard agricultural parcel and effectively precluding all but the very smallest of agricultural operations, if any.

Finally, the resulting parcelization does not provide an equal or better outcome for agriculture for all of the same reasons.

In the process of evaluating the Applicant's project, including the recently proposed alternative lot configuration, it is clear that there is a detailed record of various constraints on the site, including but not limited to, the agricultural and visual and scenic resources discussed in this report. Because of this, establishing a new residential building envelope on the new 2.6 acre parcel is quite challenging. With respect to alternatives and as described before, the Commission is unaware of any modifications that could make the new lot configuration and establishment of a new residential building envelope consistent with the agriculture protection standards of the LCP.

In short, the proposed project cannot meet even the threshold inquiry for proposed subdivision and related residential development on agricultural land, and thus cannot be found consistent with the LCP's agricultural protection policies. Furthermore, there are not readily identifiable modifications that could bring the proposed project into LCP conformance. Partially this is because the objective of the project is so clearly residential as opposed to agricultural, and the LCP is premised on projects in agricultural areas being for agricultural purposes. The purpose of this project is a more attractive residential building site on Parcel 1. Modifications that the Commission might suggest would be designed to not expand residential development on Parcel 1, and this would effectively be a denial. In other words, there is little reason to spend time crafting a lot-line adjustment to expand Parcel 1 when such expansion would need to include restrictions that would limit development of the property to agricultural purposes if it were to be found LCP consistent (and thus would effectively preclude the proposed residential use).

The Commission finds that reconfiguration of the parcels and establishment of a new residential building envelope at the center of the newly created 2.6-acre parcel does not maintain or preserve agricultural land, and would permanently alter agricultural use of the property, thereby failing to protect the basis for the County's agricultural economy. The market value of the property would shift to reflect the new residential development. Once the residence were built within the building envelope identified, future purchases of the property would necessarily tend to be made by individuals or entities with a primary interest in the residence, and with the financial resources to acquire the property at its heightened real estate market price. Farmers or farming businesses with a primary aim of agricultural crop production or cattle grazing would be much less able to acquire the property for commercial agricultural use, which would negatively impact agricultural capabilities in the area. There would also be the prospect that a future purchaser of the property would find the adjacent agricultural operation, with its dust, odors, noise, pesticide use, etc., not sufficiently compatible with optimum rural residential living. Moreover, the proposed project does not adhere to the minimum parcel sizes for agriculture prescribed in the certified LCP. Finally, the resulting parcelization does not provide an equal or better outcome for agriculture for all of the reasons listed above. Thus, the proposed lot-line adjustment and establishment of a new residential building envelope would be significantly out of conformance with



core LCP coastal agriculture protection requirements. Thus, in this circumstance, the Commission denies the CDP application.

## B. Visual and Scenic Resources

### 1. Applicable Policies

***Visual and Scenic Resource Policy 1:*** Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible.

***Visual and Scenic Resource Policy 2:*** Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Where possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created “pockets” to shield development and minimize visual intrusion.

***Visual and Scenic Resource Policy 4:*** New development shall be sited to minimize its visibility from public view corridors. Structures shall be designed (height, bulk, style) to be subordinate to, and blend with, the rural character of the area. New development which cannot be sited outside of public view corridors is to be screened utilizing native vegetation; however, such vegetation, when mature, must also be selected and sited in such a manner as to not obstruct major public views.

***Visual and Scenic Resource Policy 5:*** Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance.

***CZLUO Section 23.05.034(d) –Landform alterations within public view corridors.*** Grading, vegetation removal and other landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridors from collector or arterial roads. Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.

In addition, the North Coast Area Plan of the certified LCP contains a series of development standards specific to new subdivisions aimed at addressing potential visual and scenic resource impacts through appropriate site selection and design. Applicable Rural Areawide standards include:

***2. Driveways – New Land Divisions.*** New land divisions are to include, where possible, design provisions for combining driveways and private access roads serving proposed parcels wherever terrain and adequate site distance on the public road allow.

***5. Application Contents – Land Divisions.*** Land division applications in areas visible from the public road must identify potential building site envelopes. These building sites shall be in



*developable locations least visible from the public road.*

Finally, the “equal to or better than” LCP standard (Section 21.02.030(c), previously cited) applies in a public viewshed sense as well.

## 2. Analysis

San Luis Obispo County LCP Visual and Scenic Resources Policies 1, 2, and 4 require new development to be sited and designed to protect unique and attractive features of the landscape, views to and along the ocean and scenic areas, and minimize its visibility from public view corridors. Visual and Scenic Resources Policy 5 and CZLUO Section 23.05.034(d) require grading, major vegetation removal and landform alterations within public view corridors to be minimized. In this case, the parcels and proposed residential building site would be highly visible along the public San Simeon Creek Road view corridor. Because the surrounding area is a substantially undeveloped rural open space, any development in this area poses the potential for adverse impacts in terms of protecting the area’s valuable public viewshed scenic qualities.

Visual and Scenic Resource Policy 2 aims to protect public views through the use of slope created “pockets” to shield new development. In other words, if topographic ridges, valleys, or depressions in the landscape are available and provide natural screening, than they should be pursued as locations for new development. Given the exposed nature of the site with rolling, low-lying grasses, opportunities to hide or screen development using existing vegetation or topography is limited. Commission Staff has driven past the site on San Simeon Creek Road, studied topographic maps, and reviewed aerial photos and can confirm that it is unlikely that alternative building sites completely out of the viewshed exist on proposed Parcel 1. The only area on the project site that may provide some visual relief is in the southeast property corner where the old schoolhouse residence is currently located.

Under LCP Policies 4 and 5, every reasonable effort must be made to assure that new development in this area is truly subordinate to, and blends with, the rural landscape. Under the current parcel configuration, the residential building site is in the corner of the parcel on flatter terrain, at a much lower elevation, and directly adjacent to the San Simeon Creek Road frontage. No cutting or filling of the hillside is necessary to maintain the existing residential development at this location, and potential screening of this existing residence area would require less landform alteration and less visual intrusion into the viewshed than alternative residential locations on the site. In addition, the closer the development is to the road, the shorter the length of time the development would be visible as travelers pass. The higher up the hillside and the further away from the road the development is located, the longer the development appears within the cone of vision, and the more it appears as “ranchette” residential development than a residence clustered away from the interior of the agricultural property and at the road’s edge. One of the more compelling visual features within the San Simeon Creek watershed is the large vistas of rolling hillsides. Development within the middle of such a setting – in the “longview” – would be a much more significant impact than would a development in the immediate foreground, closer to the viewer and clustered at the road, where it currently exists as part of the viewshed.



Most significant with respect to visual and scenic impacts, the proposed LLA moves the development envelope further up the hillside, increasing the amount of cutting and filling necessary to support residential development, and increasing the amount of time the structure is visible in the viewshed. While it may be possible to screen future residential development further up the hillside with vegetation or landscaped berms, such an approach would not minimize landform alterations within the viewshed, as required by Policy 5. Screening a future residence completely at the proposed location would also depend on maintaining planted vegetation. It has been the Commission's experience that row trees and vegetated berms can sometimes look unnatural and lack effectiveness, particularly in open rural landscapes such as this. Finally, extensive grading and earthmoving for the future home, driveway, and ancillary improvements would also be visible and would also significantly alter the natural form of the hillside and the viewshed.

In short, the further up the hillside the residential development envelope is located, the steeper the slopes and the more landform alteration required. The further away the development is sited within the cone of vision of travelers on San Simeon Creek Road, the larger the berming and more intense the landscape screening must be to attempt to hide the residence, leading to viewshed impacts of its own. For these reasons, the proposed LLA and the establishment of an additional new residential building envelope are not consistent with the cited LCP policies, and will result in greater impacts to visual and scenic resources than would occur under the existing parcel configuration.

The controlling objective of Policy 4 and the North Coast Area Plan Areawide standards for subdivisions is to ensure that such subdivisions allow for siting and design of new structures so as to be subordinate to and blend with the rural character of the landscape. There are at least two general themes to test for consistency in this case: 1) compatibility with the surrounding built environment, namely the immediately surrounding agricultural parcels with farm buildings and individual farm residences; and 2) compatibility with the overall open space environs of the larger San Simeon Creek watershed.

Consistency with the character of the built environment can be evaluated primarily on architectural style and overall mass/scale. Because a new residence is not proposed under this application, it is difficult to judge consistency with this standard. Nevertheless, a 6,000 square foot development envelope suggests that the proposed residence would be larger in mass and scale than a typical farmhouse, and larger than the existing roughly 950 square-foot residence on Parcel 1. In terms of compatibility with the larger surrounding rural agricultural area, large residential development up the slope is distinctly counter to the character of this greater area. While a limited number of residences have been developed in this area, the San Simeon Creek watershed remains largely undeveloped.

### 3. Visual and Scenic Resource Conclusion

The proposed project is located in a highly scenic area protected by the LCP. Given the topography of the site, establishment of a new residential development envelope further up the elevated hillside will be more visible from San Simeon Creek Road and surrounding areas. Given the topography of the project site and the size and location of the proposed residential building envelope, the proposed project will have a negative impact on the natural setting and the public viewshed as seen primarily from San



Simeon Creek Road. Residential development within the proposed building envelope would not minimize viewshed disruption, does not use existing slope pockets and topography, would not minimize landform alteration, would not integrate development into the character of the surrounding area, would not result in development that is subordinate to the natural character of the site, and overall would not adequately protect significant public views required by the LCP (see applicable development standards cited above). Thus, the proposed LLA and establishment of a new residential building envelope cannot be approved as proposed. Notably, it facilitates new residential development in an area that is more visible than the existing residential development and introduces additional structural development on top of the existing residential development present now. In other words, it at least doubles the development intensity and would result in two structures in the significant public viewshed, including the new SFD in the highly visible envelope proposed. Even a substantially reduced-scale development would raise similar concerns at this location, and even such substantially-reduced development could not be found consistent with the LCP's visual and scenic resource protection requirements. As a result, the proposed project cannot be found consistent with the LCP's visual and scenic resource protection provisions, including those specific to site design and building construction for new subdivisions in the North Coast area.

In addition, the proposed project does not result in a parcel configuration that is equal to or better than the existing configuration in terms of the public viewshed. Notably, it facilitates new residential development in an area that is more visible and with greater public viewshed impacts than the existing residential development. As with the agricultural inconsistencies, and in light of the nature of them and the lack of LCP-consistent and available project modifications, the public viewshed inconsistencies are a corroborating reason not to approve the proposed project. As a result, the proposed project must be denied.

### C. CDP Determination Conclusion – Denial of A-3-SLO-10-028

As discussed in the above findings, the proposed development is inconsistent with the policies of the LCP. When the Commission reviews a proposed project that is inconsistent with the certified LCP, there are several options available to the Commission. In many cases, the Commission will approve the project but impose reasonable terms and conditions to bring the project into conformance with the LCP. In other cases, the range of possible changes is so significant as to make conditioned approval infeasible. In this situation, the Commission denies the proposed project because it is significantly out of conformance with the LCP, due to adverse impacts to coastal agriculture and public visual resources. For this project there are no known conditions that could bring the project into conformance with the LCP, and there are no obvious feasible alternatives consistent with the LCP that the Commission might suggest to the Applicant. Thus, the Commission is denying the project without targeted guidance to the Applicant.

## 5. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:



***CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects.*** [Relevant Portion.] *A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

***Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication.*** ...*(b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

***CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved.*** *(a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposals. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the projects were approved as proposed. Accordingly, the Commission’s denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

