

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
 725 FRONT STREET, SUITE 300  
 SANTA CRUZ, CA 95060  
 PHONE: (831) 427-4863  
 FAX: (831) 427-4877  
 WEB: WWW.COASTAL.CA.GOV

W14c



**Prepared August 9, 2010 (for August 11, 2010 hearing)**

**To:** Commissioners and Interested Persons  
**From:** Dan Carl, District Manager  
 Madeline Cavalieri, Coastal Planner  
**Subject:** **STAFF REPORT ADDENDUM for W14c**  
**LCP Amendment SLO-2-09 Part 2 (Inclusionary Housing)**

In the time since the staff report was distributed, it has come to staff's attention that a portion of the text shown as part of certified Local Coastal Program (LCP) in the staff report exhibits did not reflect a previous LCP amendment certified by the Commission. Thus, the purpose of this addendum is to modify Exhibit B of the staff report (the text of the County's proposed amendment) to reflect changes to the LCP that were previously certified by the Commission in 2009. This addendum does not make any significant substantive changes to staff's recommendation or to the County's proposed amendment.

In 2006, the County amended their LCP Implementation Plan (IP, also known as the Coastal Zone Land Use Ordinance (CZLUO)) to update the affordable housing standards (Sections 23.04.090 through 23.04.094). The purpose of the amendment was to assure long-term affordability for designated affordable housing units. In 2008, the County amended the CZLUO to include the inclusionary housing ordinance that is now before the Commission. The 2008 amendment, like the amendment for affordable housing standards adopted by the County in 2006, also proposes changes to CZLUO Section 23.04.094.

The Commission certified the affordable housing standards amendment in 2009 (LCP amendment SLO-2-07 Part 3), one year after the inclusionary ordinance amendments were adopted by the County. Therefore, when the County adopted the inclusionary ordinance amendments, the certified LCP did not include the changes made pursuant to the affordable housing standards amendment. Because of this overlap, Exhibit B of the staff report, which shows the County's proposed changes to the CZLUO that were adopted in 2008, does not reflect the currently certified LCP. Thus, this addendum modifies pages 19 and 20 of Exhibit B to reflect the currently certified LCP text correctly.<sup>1</sup> As indicated in staff report Exhibit B, single underline and ~~single strike through~~ represent the County's proposed changes to the LCP, and double underline and ~~double strikethrough~~ represent staff's recommended modifications. Section 23.04.094 on pages 19 and 20 of staff report Exhibit B is modified to read as follows:

SECTION 2: Section 23.04.094 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended as follows:

...

<sup>1</sup> Note that the text in this addendum refers to subsection f (when the original staff report exhibit referred to subsection d) because the previously certified amendment added two new sections (thus changing the d to an f).



**f. Continued availability of affordable housing:** Affordable housing units which are subject to the standards of this section shall continue to be reserved as affordable housing as follows:

**(1) For sale units:** Prior to issuance of any project construction permits the property owner and the County shall enter into and record a Master Affordable Housing Agreement, prepared by County Counsel, assuring that the project will provide designated affordable housing unit(s). When a designated affordable housing unit is first sold to an eligible buyer, or when the owner-builder of a designated affordable housing unit requests final permit approval for occupancy of his residence, the buyer and county or the owner-builder and county shall enter into an Option to Purchase at Restricted Price Agreement which shall be recorded as an encumbrance on the property, and secured by a recorded deed of trust. The said Option to Purchase at Restricted Price Agreement shall supersede the Master Affordable Housing Agreement. Under the terms of the Option to Purchase at Restricted Price Agreement, the maximum resale price of the housing unit shall be limited for a period of 45 years to the same formula used to determine the initial sales price, except that current information regarding median income, mortgage financing interest rate, taxes, insurance and homeowners association dues shall be applied. Adjustments to the maximum resale price as determined by the Planning and Building Department shall be made to ensure that the resale price is not lower than the original sales price, to increase the maximum resale price by the value of structural improvements made by the owner, and to comply with requirements of State or Federal mortgage lenders as necessary. Ownership of the property may only be transferred to party that agrees to execute a new Option to Purchase at Restricted Price Agreement with a term of 45 years.

~~The provisions of this section shall not impair the rights of a first mortgage lender secured by a recorded deed of trust. The purchase money lender(s) shall have a higher priority than the County's loan. The County's security shall be prioritized as a second mortgage. This first priority applies to the purchase money lender's assignee or successor in interest, to:~~

- ~~(i) Foreclose on the subject property pursuant to the remedies permitted by law and written in a recorded contract or deed of trust; or~~
- ~~(ii) Accept a deed of trust or assignment to the extent of the value of the unpaid first mortgage to the current market value in lieu of foreclosure in the event of default by a trustor; or~~
- ~~(iii) Sell the property to any person at a price consistent with the provisions of this Section subsequent to exercising its rights under the deed of trust.~~

~~In addition, the following types of transfers shall remain subject to the requirements of the County's loan and right of first refusal: transfer by gift, devise, or inheritance to the owner's spouse; transfer to a surviving joint tenant; transfer to a spouse as part of divorce or dissolution proceedings; or acquisition in conjunction with a marriage; or transfer as a result of foreclosure.~~



**(2) Inclusionary housing units:** For any inclusionary housing unit that is subject to Section 23.04.096 of this title and will be sold as an ownership unit, if there is a sales price difference of 10% or less between the current appraised market value of the unit and the affordable sales price established by this Section then that inclusionary housing unit shall be reserved as affordable housing for a period of thirty (30) years in the following manner. When the inclusionary housing unit is first sold to an eligible buyer, or when the owner-builder of a designated inclusionary housing unit requests final permit approval for occupancy of his residence, the buyer and the County or the owner-builder and the County shall enter into an Option to Purchase at Restricted Price Agreement which shall be recorded as an encumbrance on the property and secured by a recorded deed of trust. The said Agreement and deed of trust shall establish the monetary difference between the initial affordable purchase price and the initial appraised market value as a loan payable to the County. Said loan shall accrue interest at a rate equal to 4.5 points added to the 11th District Cost of Funds as currently published by the Federal Home Loan Bank, amortized over 30 years. The monthly payments of principal and interest shall be waived by the County as long as the owner who was previously approved by the County as an eligible buyer or as an owner-builder continues to own and reside in the inclusionary unit as his or her principal residence, and also continues to be a legal resident of the County of San Luis Obispo. Upon resale to a non-eligible buyer the County loan amount shall be determined by the Planning and Building Department and shall be adjusted to ensure that the resale price is not lower than the original affordable price, and to allow recovery of any downpayment and value of structural improvements.

The provisions of this section shall not impair the rights of a first mortgage lender secured by a recorded deed of trust. The purchase money lender(s) shall have a higher priority than the County's loan. The County's security shall be prioritized as a second mortgage. This first priority applies to the purchase money lender's assignee or successor in interest, to:

- (i) Foreclose on the subject property pursuant to the remedies permitted by law and written in a recorded contract or deed of trust; or
- (ii) Accept a deed of trust or assignment to the extent of the value of the unpaid first mortgage to the current market value in lieu of foreclosure in the event of default by a trustor; or
- (iii) Sell the property to any person at a price consistent with the provisions of this Section subsequent to exercising its rights under the deed of trust.

In addition, the following types of transfers shall remain subject to the requirements of the County's loan and right of first refusal: transfer by gift, devise, or inheritance to the owner's spouse; transfer to a surviving joint tenant; transfer to a spouse as part of divorce or dissolution proceedings; acquisition in conjunction with a marriage; or transfer as a result of foreclosure.



~~(2)~~**(3) Rental units:** Prior to issuance of any project construction permits the property owner County shall enter into and record a Rent Limitation Agreement, prepared by County Counsel, assuring that the project will provide designated affordable housing unit(s). Rent levels shall be based on the same criteria as those used to compute the original rent ceiling in subsection e of this section for a period of at least 55 years. Such rent levels will be enforced through the Review Authority imposing applicable conditions at the time of land use permit or subdivision approval for the project. If ownership of the property is transferred during the initial 55 years period, then a new Rent Limitation Agreement shall be executed with a term of 55 years.

...



## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV

W14c



**Prepared July 22, 2010 (for August 11, 2010 hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Dan Carl, District Manager  
Madeline Cavalieri, Coastal Planner

**Subject: San Luis Obispo County LCP Amendment Number 2-09 Part 2 (Inclusionary Housing).** Proposed major amendment to the San Luis Obispo County certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's August 11, 2010 meeting to take place at the San Luis Obispo County Government Center in the Board of Supervisors Chamber, 1055 Monterey Street in San Luis Obispo.

## Summary

San Luis Obispo County proposes to amend its certified Local Coastal Program (LCP) to add guidelines designed to foster affordable housing by requiring it to be provided for in many different types of development projects (i.e., "inclusionary housing"), and by providing density bonuses and exceptions from normal zoning requirements for projects that construct affordable housing either on- or off-site. The goals of the amendment are to encourage the development of affordable housing to meet the requirements of Government Code Section 65580, to reduce the number and length of vehicle trips by locating housing near jobs, and to help local businesses by providing housing affordable to their employees. The proposed amendment would require that certain measures are taken (commensurate with the level of development) to provide for affordable housing in commercial developments that are 5,000 sq. ft. or more, residential development with two or more units, all subdivisions, and all mixed use development. Such measures may include building affordable units into a project, building off-site affordable units, providing land for future development of affordable units, paying in-lieu fees, or combining all of these approaches. Eligibility for the affordable housing units would be through both verification of income, and verification that the affordable unit serves as the primary residence. The amendment includes compliance procedures to ensure that applicants meet inclusionary housing requirements, and that verified low income residents can gain access to these units efficiently. The special findings section of the amendment dictates that off site inclusionary housing must be in the same housing area as the project, and that density bonuses will not be granted for projects in areas with inadequate water supply.

In general, the proposed amendment should help to encourage affordable housing consistent with the LCP Land Use Plan (LUP), which is the standard of review for the amendment. Specifically, the amendment provides significant additional detail and specificity on requirements designed to help add to affordable housing stock in the County to both assist low-income residents and to foster appropriate land use planning scenarios (i.e., including a range of housing near jobs to reduce the need for commuting, etc.). However, it is possible that the proposed exceptions that would provide for increased densities and



lesser development restrictions (on parking requirements, height limits, setbacks and private yard space) could lead to adverse coastal resource impacts in areas where such exceptions are not appropriate (e.g., in significant public viewsheds, near coastal parks and public access areas, near sensitive habitat areas, agricultural lands, etc.). In addition, increased density may have adverse impacts on public services, especially in rural areas or areas with limited resources. As such, these exceptions included in this amendment, as submitted, are not approvable under the LUP (and their approval is not mandated by the state density bonus law in Government Code Section 65915).

The proposed ordinance also lacks clarity in two areas: (1) it is unclear how undevelopable portions of parcels would be factored when calculating the number of affordable units that are required in a project; and (2) it is unclear how the County, or Commission on appeal, would determine which of the various affordable housing requirements would apply to a specific project.

Fortunately, all of these issues can be addressed in a manner that protects coastal resources while still encouraging affordable housing. Specifically, staff recommends Suggested Modification 1 which would ensure that density bonuses and development standard exceptions are allowed only when they would not adversely impact coastal resources, and that density bonuses are not allowed outside of the USL, on agricultural land, or when adequate public services are not available to serve the project. Although these are broad standards, their application to specific cases over time will allow for the necessary consideration of the circumstances in each particular case, and ensure that the LCP's coastal resource protection policies are not suspended as the affordable housing policies are implemented over time.

To ensure the proposed ordinance is clear and can be implemented as intended, staff recommends Suggested Modifications 2 and 3, which were developed in coordination with County staff. Suggested Modification 2 would require undevelopable areas of a project site to be excluded when calculating the baseline for determining the number of affordable housing units that would be required, and the number of density bonus units that could be allowed. Suggested Modification 3 would clarify how the County would determine which affordable housing requirements a project would be subject to, and which density bonus programs they would be eligible to participate in.

Thus, Staff recommends that the Commission approve the LCP amendment only if it is modified to ensure density bonuses and development exceptions for affordable housing in the coastal zone do not adversely impact coastal resources and to ensure the ordinance is clear and can be implemented consistently. Staff has worked closely with the County on the appropriate language to insert in the LCP in this respect, and County staff and Commission staff are in agreement on Suggested Modification 3. County staff agrees to portions of Suggested Modifications 1 and 2, but believe that these modifications should apply only to the inclusionary ordinance. Staff disagrees, and believes that the inclusionary ordinance must be understood in relation to the LCP's other affordable housing provisions that it likewise implicates (and with which its provisions are unavoidably entwined), and that the identified problems with the LCP amendment are best addressed comprehensively in that sense, including to avoid internal inconsistency and confusion. Thus, staff recommends these modifications to ensure coastal resources are protected in the implementation of all LCP affordable housing programs, not just the



inclusionary ordinance. The two necessary motions and resolutions are found on pages 3 and 4 below.

**LCP Amendment Action Deadline:** This proposed LCP amendment was filed as complete on June 19, 2009. The proposed amendment affects the IP only, and the original 60-day action deadline was August 18, 2009. On August 12, 2009, the Commission extended the action deadline by one year to August 18, 2010. Thus, the Commission must take a final action on this LCP amendment at its August meeting.

## Staff Report Contents

	page
I. Staff Recommendation – Motion and Resolution.....	3
II. Suggested Modifications.....	4
III. Findings and Declarations .....	7
A. Proposed LCP Amendment.....	7
1. Government Code Section 65915 - Affordable Housing Background .....	8
2. Description of Proposed LCP Amendment.....	7
B. LUP Consistency Analysis .....	11
1. Standard of Review.....	11
2. Applicable Policies .....	11
3. Analysis .....	15
C. California Environmental Quality Act (CEQA).....	23
IV. Exhibits	
Exhibit A: Board of Supervisors’ Resolution	
Exhibit B: Proposed Changes to the Coastal Zone Land Use Ordinance (CZLUO)	
Exhibit C: Certified CZLUO Section 23.04.090 (Affordable Housing Density Bonus)	
Exhibit D: Certified CZLUO Section 23.04.092 (Affordable Housing Required in the Coastal Zone)	

## I. Staff Recommendation – Motion and Resolution

Staff recommends that the Commission, after public hearing, approve the proposed amendment only if modified. The Commission needs to make two motions in order to act on this recommendation.

### 1. Denial of Implementation Plan Major Amendment Number 2-09 Part 2 as Submitted

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Motion (1 of 2).** I move that the Commission **reject** Implementation Plan Major Amendment Number 2-09 Part 2 as submitted by San Luis Obispo County. I recommend a yes vote.

**Resolution to Deny.** The Commission hereby **denies** certification of Implementation Plan



Major Amendment Number 2-09 Part 2 as submitted by San Luis Obispo County and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

2. Approval of Implementation Plan Major Amendment Number 2-09 Part 2 if Modified Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Motion (2 of 2).** I move that the Commission **certify** Implementation Plan Major Amendment Number 2-09 Part 2 if it is modified as suggested in this staff report. I recommend a yes vote.

**Resolution to Certify with Suggested Modifications.** The Commission hereby **certifies** Implementation Plan Major Amendment Number 2-09 Part 2 to San Luis Obispo County's Local Coastal Program if modified as suggested and adopts the findings set forth in this staff report on the grounds that, as modified, the Implementation Plan amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment; or (2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Implementation Plan Amendment may have on the environment.

## II. Suggested Modifications

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Land Use Plan consistency findings. If San Luis Obispo County accepts the suggested modifications within six months of Commission action (i.e., by February 11, 2011), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Text in underline format denotes text to be added.

### 1. Add a new IP Section: **23.04.097** as follows:

23.04.097 Affordable Housing Density Bonus and Development Standard Modifications -



## Requirements

(a) Density Bonuses. The Review Authority (or the Coastal Commission on appeal) may approve a density greater than that allowed by the underlying land use and zone district designations for affordable residential projects only if: (1) the property is not designated for agriculture; (2) the property is within the Urban Services Line; (3) the project would be served by adequate public services; and (4) the project is found to be in conformity with the coastal resource protection provisions of the LCP (including but not limited to LCP policies and provisions protecting sensitive habitats, agriculture, public views, community character, public recreational access, and related coastal resources).

(b) Development Standard Modifications. The Review Authority (or the Coastal Commission on appeal) may approve modifications of development standards for residential, commercial, industrial, and other projects identified in Section 23.04.096(g)5 and 23.04.096(g)6, or those modifications of development standards allowed pursuant to the density bonus provisions of Government Code Section 65915 or Section 23.04.090 (Affordable Housing Density Bonus), only if the project is found to be in conformity with the coastal resource protection policies of the LCP (including but not limited to LCP policies and provisions protecting sensitive habitats, agriculture, public views, community character, public recreational access, and related coastal resources).

## **2. Amend IP Section 23.04.090(b) as follows:**

For purposes of determining inclusionary housing requirements and density bonuses pursuant to this section, the concept of base density is applied. Base density is the theoretical maximum number of dwellings, or in the case of a residential land division, the theoretical maximum number of residential parcels that may be allowable on the potentially developable portion of a given site under this Title, not including any density bonuses as provided under this title or state statute. For purposes of calculating base density, any area of land on a given site that is not potentially developable due to hazards or other environmental and resource factors (including, but not limited to, areas of sensitive habitat, steep slopes, significant public views, public accessways, or geologic instability) shall not be considered potentially developable and shall be excluded from the base density calculation (i.e., base density shall be determined based only on the potentially developable portion of a given site). Establishing the base density is necessary for purposes of determining whether a housing development is eligible for the density bonus, how many affordable dwellings must be provided in exchange for the density bonus, and the total number of dwellings that may be allowable including the density bonus. However, base density as determined under this section does not affect the provisions of the county code for review of proposed developments or land divisions which are not proposed to include the density bonus provided under this section, and such developments or land divisions may not necessarily be approved by the county at a density equal to this base density. Base density is determined as follows:



**(1) Residential Multi-Family category.** The base density for a the potentially developable portion of the site in the Residential Multi Family land use category is the number of multi-family dwellings that are allowable on the site pursuant to Section 23.04.084 (Multi-Family Dwellings).

**(2) Residential Single-Family category.** The base density for a the potentially developable portion of the site in the Residential Single-Family land use category is equal to the total usable site area divided by the applicable minimum parcel size pursuant to subsections 23.04.028a, b and c, except that average slope for the entire site may be used for the slope test under subsection 23.04.028b instead of the average slope for each proposed parcel.

**Amend IP Section 23.04.096(d) as follows:**

For purposes of determining inclusionary housing requirements and density bonuses pursuant to this section, the concept of base density is applied. Base density is the theoretical maximum number of dwellings, or in the case of a residential land division, the theoretical maximum number of residential parcels that may be allowable on the potentially developable portion of a given site under this Title, not including any density bonuses as provided under this title or state statute. For purposes of calculating base density, any area of land on a given site that is not potentially developable due to hazards or other environmental and resource factors (including, but not limited to, areas of sensitive habitat, steep slopes, significant public views, public accessways, or geologic instability) shall not be considered potentially developable and shall be excluded from the base density calculation (i.e., base density shall be determined based only on the potentially developable portion of a given site). Establishing the base density is necessary for purposes of determining whether a housing development is eligible for the density bonus, how many affordable dwellings must be provided in exchange for the density bonus, and the total number of dwellings that may be allowable including the density bonus. However, base density as determined under this section does not affect the provisions of the county code for review of proposed developments or land divisions which are not proposed to include the density bonus provided under this section, and such developments or land divisions may not necessarily be approved by the county at a density equal to this base density. Base density is determined as follows:

**(1) Residential Multi-Family category.** The base density for a the potentially developable portion of the site in the Residential Multi Family land use category is the number of multi-family dwellings that are allowable on the site pursuant to Section 23.04.084 (Multi-Family Dwellings).

**(2) Residential Single-Family category.** The base density for a the potentially developable portion of the site in the Residential Single-Family land use category is equal to the total usable site area divided by the applicable minimum parcel size pursuant to subsections 23.04.028a, b and c, except that average slope for the entire site may be used for the slope test under subsection 23.04.028b instead of the average slope for each proposed parcel.

**(3) Other land use categories.** The base density for a the potentially developable portion of the site in a land use category other than Residential Single-Family or Residential Multi-Family is the



maximum number of residential parcels that are allowable under this Title, not including any density bonus as provided under this title.

**3. Add to the beginning of IP Section 23.04.096(b) as follows:**

Exemptions and Applicability. When development is subject to the provisions of this section or Section 23.04.092 (Affordable Housing Required in the Coastal Zone), the applicant shall comply with the more restrictive code. The more restrictive code shall be the one that requires the highest number of affordable housing units to be provided. Should a conflict arise between this section or Section 23.04.092 or with a community planning standard regarding the number of affordable housing units to be provided, then the section or standard that requires the highest number of affordable housing units shall prevail.

When development is subject to the provisions of this section or Section 23.04.092, the applicant may choose instead to comply with the density bonus provisions of Government Code 65915 or Section 23.04.090 (Affordable Housing Density Bonus). If a conflict arises between the state and county density bonus codes, the state code shall prevail.

Nothing in this section shall be construed to supersede or in any way alter or lessen the effects or application of the California Coastal Act (Division 20 (commencing with Section 300000) of the Public Resources Code.

This Section shall apply to all residential development with two or more dwelling units and to all commercial or industrial development with 5,000 square feet of floor area or more, except as follows: ...

### III. Findings and Declarations

The Commission finds and declares as follows:

#### A. Proposed LCP Amendment

##### 1. Description of Proposed LCP Amendment

The proposed LCP amendment would add a new LCP Coastal Zone Land Use Ordinance (CZLUO) Section, Section 23.04.096, to the LCP. The proposed section contains guidelines designed to foster affordable housing by requiring it to be provided for in many different types of development projects (i.e., “inclusionary housing”), and by providing density bonuses and exceptions from normal zoning requirements for projects that construct affordable housing either on- or off-site. The proposed amendment would require that certain measures are taken (commensurate with the level of development) to provide for affordable housing in commercial developments that are 5,000 sq. ft. or



more, residential development with two or more units, all subdivisions, and all mixed use developments. Such measures may include building affordable units into a project, building off-site affordable units, providing land for future development of affordable units, paying in-lieu fees, or combining all of these approaches. The proposed text also exempts schools, churches, single-family residences, and public facilities from the requirements of the new LCP section.

Eligibility for the affordable housing units would be through both verification of income, and verification that the affordable unit serves as the primary residence. The amendment includes compliance procedures to ensure that applicants meet inclusionary housing requirements, and that verified low income residents can gain access to these units efficiently. The special findings section of the amendment dictates that off site inclusionary housing must be in the same housing area, that density bonuses will not be granted with inadequate water supply, and that waivers may be given for projects that can demonstrate that they have no connection to the requirements of the amendment.

The proposed incentives that would allow for increased densities and lesser development restrictions if affordable units are constructed on- or off-site are contained in subsection 23.04.096(g). This section states that one density bonus shall be granted for each required inclusionary housing unit that is constructed on-site or off-site. The housing units allowed by the density bonuses are not required to be affordable. In addition to the density bonus, in a residential project providing on- or off-site affordable housing, if the total number of dwellings to be constructed on-site exceed the base density amount (the maximum number of units allowed pursuant to the zoning regulations), the developer may be granted a modification of the residential development standards for parking, height, private yard space or setbacks. In a commercial or industrial project, any project that includes on-site affordable housing units may be granted a modification of the development standards for parking, height, or setback. In addition, if affordable units are to be built either on- or off-site but within incorporated city limits, then the project's affordable housing requirement would be reduced by 25%.

Finally, the proposed amendment would make changes to existing CZLUO Section 23.04.094 requiring the County and property owner to enter into agreements designed to ensure that any affordable units developed remain affordable for at least 30 years, and requiring that a public facilities fee be paid in all cases (this fee can currently be deferred in certain affordable housing projects).

See Exhibit 2 for the text of the proposed LCP amendment.

## 2. Existing Affordable Housing Requirements

### Government Code Section 65915 - Affordable Housing Background

Section 65915 of the Government Code provides standards and requirements pertaining to affordable housing density bonuses. It requires local governments to adopt an ordinance carrying out the State density bonus law, and it establishes the method for determining how many density bonuses to grant, depending on the amount of affordable housing provided, and the level of affordability of the housing. The amount of density bonus units that must be granted may be changed in the future, but currently, it



cannot exceed 35% of the number of units proposed. Higher amounts of density bonuses are granted for housing that is available to lower income residents. Section 65915 provides in relevant part:

*(a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.*

*(b)(1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:*

*(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.*

*(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.*

*(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.*

*(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.*

...

*(c)(1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program...*

...

*(d)(1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant*



*requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:*

*(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).*

*(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.*

*(C) The concession or incentive would be contrary to state or federal law.*

*(d)(2) The applicant shall receive the following number of incentives or concessions:*

*(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.*

*(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.*

*(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.*

...

*(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).*

...

Thus, Section 65915 describes a mechanism for providing incentives for density bonuses provided such incentives/bonuses do not adversely impact the County's environment, among other considerations. Such a density bonus must be consistent with the applicable Coastal Act/LCP requirements. As described in subsection (m), the state's density bonus law may not alter or lessen the effect of the



Coastal Act and therefore the LCP certified in conformity with that Act. In short, Section 65915 requires that a density bonus be provided, but not at the expense of the physical environment, including coastal resources within the coastal zone.

#### County Affordable Housing Ordinances

The County's certified IP has two existing affordable housing ordinances: a density bonus program (CZLUO Section 23.04.090) and an affordable housing requirement (CZLUO Section 23.04.092). The density bonus program in CZLUO Section 23.04.090, attached in Exhibit C, was developed and adopted to carry out the State's density bonus law, as required by Government Code Section 65915(a). Like the State's density bonus law, it applies to residential projects of 5 or more units. However, the State's density bonus law has changed over the years, and it is now different than the County's ordinance in that projects that provide a fewer number of affordable units now qualify for a density bonus pursuant to the State law. Because the County is required to carry out the State law, it appears that its local ordinance would be superseded by State law in most circumstances. County staff has stated that they intend to update the County density bonus ordinance in the near future.

The County's affordable housing requirement in CZLUO Section 23.04.092 requires residential developments of 11 or more units to provide 15% of the proposed dwelling units as low or moderate income affordable housing. The affordable housing can be constructed either on or offsite and the County does not provide density bonuses or other development incentives in exchange for constructing the housing.

Under the existing LCP, depending on the type of project proposed, applicants may be required to comply with the affordable housing requirement, and/or they may choose to participate in the State or County density bonus.

## B. LUP Consistency Analysis

### 1. Standard of Review

The proposed amendment affects the IP component of the San Luis Obispo LCP. The standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LUP.

### 2. Applicable Policies

The coastal protection policies of the LUP are limited with respect to affordable housing, but the area plans, which are a part of the LUP, do encourage affordable housing through requirements for appropriately placing multi-family and mixed use zoning designations, restricting single-family development in multi-family zones, and requiring community service districts to reserve water and



sewer capacity for use by affordable housing.<sup>1</sup>

In addition, although not the standard of review for the proposed amendment, the certified IP includes a requirement for affordable housing in residential projects of 11 or more dwelling units (CZLUO Section 23.04.092) and a density bonus for affordable housing in residential projects of 5 or more dwelling units (CZLUO Section 23.04.090). These IP sections are discussed above (in Section III.A.2 of this report) and attached in Exhibits C and D.

The proposed amendment would require all projects, regardless of their proximity to existing development, to provide for affordable housing. Projects that choose to construct the affordable units either on or off-site would be eligible to receive density bonuses that increase the density of the project beyond the existing allowed limits. However, Public Works Policies 1 and 10 direct new development to existing subdivided areas and discourage intensifying development outside of the Urban Services Line.

***Public Works 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 that 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...*

***Public Works Policy 10: Encouraging Development within the Urban Services Line***

*During the periodic update of the Local Coastal Program, including area plan updates, the County and California Coastal Commission should require new or expanded urban development to be located within the Urban Services Line (USL) of coastal communities. The USL defines areas where the capital improvement program and community plans should schedule extensions of public services and utilities needed for urban development. Proposals to increase urban density or intensity of urban land uses outside of the USL should be discouraged. Other nonregulatory methods to encourage infilling of development within communities may include greenbelt programs, transfer of development credits programs, agricultural conservation easements, and open space initiatives. [THIS POLICY SHALL BE IMPLEMENTED AS A PROGRAM.]*

The proposed amendment also raises questions with respect to coastal resource protection. Specifically, the increased density and exceptions to existing LCP development standards to encourage affordable housing raise questions of consistency with LUP policies protecting coastal resources (such as

---

<sup>1</sup> See page 4-11 of the Estero Area Plan and pages 2-8 and 7-38 of the North Coast Area Plan for policies encouraging mixed uses; see pages 2-9, 4-17, 7-28 and 7-75 of the North Coast Area Plan for policies requiring reservation of water and sewer capacity for affordable housing; and see pages 4-12 and 7-56 of the North Coast Area Plan for policies discouraging single-family development in multi-family zones.



agricultural lands, sensitive habitats, public views, community character, and public recreational access areas). Applicable LUP policies 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 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...*

***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...*

***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...*

***Agriculture Policy 5: Urban-Rural Boundary***

*To minimize conflicts between agricultural and urban land uses, the urban service line shall be designated the urban-rural boundary. Land divisions or development requiring new service extensions beyond this boundary shall not be approved. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.432 AND 23.04.021 OF THE CZLUO.]*

***Environmentally Sensitive Habitats Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats***

*New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.*

***Visual and Scenic Resources Policy 1: Protection of Visual and Scenic Resources***

*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 Resources Policy 2: Site Selection for New Development***

*Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever 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. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

***Visual and Scenic Resources Policy 4: New Development in Rural Areas***

*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. New land divisions whose only building site would be on a highly visible slope or ridgetop shall be prohibited. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.04.021 OF THE CZLUO.]*

***Visual and Scenic Resources Policy 6: Special Communities and Small-Scale Neighborhoods***

*Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to complement and be visually compatible with existing characteristics of the community which may include concerns for the scale of new structures, compatibility with unique or distinguished architectural historical style, or natural features that add to the overall attractiveness of the community. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO CHAPTER 23.11 (DEFINITIONS) OF THE CZLUO.]*

***Shoreline Access Policy 1: Protection of Existing Access***

*Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions which incorporate access measures into new development.*

***Shoreline Access Policy 2: New Development***

*Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as those accessways that provide for public access and use along the shoreline. Vertical access is defined as those accessways which extend to the shore, or perpendicular to the shore in order to provide access from the first public road to the*



*shoreline. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.420 a. AND c. OF THE CZLUO.]*

### 3. Analysis

The proposed amendment would encourage affordable housing consistent with the LUP. It provides significant additional detail and specificity on requirements designed to help add to affordable housing stock in the County to assist low-income residents and to foster appropriate land use planning scenarios (i.e., including a range of housing near jobs to reduce the need for commuting, etc.). However, it is possible that the proposed development incentives, including density bonuses and lesser development restrictions (on height limits, and parking and setback requirements) could lead to adverse coastal resource impacts in areas where such exceptions are not appropriate (e.g., outside of the Urban Services Line, in areas with inadequate public services, in significant public viewsheds, near coastal parks and public access areas, near sensitive habitat areas, agricultural lands, etc.).

#### Urban Services

The County's LCP clearly distinguishes between urban land and rural land, and directs development to urban areas where it can be best accommodated. The LCP includes an Urban Services Line (USL) to define such areas. The distinction between urban and rural areas is a fundamental element of the LCP's land use framework, and is derived directly from the Coastal Act.

The proposed amendment would require affordable units to be provided by most development, including commercial and industrial development, regardless of its location. This means that new development in rural areas would be required to provide the same level of affordable housing as new developments in urban areas. All new development that includes construction of affordable units either on or off-site would be eligible to receive density bonuses that allow development beyond the density allowed in the LCP. Providing density bonuses on land outside of the urban services line would be in conflict with policies that direct development to within the USL, including Public Works Policy 10, which discourages proposals that increase urban density outside of the USL, and Agriculture Policy 5, which prohibits new development that requires service extensions outside the USL. As proposed, the IP amendment would not be consistent with these LUP policies because it would allow for density bonuses regardless of whether the development is located inside or outside of the urban services line. Therefore, the Commission adopts Suggested Modification 1, prohibiting density bonuses on property outside of the USL.

Section 23.04.096.k(2) requires the County, or the Commission on appeal, to make special findings regarding the adequacy of water supply when approving projects that exceed the normal maximum residential density in communities with a certified Level of Severity III for water supply. Although this section addresses important concerns about density bonuses in areas with inadequate public services, it does not go far enough to adequately carry out the policies of the LUP. Specifically, it is not consistent with Public Works Policy 1, which requires all new development to demonstrate that there are adequate service capacities to serve the development, including when considering the outstanding commitment to



existing lots within the USL. To ensure consistency with these policies, the Commission adopts Suggested Modification 1, which prohibits density bonuses in projects that would not be served by adequate public services. Given the resource limitations in the unincorporated County, especially with regard to water and sewer services, it is especially important that the IP adequately carry out the public works policies of the LUP.

The prohibitions in Suggested Modification 1 on density bonuses outside of the USL and in projects where there are not adequate public services to serve the development would apply not only to density bonuses allowed pursuant to the proposed inclusionary housing ordinance, but also to those density bonuses allowed pursuant to the County's existing density bonus program in CZLUO Section 23.04.090 and to density bonuses allowed pursuant to the State density bonus law. These restrictions on density bonuses are necessary to ensure the IP adequately carries out the above-mentioned policies of the LUP. The restrictions do not create a conflict with the requirements of the State density bonus law because Government Code Section 65915(m) states that the density bonus law shall not supersede or alter or lessen the effect or application of the Coastal Act. In this case, the County and the Commission are applying the Coastal Act through the certified LCP, which prohibits development that would not have adequate public services and restricts development outside of the USL.

The County has indicated that it does not concur that such a prohibition should apply to all density bonuses, indicating that a prohibition on bonus units outside of the USL is unnecessary given that the existing LCP prohibits rural development that requires service extensions outside of the USL.<sup>2</sup> However, there is no mechanism in the proposed ordinance that would discourage or prohibit density bonuses in rural areas that are serviced by private, on-site water and sewer service. Therefore, as proposed, the ordinance is not adequate to carry out Public Works Policies 1 and 10 because it would provide for increased density regardless of the project's location inside or outside of the USL, and because it provides for densities that may go beyond the current zoning limitations, without ensuring adequate services will be available. For these reasons, the Commission adopts Suggested Modification 1.

#### Agriculture

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.*

---

<sup>2</sup> E-mail communications from San Luis Obispo County Planner Ted Bench to Coastal Commission planner Madeline Cavalieri on June 30, 2010 and July 2, 2010.



*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>3</sup>*

Most important, LUP Policies 1, 2, and 3 establish strict basic requirements to achieve the broad intent of Coastal Act Sections 30241 and 30242. Policy 1 requires that agricultural lands be maintained, and limits conversions of such land to the circumstances enumerated by the Coastal Act. 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 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 up to 2% of the total acreage may be allocated to such non-agricultural uses. Policy 3 also requires an open space/agricultural easement over the remaining 98% or more of the land if a non-agricultural use meets all relevant criteria and is allowed.

The overall import of LUP Policies 1, 2, and 3 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 where at least 98% of the land is affirmatively 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.*

---

<sup>3</sup> County of San Luis Obispo. "Coastal Plan Policies." March 1, 1988, Revised April 2007. Page 7-12.



- 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>4</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.*
- 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.” Concomitantly, all residential uses, including a primary residence, are designated as special uses, subject to various restrictions. This basic framework for residential development on agricultural land is stated in CZLUO Section 23.04.0167:

*Dwellings in the Agriculture land use category, including primary housing and farm support quarters **are allowed accessory uses** on the same site as an agricultural use...[emphasis added]*

Under the proposed inclusionary ordinance, new residential subdivisions, and commercial and industrial development on agricultural land would be required to provide affordable housing and would be eligible for density bonuses and development incentives, including development incentives that could reduce setbacks in agricultural land. Allowing increased density on agricultural land, without regard for whether the increased density is necessary for the agricultural operations or whether it may adversely impact the agricultural viability of the site or in the area, is in direct conflict with the LCP policies

---

<sup>4</sup> County of San Luis Obispo. “Framework for Planning.” March 1, 1988, Revised June, 2001. Page 6-13.



protecting agriculture, including agriculture policies 1, 2 and 3, stated above. To eliminate these conflicts, the Commission adopts Suggested Modification 1, which prohibits density bonuses on land designated for agriculture.

As in the prohibition on density bonuses outside of the Urban Services Line, this prohibition would apply not only to density bonuses allowed under the proposed inclusionary ordinance, but also those allowed pursuant to the State density bonus law and the County's density bonus ordinance in CZLUO Section 23.04.090. The County is opposed to this modification in two regards.<sup>5</sup> First, the County asserts that the prohibition on bonus units in agricultural land is unnecessary because the existing policies of the certified LCP would prohibit such development already. If the IP submittal is not intended to affect existing agricultural land, however, as the County asserts, it should have no objection to adding a section that simply makes this explicit. Second, the County asserts that the modifications should be limited to the inclusionary ordinance and should not apply to bonus units allowed pursuant to other affordable housing programs. However, Suggested Modification 1 is appropriate as suggested because: (1) the IP must carry out the policies of the LUP, and therefore, because the LUP would prohibit density bonuses on agricultural land, the IP must also include such a prohibition; (2) the proposed amendment would address all affordable housing programs in the County, including by virtue of Suggested Modification 3 (which was developed with and agreed upon by County staff); the inclusionary ordinance must be understood in relation to the LCP's other affordable housing provisions that it likewise implicates (and with which it is unavoidably entwined), and that the identified problems with the LCP amendment are best addressed comprehensively in that sense, including to avoid internal inconsistency and confusion; and (4) such a prohibition is allowed pursuant to Government Code Section 65915(m).

#### Other Coastal Resources

Although the increased density proposed may have less than significant impacts if it is otherwise consistent with the LCP (e.g., in terms of adequacy of services, etc.), such LCP consistency is not explicitly required for such increased densities. In addition, allowing exceptions to zoning restrictions that would provide for increased bulk and scale could potentially adversely impact coastal resources, such as sensitive habitat and protected viewsheds. As such, these LCP modifications as submitted are not approvable under the LUP.

In terms of density bonuses, proposed Section 23.04.096(g)1 grants one density bonus unit for each affordable housing unit which is constructed either on or off site, where such units are exempt from affordable housing requirements otherwise. The end of proposed Section 23.04.096(g)1 states that a density bonus will not be granted if "...the proposed development would have a specific adverse impact on the physical environment or on public health and safety that cannot be satisfactorily mitigated or avoided without rendering the development unaffordable." Although this text provides important

---

<sup>5</sup> Id (personal communication from County to Commission staff).



recognition of the fact that an increase in units through density bonuses could result in impacts to the physical environment and public health, such terms are not clearly defined nor understood in terms of coastal resources, and thus coastal resources could be negatively impacted by such increases in density.

With respect to the proposed exemptions from LCP development standards, proposed Sections 23.04.096g(5) and 23.04.096g(6) provide incentives for including affordable housing on site. Specifically, these sections allow for the modification of “development standards for parking, height, private yard space or setback.” These incentives allow applicants to develop projects that are larger than normally allowed if such projects include affordable housing on-site and if they would exceed allowed density. Although in some cases it may be that such larger developments can be found consistent with the LCP (in terms of protecting significant public viewsheds, coastal parks and public access areas, sensitive habitats, agricultural lands, etc.), in other cases it is possible that the increased scale of development would conflict with such LCP protections. The County’s submittal does not include a mechanism for preventing or mitigating such potential impacts, to ensure consistency with the LCP. Given the broad application of the affordable housing requirements, it would be difficult to identify all such potential impacts in this LCP amendment, so a broad statement ensuring that this section is applied to development in such a way to ensure its consistency with the coastal resource policies of the LCP is necessary. In addition, the proposed text does not specify in precise terms to what degree such development standards could be modified, likewise contributing to the potential for impacts over time. Finally, although it could be interpreted that such exceptions are not allowed to negate other LCP coastal resource protection provisions, the new LCP sections do not make this clear. This means that proposed incentives that allow modifications of parking, height, yard space, and set back requirements could pose a threat to coastal resources. For example, buildings that are granted an increase in height could block public view sheds, reduced parking requirements could negatively impact public access to the coast, and reduced setbacks could threaten environmentally sensitive habitat.

Fortunately, these issues can be addressed in a manner that protects coastal resources while still encouraging affordable housing. Specifically, the amendment can be modified so that density bonuses and development standard exceptions are allowed only when they will not adversely impact coastal resources (see suggested modification 1). And because the issue raised by this aspect of the amendment is applicable to the proposed text as well as existing LCP affordable housing provisions, the suggested modification is in the form of a new LCP section that applies to all LCP affordable housing requirements. Although this is a fairly broad standard, it reflects the broad applicability of the proposed amendment and the LCP appropriately, and its application to specific cases over time will allow for the necessary consideration of the circumstances in each particular case, and it will ensure that the LCP’s coastal resource protection policies are not suspended as the affordable housing policies are implemented over time.

#### Base Density Calculations

In the proposed ordinance, the number of inclusionary units that would be required would be determined using the “base density” of each project site. As proposed, this base density would be equal to the



maximum number of units per acre theoretically allowed under the zoning code, without considering any constraints to development. In other words, the base density calculation would be a rote arithmetic exercise where maximum allowed density per the LCP (e.g., 10 units per acre) is applied to the total land area of a site (e.g., 5 acres) to come up with the “base density” (e.g., 50 units). The problem with this approach is that it does not consider the physical constraints to development. For example, the hypothetical 5-acre parcel might be covered over 4 of its acres with a wetland and wetland setback area that is not developable under the LCP. As a result, the actual base density for such a constrained parcel would be based on a 1-acre developable area, allowing development of 10 units, not 50. Although it is not entirely clear from the proposed ordinance, it appears that the base density would be determined by County planning staff early in the review process. In some cases, this determination may not be complicated. However, there are many circumstances in which project sites may contain characteristics such as sensitive habitats or geologic hazards that would limit the allowable density. In these circumstances, the Planning Commission or Board of Supervisors, or the Commission on appeal, may not be able to approve a project that proposes the maximum number of units allowed in the zoning code. Because it is not clear from the ordinance what the procedure would be for calculating the base density in projects where the discretionary approval reduces the number of allowed units, the definition may lead to confusion in the CDP process because applicants could attempt to develop projects at densities that conflict with existing site constraints. In addition, because the definition of base density does not take potential site-specific constraints into account, it could allow increased densities on parcels with site constraints that could lead to conflicts with LCP policies, including policies protecting sensitive habitats and other coastal resources, and policies requiring development to avoid hazards.

To ensure consistency with these above-mentioned policies, the Commission adopts Suggested Modification 2. This modification would require undevelopable portions of project sites to be excluded from the calculation of base density. In addition, this modification clarifies that base density is a theoretical maximum being used solely in this circumstance for determining inclusionary housing requirements and potential density bonuses for affordable housing purposes. The intent is not to use the identification of base density as some sort of entitlement to a certain number of units, rather it is to consider it as a working tool as part of the application process that does not purport to require decision makers to approve that number of units/parcels, or to somehow circumscribe their review of development for LCP consistency otherwise. On the contrary, the approving body would have all the normal discretion appropriate to a coastal permit decision, and they would not be required to approve a particular density just because the “base density” determination for affordable housing purposes identifies a particular density.

The language of the proposed base density definition is taken directly and verbatim from existing IP Section 23.04.090(b). Therefore, to ensure the LCP is clear and internally consistent, the Commission finds it is necessary to apply the language of Suggested Modification 2 not only to the proposed inclusionary ordinance, but also to the density bonus ordinance text of Section 23.04.090(b).

Other Affordable Housing Requirements



As proposed, there would be four separate affordable housing programs in the County’s coastal zone: (1) the density bonus program in CZLUO Section 23.04.090; (2) the affordable housing requirement in CZLUO Section 23.04.092; (3) the proposed inclusionary ordinance, which is an affordable housing requirement that incorporates a density bonus component, and; (4) the state density bonus law (Government Code Section 65915). As discussed above, in section III.A.2 of this report, these programs apply to different kinds of projects, require varying levels of affordable housing, and provide for various types of incentives. Below is a table showing the components of each program:

	<b>Proposed LCP Amendment Inclusionary Housing Ordinance (Section 23.04.096)</b>	<b>Existing LCP Affordable Housing Ordinance (Section 23.04.092)</b>	<b>Existing LCP Density Bonus Ordinance (Section 23.04.090)</b>	<b>State Density Bonus Law (Section 65915)</b>
<b>Applicable Projects</b>	Residential, Commercial and Industrial	Residential	Residential	Residential
<b>Land Use Categories</b>	All	All	Residential Single-Family or Residential Multi-Family	All
<b>Project Size</b>	Residential development or subdivision of two or more units; Commercial or industrial development of 5,000 s.f. or more	Eleven or more units	Five or more units	Five or more units
<b>Affordability Requirement</b>	After five-year phase in:** 5% very-low and 5% low and 5% moderate and 5% workforce*	15% low or moderate	10% very-low or 20% low or 50% seniors of low or moderate	5%-11% very-low or 10%-20% low or 10%-40% moderate



<b>Density Bonus</b>	One bonus unit for each affordable unit built on- or off-site	No bonus	35% for on-site units; 30% for off-site units	20% to 35% for very-low or low; 5%-35% for moderate
----------------------	---	----------	---	---

\* Workforce level housing is not recognized by state density bonus law or the other County ordinances. It is intended to provide housing for residents that have a higher income level than those that qualify for ‘moderate’ income housing.

\*\* The affordable housing requirement in the proposed ordinance would be phased in over a 5-year period, so that in the first year the ordinance is implemented, affected projects would be required to provide 4% of their units as affordable, in the second year the requirement would be 8%, then 12%, 16%, and in the fifth year and thereafter, the requirement would be 20%. See proposed Section 23.04.096.c.1 on page 2 of Exhibit B.

As proposed, the inclusionary ordinance would not provide any clarity as to how to determine which of the four affordable housing programs would apply to a specific project. So, for example, if there was a proposed project for an 11-unit residential development, it would not be clear if the project would be required to comply with the proposed inclusionary housing ordinance or the affordable housing requirement in CZLUO Section 23.04.092. Also, if that same project were proposing to provide 5% very-low income units, it is unclear if it would be eligible for a density bonus pursuant to the state density bonus law, even though it would not be providing enough units to qualify for a bonus pursuant to CZLUO Section 23.04.090.

To clarify the appropriate applicability of the four affordable housing programs, County staff has developed the language of Suggested Modification 3. This modification would require projects that meet the criteria in both the inclusionary ordinance and the affordable housing requirement in CZLUO Section 23.04.092, to comply only with the ordinance that requires the greater number of affordable units. This modification also clarifies that applicants may choose to comply either with the County’s density bonus ordinance (CZLUO Section 23.04.090) or the state’s density bonus statute, but not both. Compliance with either of the density bonus programs would make the project exempt from both the inclusionary ordinance and the affordable housing requirement in Section 23.04.092.

The effect of this modification depends on the specific circumstances of each proposed project. For example, under the existing LCP an 11-unit residential development would be required to provide 15% of its units as affordable to low or moderate income occupants. It would be required to construct the units either on- or off-site and would receive no density bonus or other development incentives for doing so. With the proposed amendment, as modified, this same applicant could choose to comply with one of the density bonus programs and could be granted a density bonus and/or development incentive(s). Or, after the five-year phase in,<sup>6</sup> this applicant would be required to provide 20% affordable units pursuant to the proposed inclusionary ordinance, and those units could be provided through paying in-lieu fees

<sup>6</sup> The affordable housing requirement in the proposed ordinance would be phased in over a 5-year period, so that in the first year the ordinance is implemented, affected projects would be required to provide 4% of their units as affordable, in the second year the requirement would be 8%, then 12%, 16%, and in the fifth year and thereafter, the requirement would be 20%. See proposed Section 23.04.096.c.1 on page 2 of Exhibit B.



instead of through construction of actual units.

In summary, the effect of Suggested Modification 3 depends on the specific circumstances of the project, and may result in more affordable units, and/or density bonuses or other development incentives. Because, as modified by Suggested Modifications 1 and 2, all of the affordable housing programs in the County would be consistent with the coastal protection policies of the LCP, the ultimate number of affordable units required and the potential for development incentives provided for in Suggested Modification 3 would not have the potential to cause adverse impacts to coastal resources. In addition, this modification would ensure that the IP provides better clarity regarding the applicability of the various affordable housing programs and requirements in the County. Therefore, as modified, the Commission finds the proposed amendment consistent with the certified LUP.

#### Conclusion

The proposed amendment would require affordable housing to be provided by many new development projects, and it would allow density bonuses and other development incentives for projects that include the construction of affordable units, either on- or off-site. The County's certified LUP encourages affordable housing, and this proposed amendment would be consistent with the LUP in that respect. However, as proposed, the ordinance would provide for density bonuses and other development incentives in all projects that meet the size criteria (i.e. all residential projects of two or more units, and commercial and industrial development of 5,000 square feet or more) regardless of their impacts on coastal resources, and, as proposed, the ordinance would lack clarity in several areas.

The suggested modifications adopted by the Commission ensure the proposed amendment would be consistent with the LUP. Suggested Modification 1 prohibits density bonus units outside of the USL, on agricultural land, and in projects where adequate public services are not available. This modification also ensures that all projects that include density bonuses and other development incentives would be required to be consistent with the policies of the LCP, including policies protecting public views, ESHA and public access. Suggested Modifications 2 and 3 ensure clarity with regard to how the County would calculate the number of affordable units that would be required, and how the County would determine which affordable housing program would apply to each specific project.

Therefore, the Commission finds that, as modified, the proposed IP amendment is consistent with the policies of certified LUP, including policies related to public services, agriculture, public views, ESHA, hazards and public access.

### C. California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. CEQA also provides that local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any



environmental information that the local government has developed.

In December 2008, the County, acting as lead agency, certified an EIR pursuant to CEQA for three new ordinances related to affordable housing: (1) residential development standards; (2) inclusionary zoning; and (3) minimum density requirements for selected residential multi-family zoned parcels. The County adopted a Statement of Overriding Considerations for the project (which includes all three ordinances) regarding the unavoidable significant impacts of future development approved pursuant to the ordinances on biological resources and the potential location of future development in areas where demand for available water is at or above capacity.

This report has discussed the relevant coastal resource issues with the proposal, and has identified appropriate modifications to avoid and/or lessen any potential for adverse impacts to said resources. 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 such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).



**IN THE BOARD OF SUPERVISORS**  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tues day April 7, 2009

**PRESENT:** Supervisors Frank Mecham, Adam Hill, K.H. 'Katcho' Achadjian,  
James R. Patterson and Chairperson Bruce S. Gibson

**ABSENT:** None

**RESOLUTION NO. 2009-99**

**RESOLUTION AUTHORIZING SUBMITTAL OF ADOPTED REVISIONS OF THE LOCAL  
COASTAL PLAN TO THE CALIFORNIA COASTAL COMMISSION.**

The following Resolution is hereby offered and read:

**WHEREAS,** the Board of Supervisors adopted ordinance amendments to the Coastal Zone Land Use Ordinance, Title 23 of the County Code, specifically Section 23.08.164.g - Closure or Conversion of a Mobilehome Park to Another Use, and Section 23.04.096 - Inclusionary Housing; and

**WHEREAS,** these Board adopted ordinance amendments are revisions to the Local Coastal Plan of San Luis Obispo County; and

**WHEREAS,** the amendments of the Local Coastal Plan become operative only upon approval by the California Coastal Commission and upon acknowledgment by the San Luis Obispo County Board of Supervisors of receipt of the Commission's resolution of certification; and

**WHEREAS,** it is the intent of the Board to submit the adopted ordinance amendments that are revisions of the Local Coastal Plan to the California Coastal Commission for consideration and approval pursuant to Chapter 6, Article 2 of the California Coastal Act.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** that the Board of Supervisors of the County of San Luis Obispo hereby adopts this resolution, and that the Department of Planning and Building shall submit this resolution and the above described revisions of the Local Coastal Plan to the California Coastal Commission along with a request that the California Coastal Commission consider and act upon the said revisions pursuant to Chapter 6, Article 2 of the California Coastal Act.

Upon motion of Supervisors Patterson, seconded by Supervisor Achadjian, and on the following roll call vote, to wit:

**AYES:** Supervisors Patterson, Achadjian, Hill, Patterson and Chairperson Gibson

**NOES:** None

**ABSENT:** None

**ABSTAINING:** None

the foregoing resolution is hereby adopted.

**BRUCE S. GIBSON**

Chairperson of the Board of Supervisors

**ATTEST**

JULIE L. RODEWALD  
Clerk of the Board of Supervisors

By: Sandy Curran  
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN  
COUNTY COUNSEL

By: [Signature]  
Deputy County Counsel

Date: 3.5.09

STATE OF CALIFORNIA )  
COUNTY OF SAN LUIS OBISPO ) SS

I, JULIE L. RODEWALD, County Clerk of the above  
entitled County, and Ex-Officio Clerk of the Board of  
Supervisors thereof, do hereby certify the foregoing to  
be a full, true and correct copy of an order entered in the  
minutes of said Board of Super-visors, and now remain-  
ing of record in my office.

Witness, my hand and seal of said Board of Super-  
visors this April 21, 2009

**JULIE L. RODEWALD**  
County Clerk and Ex-Officio Clerk of the  
Board of Supervisors

By: [Signature] Deputy Clerk

**EXHIBIT LRP 2006-00003:B**

**ORDINANCE NO. 3170**

**AN ORDINANCE AMENDING TITLE 23 OF THE SAN LUIS OBISPO COUNTY CODE, THE COASTAL ZONE LAND USE ORDINANCE, CHAPTER 4 BY ADDING AN INCLUSIONARY HOUSING ORDINANCE**

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1: Chapter 4 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by adding Section 23.04.096 as follows:

**23.04.096 – Inclusionary Housing**

**a. Purpose statement.** The purpose and intent of this Section is to:

- (1) Implement Housing Element Program HE 1.9 - Require Development of Affordable Housing.
- (2) Fulfill the responsibility of the County under State Housing Law (California Government Code Section 65580 et seq.) to provide housing opportunities for all economic segments of the County.
- (3) Address the shortage of affordable housing in the County for households with incomes below 160 percent of median.
- (4) Provide opportunities for persons who work throughout the County to live closer to employment centers in order to reduce the length and number of vehicle trips.
- (5) Promote the vitality of local businesses by ensuring that housing affordable to their employees is available near the place of business.

**b. Exemptions and Applicability.** This Section shall apply to all residential development with two or more dwelling units and to all commercial or industrial development with 5,000 square feet of floor area or more, except as follows:

**(1) Exemptions.** The following development is exempt from the requirements of this Section:

- (i) Development that is non-residential or non-commercial in nature, such as educational facilities (i.e., schools and museums), religious institutions, public facilities and public infrastructure.
- (ii) Rental housing secured for a period of 10 years or longer, to the satisfaction of the County.
- (iii) Affordable housing development secured for a period of 30 years or longer, to the satisfaction of the County.
- (iv) Any residential condominium conversion that is subject to the provisions of Section 23.04.028 – Residential Single Family and Multi-Family Categories.

- (v) Residential development that complies with California Government Code Section 65915 et seq. (the "State density bonus law"). Any affordable housing units provided in conformance with the State density bonus law will simultaneously satisfy the requirements of this Section.
- (vi) Dwelling unit(s) of less than 900 square feet in size (each).
- (vii) Residential addition, repair or remodel work that does not increase the number of existing residential dwellings.
- (viii) Commercial structure repair or maintenance. Commercial structure addition or conversion to different commercial uses, cumulatively not exceeding 5,000 square feet.
- (ix) Reconstruction of any structures destroyed by fire, flood, earthquake or other acts of nature provided that the reconstruction of the site does not increase the number of residential units or size of non-residential floor area beyond County approved pre-existing conditions.
- (x) Live-work units secured for a period of 10 years or longer, to the satisfaction of the County.
- (xi) Residential care-taker units.
- (xii) Residential care facilities.
- (xiii) Farm support quarters.
- (xiv) Employee housing units (deed restricted for very low, low, moderate and/or workforce households).
- (xv) Secondary dwelling units.

**(2) Applicability.** The following development is subject to the requirements of this Section:

- (i) Residential development with two or more dwelling units.
- (ii) Commercial/industrial development with a floor area of 5,000 s.f. or more.
- (iii) Mixed-use development.
- (iv) Subdivision of land.
- (v) Construction of two or more new housing units on existing parcels.

**c. Inclusionary requirements for residential development.** For all residential development subject to this Section, the base density shall be determined at the time of application submittal pursuant to Subsection d, and a portion of that base density shall be restricted for occupancy by workforce, moderate, low or very-low income households as follows:

**(1) Required Inclusionary housing by income group.** Inclusionary housing units shall be provided for each income group as follows:

Percentage of Base Density that shall be Inclusionary Housing Units					
Income Group	Year 1	Year 2	Year 3	Year 4	Year 5 and thereafter
Workforce households	1%	2%	3%	4%	5%

Moderate income households	1%	2%	3%	4%	5%
Low income households	1%	2%	3%	4%	5%
Very Low income households	1%	2%	3%	4%	5%
Project Total	4%	8%	12%	16%	20%

Year 1 shall begin on the 31<sup>st</sup> day following the adoption of this Section by the Board of Supervisors.

- (2) **Establishing the Inclusionary requirement and fee schedule.** For all residential development the Inclusionary requirement is established upon approval of the land use permit or tentative approval of the subdivision map, whichever comes first. When the applicant proposes to pay in-lieu fees, pursuant to Subsection E.2 below, the appropriate in-lieu fee schedule to use will be determined as follows:
- (i) Projects subject to ministerial permit or discretionary permit approval shall be subject to the in-lieu fee schedule in effect at the time that the construction permit for each single family dwelling unit or each multi-family structure is issued.
  - (ii) For residential subdivisions in which the subdivider pays the in-lieu fee at the time of map recordation, the subdivision shall be subject to the in-lieu fee schedule in effect at the time the final map is recorded. The subdivided parcels resulting from the original subdivision map and subsequent development of the subdivided parcels shall not be subject to further Inclusionary housing requirements, unless the parcels are subject to further subdivisions that eliminate the boundaries of the subdivided parcel.
  - (iii) For residential subdivisions, including residential condominium subdivisions, in which the subdivider defers fee payment until sale of the parcel or unit, the subdivided parcels or units shall be subject to the in-lieu fee schedule in effect at the time that the residential construction permit(s) for the parcel or unit is issued.
- (3) **Sequence of income groups applicable to required Inclusionary housing units.** The first required Inclusionary housing unit shall be for Workforce households, the second for moderate-income households, the third for lower-income households and the fourth for very low-income households. This sequence is repeated for each additional required Inclusionary housing unit(s).
- (4) **Fraction of Inclusionary housing units.** If the number of Inclusionary housing units required includes a fraction of a unit then the applicant shall pay a pro-rated in-lieu fee for the fractional unit, pursuant to Subsection e(2), or provide a whole unit.
- (5) **Subdivision of land.** The subdivision of land is subject to this Section. Alternative methods may be used to satisfy the inclusionary housing requirements, pursuant to Subsections e, f(1) and f(3). If in-lieu fees or housing impact fees are used, the fees may be paid prior to map recordation or deferred. If the fees are deferred then an Inclusionary Housing Agreement and/or trust deed(s) shall be recorded at the time the subdivision map is recorded, pursuant to Subsections j(3) and j(4).
- d. **Determining base density.** Base density is the maximum number of dwellings, or in the case of a residential land division, the maximum number of residential parcels that may be allowable on a given site under this Title, not including any density bonuses as provided under this Title or state statute. Establishing the base density is necessary for purposes of determining how many Inclusionary housing units must be provided and the total number of dwellings that may be allowable including the density bonus units. However, base density as determined under this Section does not affect the provisions of

this Title for review of proposed developments or land divisions which are not subject to this Section. Base density is determined as follows:

- (1) Residential Multi-Family category.** The base density for a site in the Residential Multi-Family land use category is the number of multi-family dwellings that are allowable on the site in compliance with Section 23.04.084 - Multi-Family Dwellings.
  - (2) Residential Single-Family category.** The base density for a site in the Residential Single-Family land use category is equal to the total usable site area divided by the applicable minimum parcel size in compliance with Subsections 23.04.028a, b and c, except that average slope for the entire site may be used for the slope test under Subsection 23.04.028b instead of the average slope for each proposed parcel.
  - (3) Other land use categories.** The base density for a site in a land use category other than Residential Single-Family or Residential Multi-Family is the maximum number of residential parcels that are allowable under this Title, not including any density bonus as provided under this Title.
- e. Alternative methods for residential projects.** One or more alternative methods, such as constructing the Inclusionary housing units on-site or off-site, payment of an in-lieu fee or donation of land may be used to satisfy the requirements of this Section. Pursuant to Subsection j below the applicant shall submit a statement that includes a description of the required number of Inclusionary housing units and any alternative methods proposed to meet the requirements of this Section.
- (1) On-site Inclusionary housing units.** The applicant may choose to provide all or a portion of the required Inclusionary housing units on-site, provided that the Inclusionary housing units are not constructed on prime agricultural soil.
  - (2) In-lieu fee.** The applicant may propose to pay an in-lieu fee instead of providing Inclusionary housing unit(s). The fee may be paid when construction permits are issued or be deferred. An Inclusionary Housing Agreement is required when fee payment is deferred until after construction permit issuance or subdivision map recordation, pursuant to Subsections j(3) and j(4). Fee payment may be deferred until the time of sale of individual ownership residential units or prior to final permit approval for occupancy for individual rental residential units. Where feasible, the cost of the in-lieu fee shall be spread evenly among the project's residential units. The in-lieu fee schedule is updated annually by resolution of the Board of Supervisors, and can be found in the Implementation Guidelines Manual.
  - (3) Off-site construction.** To the extent allowed by this Title and the applicable County ordinances, the applicant may propose to build Inclusionary housing units off-site. The number and sequence of Inclusionary housing units built off-site shall be equivalent to what is required for on-site Inclusionary housing units. Off-site unit(s) shall meet all the applicable standards and criteria of this Section, including but not limited to the standards of Subsection h(5) – Off-site construction.
  - (4) Land donation.** The applicant may donate land located on-site or off-site. Such land donation(s) shall meet all of the standards and criteria that apply to land donation offers, including but not limited to the standards of Subsection h(6) – Land donation.
- f. Inclusionary requirements for commercial, industrial and mixed-use development.** Commercial and industrial development of 5,000 square feet or more of floor area for commercial or industrial use requires the payment of a housing impact fee or construction of Inclusionary housing units.
- (1) Payment of housing impact fee.** The fee may be paid when the construction permit is issued. An Inclusionary Housing Agreement is required when fee payment is deferred until after

construction permit issuance or subdivision map recordation, pursuant to Subsections j(3) and j(4). The housing impact fee may be paid prior to final permit approval for occupancy for new structures, structural additions, and for any remodel work or conversion of existing structures to a new or different commercial or industrial use. For commercial subdivisions, fee payment may be deferred no later than the sale of individual units. If no construction permit is issued then the housing impact fee shall be paid prior to approval of any land use permit for new or converted commercial or industrial structure(s). The housing impact fee schedule is updated annually by resolution of the Board of Supervisors, and can be found in the Implementation Guidelines Manual.

**(2) Establishing the inclusionary requirement and fee schedule.** For all commercial, industrial, and mixed-use development the Inclusionary requirement is established upon approval of the land use permit or tentative approval of the subdivision map, whichever comes first. When the applicant proposes to pay housing impact fees, pursuant to Subsection f(1) above, the appropriate housing impact fee schedule to use will be determined as follows:

- (i) Projects subject to ministerial permit or discretionary permit approval shall be subject to the housing impact fee schedule in effect at the time that the construction permit for each structure is issued. Projects for which no construction permit will be issued shall use the housing impact fee schedule in effect at the time that the land use permit is approved.
- (ii) For commercial/industrial subdivisions in which the subdivider pays the housing impact fee at the time of map recordation, the subdivision shall be subject to the housing impact fee schedule in effect at the time the final map is recorded. The subdivided parcels resulting from the original subdivision map and subsequent development of the subdivided parcels shall not be subject to further Inclusionary housing requirements, unless the parcels are subject to further subdivisions that eliminate the boundaries of the subdivided parcel.
- (iii) For commercial/industrial subdivisions, including condominium subdivisions, in which the subdivider defers fee payment until sale of the parcel or unit, the subdivided parcels or units shall be subject to the housing impact fee schedule in effect at the time that the construction permit(s) for the parcel or unit is issued.

**(3) Alternative methods for commercial/industrial projects.** As an alternative to paying the housing impact fee, the applicant may propose to satisfy the Inclusionary housing requirement by using any one or a combination of the following alternative methods:

- (i) **Construction of housing units.** To the extent allowed by this Title and County ordinances, the applicant may propose to build Inclusionary housing units on-site or off-site. The required number of Inclusionary housing units shall be determined as follows:
  - (a) Calculate the required amount of housing impact fee(s).
  - (b) The housing impact fee shall produce the same number of inclusionary housing units that an equal amount of in-lieu fees would produce for a residential project.
  - (c) Refer to the in-lieu fee schedule and find the fee amount for a median sized dwelling unit. The median sized dwelling unit is determined annually by the Department of Planning and Building. The in-lieu fee schedule is in the Implementation Guidelines Manual.
  - (d) The fee amount for each whole inclusionary housing unit is indicated by the in-lieu fee schedule. Refer to the whole unit cost associated with the median sized dwelling unit.

- (e) When the fee collected from the project would produce a fraction of an inclusionary housing unit, the applicant shall pay a pro-rated housing impact fee or provide a whole unit.

The sequence of Inclusionary housing units by income level for both commercial and residential projects shall comply with Subsection c(3) above. Off-site unit(s) shall meet all of the applicable standards and criteria of this Section, including but not limited to the standards of Subsection h(5) – Off-site construction. Any additional residential units built shall be subject to Subsection c – Inclusionary requirements for residential development.

- (ii) **Land donation.** The applicant may offer to donate land located on-site or off-site. Such land donation(s) shall meet all of the standards and criteria of this Section, including but not limited to the standards of Subsection h(6) – Land donation.

- (iii) **Employee housing.** The applicant may offer to provide employee housing units located on-site or off-site. Such units may be rental units or ownership units, and shall be deed restricted pursuant to Section 23.04.094 – Housing Affordability Standards. The number of employee housing units and the sequence of units by income level shall comply with the standards of Subsection f(3)(i) above.

- (iv) **Employee housing program.** The applicant may provide an affordable housing program(s) to its employees. Examples of such programs include, but are not limited to, a rental assistance program or a first-time homebuyer program. The number of employee housing units and the sequence of units by income level shall comply with the standards of Subsection f(3)(i) above.

- (v) **Credit for alternative methods.** Credit towards satisfying the Inclusionary housing requirement of a commercial/industrial project by using any of the alternative methods listed above shall be based on the monetary value of the proposed alternative method(s), at a one-to-one dollar value. The applicant shall describe all proposed alternative methods in an Inclusionary housing proposal that is submitted with the initial project application. The Planning Director, at his or her sole discretion shall determine the monetary value of the proposed alternative method(s) and whether the proposal provides the required amount of fee(s) and/or inclusionary housing units in conformance with this Section. No credit will be awarded for any surplus value, and any deficit balance shall be met through payment of a housing impact fee. All affordable housing that results from the use of alternative methods shall be located in the same Housing Market Area as the commercial/industrial project. Refer to the Implementation Guidelines Manual for the Housing Market Area map.

- (4) **Mixed-use projects.** In any mixed-use project the commercial and industrial floor areas are exempt from this Section and the residential areas are subject to Subsection c – Inclusionary requirements for residential development. A mixed-use project shall have at least 25% of its total floor area designated for habitable residential use.

- g. **Development incentives for residential and commercial/industrial projects.** When the Inclusionary housing units required by this Section are to be constructed on-site or off-site the following incentives shall be available:

- (1) **Density bonus.** Within any approved residential development one density bonus unit shall be granted for each required Inclusionary housing unit that is constructed on-site or off-site. Such density bonus units are exempt from affordable housing standards. Any residential development that complies with California Government Code Section 65915 (“State density bonus law”) is exempt from this Section. If a residential development qualifies for a density bonus under both

the California Government Code and this Section, then the applicant may use either the state or local density bonus benefits, but not both. The granting of density bonus benefits shall not, in and of itself, require a general plan amendment, zoning change or other separate discretionary approval. The base density and density bonus increase shall be granted in any approved residential development unless the decision making body finds that the proposed development would have a specific adverse impact on the physical environment or on public health and safety that cannot be satisfactorily mitigated or avoided without rendering the development unaffordable.

- (2) **Less than base density.** If the County approves the proposed residential development at an overall density lower than the base density, then the Inclusionary requirement of this Section shall be applied only to the actual number of market-rate units approved, not to a larger base density number.
- (3) **On-site housing for residential projects.** When all of a project's Inclusionary requirements are met by providing Inclusionary housing units on-site then the Inclusionary requirement of Subsection c shall be reduced by 25%. The standards of Subsection c regarding the sequence of the Inclusionary housing units by income group shall be adjusted evenly to reflect the 25% reduction.
- (4) **On-site housing for commercial/industrial projects.** When all of a project's Inclusionary requirements are met by providing Inclusionary housing units on-site then the Inclusionary requirement of Subsection f(3)(i) shall be reduced by 25%. The sequence of the Inclusionary housing units by income group shall be adjusted evenly to reflect the 25% reduction.
- (5) **Modification of development standards for residential projects.** If the number of dwellings constructed on-site, in compliance with this Section, will exceed the base density amount then at the applicant's request the County shall grant at least one of the following additional incentives: a modification of the residential development standards for parking, height, private yard space or setback. Requests shall be submitted along with the first application for a proposed project. The requested modification shall be granted unless the County finds that the proposed development would have a specific adverse impact on the physical environment or on public health and safety that cannot be satisfactorily mitigated or avoided without rendering the development unaffordable.
- (6) **Modification of development standards for commercial/industrial projects.** To assist with the placement of Inclusionary housing units within a commercial/industrial project, at the applicant's request the County shall grant at least one of the following additional incentives: modification of the development standards for parking, height, or setback. This incentive(s) shall be applied only to on-site Inclusionary housing units but not to any commercial portion of the project. Requests shall be submitted along with the initial application for a proposed project. The requested modification shall be granted unless the County finds that the proposed development would have a specific adverse impact on the physical environment or on public health and safety that cannot be satisfactorily mitigated or avoided without rendering the development unaffordable.
- (7) **Development of affordable housing within incorporated city limits.** Whenever an applicant uses an alternative method to satisfy the requirements of this Section, such as providing off-site Inclusionary housing units or a donation of land for affordable housing, and this results in the development of new affordable housing units within the urban limits of an incorporated city within this County, then the Inclusionary housing requirement of the applicant's project shall be reduced by 25%. If a portion, but not all, of a project's Inclusionary housing requirement is met in this manner, then a proportionate amount of the project's Inclusionary housing requirement will be reduced.

**h. Development standards for Inclusionary housing.** Inclusionary housing units and land donation(s) that are provided in compliance with this Section are subject to the following standards:

**(1) Affordability.** The selection of eligible households, calculation of sales prices and rental rates, and preparation of long term affordability agreements shall be in conformance with the provisions of Section 23.04.094 – Housing Affordability Standards. Inclusionary housing units shall be and shall remain affordable pursuant to Section 23.04.094.

**(2) Inclusionary housing design in residential and mixed use projects.**

(i) The Inclusionary housing units shall have compatible exterior designs and finishes to the development's market-rate units.

(ii) The Inclusionary housing units may be smaller in size and have different interior finishes, features, and appliances so long as the interior components are durable, of good quality and consistent with contemporary standards for new housing.

(iii) In 50 percent or more of the Inclusionary units the average number of bedrooms shall be equal to or greater than the average number of bedrooms in the development's market-rate units.

(iv) Up to 30 percent of the Inclusionary housing units may be secondary dwelling units, pursuant to Section 23.08.169 – Residential-Secondary Dwellings.

**(3) Inclusionary housing design in commercial/industrial projects.** Inclusionary housing units within commercial/industrial development shall be designed to include the following:

(i) An equal mix of one and two bedroom sized units, except where the County determines that other unit size(s) are suitable.

(ii) Exterior designs and finishes that are compatible with the development's commercial/industrial units.

(iii) Convenient unit location(s) that provide safe pedestrian, vehicular and emergency response access.

(iv) Placement within the commercial/industrial project to avoid noise, lighting and traffic conflicts.

**(4) Existing housing units as Inclusionary housing units.** Existing housing units on the site of a new development may be designated as Inclusionary housing units if they meet the design standards of this Section. Existing housing units off-site shall not qualify as Inclusionary housing units.

**(5) Off-site construction.** The applicant may propose to construct the required Inclusionary housing unit(s) at an off-site location in the same Housing Market Area. Refer to the Implementation Guidelines Manual for the Housing Market Area map.

(i) Prior to approval of such off-site units the County shall find either that the off-site units will not create an adverse concentration of affordable housing units within any certain area or that the public benefit of providing affordable housing justifies the adverse concentration.

- (ii) The transferred unit(s) and receiver site shall comply with this Title and all applicable County ordinances.
  - (iii) The transferred Inclusionary housing unit(s) shall not be included when calculating the required number of Inclusionary housing units for the receiver site, nor shall the receiver site qualify for any density increase in residential units on the basis of the transferred Inclusionary housing unit(s) that it receives.
- (6) **Land donation.** The applicant may donate land that is located on-site or off-site of the proposed development. The County shall evaluate such donations based on the following criteria:
- (i) Value of the land is of equal or greater value than the amount of the in-lieu fees or housing impact fees that otherwise would be required. An appraisal shall be submitted as prepared by qualified appraiser acceptable to the County. Costs associated with the appraisal, title insurance, property transfer, document recordation and related costs shall be borne by the applicant.
  - (ii) The land shall be donated to a nonprofit or for-profit developer acceptable to the County that is willing to develop affordable housing on the land.
  - (iii) The land must be acceptable to the Planning Director who will review to determine if the land is capable of being developed with residential units in conformance with the Coastal Zone Land Use Element and Coastal Zone Land Use Ordinance, and that such development of the land would not be significantly restricted by environmental constraints, hazardous materials, public service constraints, or public health and safety concerns.
  - (iv) Applicants/Developers may pool land to meet the Inclusionary housing requirements for multiple developments subject to County approval.
  - (v) The donated land shall be located in the same Housing Market Area as the development project. Refer to the Implementation Guidelines Manual for the Housing Market Area map.
- i. **Eligible residents.** The prospective residents of Inclusionary housing units that are developed in conformance with this Section are subject to the following standards and requirements:
- (1) **Income categories.** Only households that qualify as very low, low, moderate or workforce households pursuant to Section 23.04.094 – Housing Affordability Standards shall be eligible to rent, purchase or occupy an Inclusionary housing unit.
  - (2) **Income verification.** The County or other organization designated by the County shall verify the household income of prospective renters or buyers prior to occupancy of any Inclusionary housing units. In addition to satisfying the income eligibility requirements of this Title, prospective residents shall also:
    - (i) Prove that total household assets do not exceed one-half of the purchase price of the desired ownership unit.
    - (ii) Prove that they do not currently own a home.
  - (3) **Primary Residence.** Any household that purchases an Inclusionary housing unit or occupies a rental Inclusionary housing unit shall occupy that unit as its primary residence, and shall not rent out any portion of the unit.

- (4) **Eligibility list.** The County may, at its discretion, maintain an active list of households that are eligible to rent or buy Inclusionary housing units.

**j. Compliance procedures.**

- (1) **Residential development application.** For any project with an Inclusionary housing requirement the applicant shall submit the standard permit application along with a statement describing the Inclusionary housing proposal. The applicant's statement shall include the following information:

- (i) A brief description of the proposed project, including its Inclusionary housing requirements, the number, type and location of Inclusionary housing units (on-site, off-site, or existing designated units), proposed tenure (for sale or rental), targeted income category for each unit, size comparison of market-rate and Inclusionary housing units, any alternative method(s) chosen to meet the Inclusionary housing requirements, calculation of in-lieu fee, an offer of land donation in conformance with the criteria described in Subsection h(6) above, or any combination thereof.
- (ii) A description of any development incentives, as described in Subsection g above, that are requested of the County.

- (2) **Commercial development application.** Applicants of (non-mixed-use) commercial and industrial development projects may pay the housing impact fee described in Subsection f(1) above, or propose an alternative method(s) pursuant to Subsection f(3) and submit an Inclusionary housing proposal.

- (3) **Payment of fees.** Whenever a fee payment will be deferred to a time after the issuance of a construction permit or after recordation of a final map an Inclusionary Housing Agreement and/or trust deed shall be executed, pursuant to Subsection j(4).

- (4) **Inclusionary Housing Agreement and/or trust deed.** The provision of Inclusionary housing units on-site or off-site, or the deferment of fees as described in Subsection j(3) – Payment of fees, or the use of any alternative method(s) described in Subsection e – Alternative methods for residential projects, or in Subsection f(3) – Alternative methods for commercial/industrial projects, are subject to this Subsection. Project compliance shall be secured with an Inclusionary Housing Agreement, except that deferred fees on vacant, subdivided parcels shall be secured by trust deed(s). The Inclusionary Housing Agreement or trust deed(s) shall be prepared by County Counsel.

- (i) The Inclusionary Housing Agreement shall be executed and recorded to the County's satisfaction prior to any construction permit issuance or subdivision map recordation, whichever comes first. If no construction permit or subdivision map is required, then the Inclusionary Housing Agreement shall be executed and recorded prior to the approval of any land use permit. Any deferred fee amount shall be based on the fee schedule described above in Subsections c(2) and f(2) – Establishing the Inclusionary requirement and fee schedule.
- (ii) The relevant terms and conditions of the Inclusionary Housing Agreement shall be recorded as deed restrictions on owner-occupied Inclusionary housing units and projects containing rental Inclusionary housing units. All deferred fee amount(s) shall be recorded as a lien against the project site. In cases where the requirements of this Section are satisfied through a donation of land or development of off-site Inclusionary housing units the Inclusionary Housing

Agreement must simultaneously be recorded against the property to be donated or where the off-site units are to be developed.

- (iii) If a subdivision will create vacant parcels for sale and the payment of in-lieu or housing impact fee(s) will be deferred to a time after map recordation, then a trust deed shall be recorded on each parcel when the map is recorded. The deferred fee amount shall be determined at the time that construction permit(s) are issued on the parcel and fee payment shall occur prior to final permit approval for occupancy or unit sale. The trust deed(s) shall indicate that future fee schedule(s) will be used to calculate deferred fee amounts. Where feasible the fee requirements shall be spread evenly among the parcels. Pursuant to Title 29, future fee schedules will be approved annually by resolution of the Board of Supervisors.

**(5) Timing of construction and land donations.** Completion of Inclusionary housing units and securing of donated land shall occur as follows:

(i) On-Site Inclusionary housing units.

1. Small projects. For all projects with a total of five units or less, the on-site Inclusionary housing unit shall be available for occupancy prior to final permit approval for occupancy of any on-site market-rate housing units.
2. Large projects. For projects with a total of six or more residential units, whenever an individual Inclusionary housing unit is available for occupancy then a single group of up to five market-rate units may also be made available for occupancy. The project may have separate phases of unit occupancy wherein each phase includes one Inclusionary unit and up to five market-rate units.
3. Alternative timing. The County may agree to an alternative timing arrangement, and if so then an agreement with a nonprofit housing development organization or a bond shall be provided to the County's satisfaction. If a bond is used, the bond shall secure a dollar amount adequate to cover the total cost of the bonded on-site units.

- (ii) Off-site Inclusionary housing units shall be available for occupancy prior to final permit approval for occupancy for any on-site housing unit. The County may agree to an alternative timing arrangement, and if so then an agreement with a nonprofit housing development organization or a bond shall be provided to the County's satisfaction. If a bond is used, the bond shall secure a dollar amount adequate to cover the total cost of the bonded off-site units.

- (iii) Any donation of land shall be secured by a trust deed that is recorded to the County's satisfaction prior to any construction permit issuance or subdivision map recordation, whichever comes first. If no construction permit or subdivision map is required, then the deed shall be recorded prior to the approval of any land use permit. The County may agree to an alternative timing arrangement, and if so then a bond shall be posted to the County's satisfaction. The bond shall secure a dollar amount adequate to cover the total cost of the land to be donated.

**k. Special findings for inclusionary housing development.** Approval of any development pursuant to this Section is subject to the following findings:

- (1) **Housing Market Area** All off-site inclusionary housing development proposed by the applicant shall be located within the same Housing Market Area unless the Review Authority determines that there are compelling public benefits for locating such development in an adjacent Housing Market

Area. One such benefit may be improvement of the job-housing balance within the same geographical area.

**(2) Level of Severity III (LOS III) for water supply.** In communities with a certified Level of Severity III (LOS III) for the water supply, whenever the use of inclusionary density bonus units will cause a development to exceed the residential density otherwise allowed by County ordinances, then prior to project approval the decision-making body shall find substantial evidence to support a conclusion that the local water purveyor can supply adequate water for the project and for full community build-out within its service area as provided for in the General Plan. If there is an inadequate water supply to support density bonus units then the developer shall use other options to satisfy the inclusionary housing requirement, such as payment of fees or donation of land.

**l. Adjustment or waivers.** The requirements of this Section may be adjusted or waived (in whole or in part) if the applicant demonstrates to the County that a reasonable relationship does not exist between the impact of a proposed development and the requirements of this Section, or that applying the requirements of this Section would take property in violation of the United States or California Constitutions. At the time of submittal of a project's first development application the applicant shall also make an initial request for an adjustment or waiver and shall submit evidence to adequately demonstrate the appropriateness of the request. The request shall include financial and other information that the County deems necessary to perform an independent evaluation of the applicant's rationale for the request. In making a determination the County may assume each of the following when applicable; (i) that the applicant is subject to the Inclusionary housing requirements of this Section; (ii) the extent to which the applicant may benefit from development incentives provided pursuant to Subsection g above; and (iii) that the applicant will be obligated to provide the most economical Inclusionary housing units feasible in terms of construction, design, location and tenure. The Director of Planning and Building will consider the request and issue a written decision. The Director's decision may be appealed in the manner and within the time set forth in Section 23.01.042 – Appeals. If the Planning Director determines requirements of this Section may be adjusted or waived (in whole or in part) then the Inclusionary housing requirement(s) of the proposed development shall be modified, adjusted or waived to reduce the obligations under this Section.

**m. Severability.** If any clause, sentence, section, part or provision of this Section that is imposed upon any person or entity is found to be unconstitutional, illegal, or invalid, then such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, subsection, part, provision, or such person or entity, and shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, parts, provisions, or the effect of this Section on other persons or entities.

**n. Annual Report.** The Planning Director shall prepare an annual report for the Planning Commission and the Board of Supervisors, and present the report at an agenda meeting. The report shall describe the progress made during the prior reporting period with regards to providing affordable housing pursuant to this ordinance. The Planning Commission may make recommendations regarding the ordinance or its implementation.

**o. Definitions.**

**(1) Affordable** means housing which can be purchased or rented by a household with very low, low, moderate or workforce income, as described in Section 23.04.094 – Housing Affordability Standards.

**(2) Affordable Housing Fund** means the fund established by the County to receive all in-lieu fees and housing impact fees contributed pursuant to this Section. See Title 29 – Affordable Housing Fund.

- (3) **Affordable housing unit** – see “Affordable.”
- (4) **Applicant or Developer** means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks County approval(s) for all or part of a residential or commercial development.
- (5) **Building valuation** means the total value of all construction work for which a construction permit is required, as determined by the Chief Building Official.
- (6) **Commercial/industrial development** means a development project involving primarily non-residential uses, including, but not limited to, retail, office, commercial-service, industrial and manufacturing uses as described in Title 23 – Coastal Zone Land Use Ordinance for which a construction permit application or subdivision application was submitted to the County.
- (7) **County** means the County of San Luis Obispo.
- (8) **Household** means all the persons who occupy a housing unit.
- (9) **Housing impact fee** means a fee paid to the County to off-set the demand for housing created by commercial development.
- (10) **Implementation Guidelines Manual** means the guidelines manual that is produced and updated by the Department of Planning and Building. This manual includes current in-lieu and housing impact fee schedules, and the Housing Market Area Map.
- (11) **Inclusionary Housing Agreement** means a recorded agreement executed by the County and applicant or developer as provided by Subsection j – Compliance procedures.
- (12) **Inclusionary housing unit** means a dwelling unit which is developed under the provisions of this Section and which is and remains affordable to households of very low-income, lower-income, moderate income or workforce pursuant to this Section and Section 23.04.094 – Housing Affordability Standards.
- (13) **In-lieu fee** means a fee paid to the County as an alternative to the production of Inclusionary housing units.
- (14) **Low or lower income household** means a household whose annual income does not exceed 80 percent of the median income of the County of San Luis Obispo, pursuant to Coastal Zone Land Use Ordinance Section 23.04.094 – Housing Affordability Standards.
- (15) **Market-rate unit** means a dwelling unit in a residential development or mixed use development that is not an Inclusionary housing unit.
- (16) **Mixed-use development** means a development project that combines residential and non-residential uses on the same site, where the proposed residential unit(s) is in addition to any on-site residential caretaker unit(s) developed pursuant to Section 23.08.161. For the purposes of this Section, a mixed-use project shall have at least 25% of its total floor area designated for habitable residential use.
- (17) **Moderate income household** means a household whose annual income does not exceed 120 percent of the median income of the County of San Luis Obispo, pursuant to Coastal Zone Land Use Ordinance Section 23.04.094 – Housing Affordability Standards.

- (18) **Off-site unit** means an Inclusionary housing unit that will be built separately or at a different location than the main development.
- (19) **On-site unit** means an Inclusionary housing unit that will be built as part of the main development.
- (20) **Planning Director** means the director of the Department of Planning and Building or his authorized representative.
- (21) **Residential development** means a development project which results in the subdivision of land or real property for residential use and/or the construction or conversion of dwelling(s), including but not limited to: detached residential single family dwellings, multi-family dwelling units, apartments, condominiums and mobilehomes, but excluding condominium conversion, mobilehome park conversion and mixed-use development.
- (22) **Review Authority** means the County representative or decision making body that has administrative permit and/or discretionary permit review authority over the application for subdivision and/or development project(s).
- (23) **Very-low income household** means a household whose annual income does not exceed 50 percent of the median income of the County of San Luis Obispo, pursuant to Coastal Zone Land Use Ordinance Section 23.04.094 – Housing Affordability Standards.
- (24) **Workforce household or Workforce income household** means a household whose annual income does not exceed 160 percent of the median income of the County of San Luis Obispo, pursuant to Coastal Zone Land Use Ordinance Section 23.04.094 – Housing Affordability Standards.

SECTION 2: Section 23.04.094 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended as follows:

d. **Continued availability of affordable housing.** Once a density bonus as described in Section 23.04.090 of this title; approval of a new housing development, land division, or demolition or conversion of existing housing for one or more sites as described in Section 23.04.092 of this Title; or an exemption from growth management provisions under Subsection 26.01.034b of the Growth Management Ordinance, Title 26 of the San Luis Obispo County Code is granted in return for a commitment to provide affordable housing, such affordable units shall continue to be reserved as affordable housing as determined by this Section, for a period of 30 years, or for a period of time as defined in Section 23.04.090 or 23.04.092 of this title or Subsection 26.01.034b of Title 26 of the County Code, as follows:

- (1) **For sale units:** Prior to issuance of any project construction permits the property owner and the County shall enter into and record a Master Affordable Housing Agreement, prepared by County Counsel, assuring that the project will provide designated affordable housing unit(s). When a designated affordable housing unit is first sold to an eligible buyer, or when the owner-builder of a designated affordable housing unit requests final permit approval for occupancy of his residence, the buyer and County or the owner-builder and County shall enter into an Option to Purchase at Restricted Price Agreement which shall be recorded as an encumbrance on the property, and secured by a recorded deed of trust. The said Option to Purchase at Restricted Price Agreement shall supersede the Master Affordable Housing Agreement. The said Agreement and deed of trust shall establish the monetary difference between the initial purchase price and the initial appraised value as a loan payable to the County. Said loan shall accrue interest at a rate equal to 4.5 points

added to the 11th District Cost of Funds as currently published by the Federal Home Loan Bank Board, amortized over 30 years, and the monthly payments of principal and interest shall be waived by the County as long as the owner who was previously approved by the County as an eligible buyer or as an owner-builder continues to own and reside in the property subject to the County loan as his or her principal residence, and also continues to be a legal resident of the County of San Luis Obispo. The County shall have a right of first refusal to purchase the property at current appraised value. The consideration for the County's right of first refusal shall consist of 1 percent of the remaining County loan balance. The balance of the County loan remaining after deducting this 1 percent of the loan balance shall be credited toward the purchase price if the County chooses to exercise the purchase option.

- (2) Inclusionary housing units:** For any Inclusionary housing unit that is subject to Section 23.04.096 of this title and will be sold as an ownership unit, if there is a sales price difference of 10% or less between the current appraised market value of the unit and the affordable sales price established by this Section then that Inclusionary housing unit shall be reserved as affordable housing for a period of thirty (30) years in the following manner. When the Inclusionary housing unit is first sold to an eligible buyer, or when the owner-builder of a designated Inclusionary housing unit requests final permit approval for occupancy of his residence, the buyer and the County or the owner-builder and the County shall enter into an Option to Purchase at Restricted Price Agreement which shall be recorded as an encumbrance on the property and secured by a recorded deed of trust. The said Agreement and deed of trust shall establish the monetary difference between the initial affordable purchase price and the initial appraised market value as a loan payable to the County. Said loan shall accrue interest at a rate equal to 4.5 points added to the 11th District Cost of Funds as currently published by the Federal Home Loan Bank, amortized over 30 years. The monthly payments of principal and interest shall be waived by the County as long as the owner who was previously approved by the County as an eligible buyer or as an owner-builder continues to own and reside in the Inclusionary unit as his or her principal residence, and also continues to be a legal resident of the County of San Luis Obispo. Upon resale to a non-eligible buyer the County loan amount shall be determined by the Planning and Building Department and shall be adjusted to ensure that the resale price is not lower than the original affordable price, and to allow recovery of any downpayment and value of structural improvements.

The provisions of this Section shall not impair the rights of a first mortgage lender secured by a recorded deed of trust. The purchase money lender shall have a higher priority than the County's loan. The County's security shall be prioritized as a second mortgage. This first priority applies to the purchase money lender's assignee or successor in interest, to:

- (i)** Foreclose on the subject property pursuant to the remedies permitted by law and written in a recorded contract or deed of trust; or
- (ii)** Accept a deed of trust or assignment to the extent of the value of the unpaid first mortgage to the current market value in lieu of foreclosure in the event of default by a trustor; or
- (iii)** Sell the property to any person at a fair market value price subsequent to exercising its rights under the deed of trust. Any value in excess of the unpaid mortgage and costs of sale administration shall be used to satisfy the county loan. In no case may a first mortgage lender, exercising foreclosure assignment in-lieu of foreclosure or sale, obtain value or rights to value greater than the value of the outstanding indebtedness on the first mortgage at the time of the debt clearing action.

In addition, the following types of transfers shall remain subject to the requirements of the county's loan and right of first refusal: transfer by gift, devise, or inheritance to the owner's spouse; transfer to a

surviving joint tenant; transfer to a spouse as part of divorce or dissolution proceedings; or acquisition in conjunction with a marriage.

3. **Rental units:** Rent levels shall be based on the same criteria as those used to compute the original rent ceiling in Subsection c of this section. Such rent levels will be enforced through the Review Authority imposing applicable conditions at the time of land use permit or subdivision approval for the project, and by recorded deed restriction on each affordable unit.
4. **Exception to resale restrictions:** At the time of sale to a qualified buyer or at the time of occupancy by an owner-builder, if the fair market value of any designated affordable housing units is equivalent to the affordable sales price determined above, no affordable housing agreement shall be required. Additionally, no affordable housing agreement shall be required for housing units purchased with mortgage financing provided through the federal Rural Housing Service Section 502 program.

**SECTION 3. Regarding the Final Environmental Impact Report (FEIR) issued for amendments,** the Board of Supervisors hereby certifies that the FEIR has been prepared and completed in compliance with the California Environmental Quality Act, California Public Resources Code Section 21000 et seq. and the Board of Supervisors reviewed and considered the information contained in the FEIR prior to approving the amendments and that the FEIR reflects the lead agency's independent judgment and analysis. Further, the Board of Supervisors hereby adopts the recommended findings of the County Environmental Coordinator which are attached hereto and incorporated herein as though fully set forth.

**SECTION 4.** If any section, Subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, Subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, Subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 5:** This ordinance shall take effect and be in full force on and after 30 days from the date of its passage hereof. Before the expiration of 15 days after the adoption of this ordinance, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 9th day of December, 2008, by the following roll call vote, to wit:

AYES: Supervisors Bruce S. Gibson, K.H. 'Katcho' Achadjian, Jerry Lenthall, and  
Chairperson James R. Patterson

NOES: Supervisor Harry L. Ovitt

ABSENT: None

ABSTAINING: None

/s/ James R. Patterson  
Chairman of the Board of Supervisors,  
County of San Luis Obispo,  
State of California

ATTEST:

JULIE L. RODEWALD  
County Clerk and Ex-Officio Clerk  
of the Board of Supervisors  
County of San Luis Obispo, State of California

By: /s/ Sandy Currens  
[SEAL] Deputy Clerk

ORDINANCE CODE PROVISIONS APPROVED  
AS TO FORM AND CODIFICATION:

WARREN R. JENSEN  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

Dated: \_\_\_\_\_

Coastal Commission has not yet approved the previous amendments to Section 23.04.094d of the CZLUO. What appears below are all the changes that SLO County proposes to 23.04.094d.

SECTION 2: Section 23.04.094 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended as follows:

**d. Continued availability of affordable housing.** Once a density bonus as described in Section 23.04.090 of this title; approval of a new housing development, land division, or demolition or conversion of existing housing for one or more sites as described in Section 23.04.092 of this title ~~Title~~; or an exemption from growth management provisions under Subsection 26.01.034b of the Growth Management Ordinance, Title 26 of the San Luis Obispo County Code, ~~or a deferment of the public facilities fee as described in Subsection 18.04.010a(1) of the Public Facilities Fee Ordinance, Title 18 of the San Luis Obispo County Code~~; is granted in return for a commitment to provide affordable housing, such affordable units shall continue to be reserved as affordable housing as determined by this Section, for a period of 30 years, or for a period of time as defined in Section 23.04.090 or 23.04.092 of this title or Subsection 26.01.034b of Title 26 of the County Code, as follows:

**(1) For sale units:** Prior to issuance of any project construction permits the property owner and the County shall enter into and record a ~~Construction Agreement~~ MASTER AFFORDABLE HOUSING AGREEMENT, prepared by County Counsel, assuring that the project will provide designated affordable housing unit(s). When a designated affordable housing unit is first sold to an eligible buyer, or when the owner-builder of a designated affordable housing unit requests final permit approval for occupancy of his residence, the buyer and ~~County~~ or the owner-builder and ~~County~~ shall enter into an ~~Affordable Housing Agreement~~ OPTION TO PURCHASE AT RESTRICTED PRICE AGREEMENT which shall be recorded as an encumbrance on the property, and secured by a recorded deed of trust. The said ~~Affordable Housing Agreement~~ OPTION TO PURCHASE AT RESTRICTED PRICE AGREEMENT shall supersede the ~~Construction Agreement~~ MASTER AFFORDABLE HOUSING AGREEMENT. The said Agreement and deed of trust shall establish the monetary difference between the initial purchase price and the initial appraised value as a loan payable to the ~~county~~ County. Said loan shall accrue interest at a rate equal to 4.5 points added to the 11th District Cost of Funds as currently published by the Federal Home Loan Bank Board, amortized over 30 years, and the monthly payments of principal and interest shall be waived by the ~~county~~ County as long as the owner who was previously approved by the ~~county~~ County as an eligible buyer or as an owner-builder continues to own and reside in the property subject to the ~~county~~ County loan as his or her principal residence, and also continues to be a legal resident of the County of San Luis Obispo. The County shall have a right of first refusal to purchase the property at current appraised value. The consideration for the County's right of first refusal shall consist of 1 percent of the remaining ~~county~~ County loan balance. The balance of the County loan remaining after deducting this 1 percent of the loan balance shall be credited toward the purchase price if the County chooses to exercise the purchase option. ~~The provisions of this section shall not impair the rights of a first mortgage lender secured by a recorded deed of trust. The purchase money lender shall have a higher priority than the county's loan. The county's security shall be prioritized as a second mortgage. This first priority applies to the purchase money lender's assignee or successor in interest, to:~~

**(2) Inclusionary housing units:** For any Inclusionary housing unit that is subject to Section 23.04.096 of this title and will be sold as an ownership unit, if there is a sales price difference of 10% or less between the current appraised market value of the unit and the affordable sales price established by this Section then that Inclusionary housing unit shall be reserved as affordable housing for a period of thirty (30) years in the following manner. When the Inclusionary housing unit is first sold to an eligible buyer, or when the owner-builder of a designated Inclusionary housing unit requests final permit approval for occupancy of his residence, the buyer and the County or the owner-builder and

the County shall enter into an Option to Purchase at Restricted Price Agreement which shall be recorded as an encumbrance on the property and secured by a recorded deed of trust. The said Agreement and deed of trust shall establish the monetary difference between the initial affordable purchase price and the initial appraised market value as a loan payable to the County. Said loan shall accrue interest at a rate equal to 4.5 points added to the 11th District Cost of Funds as currently published by the Federal Home Loan Bank, amortized over 30 years. The monthly payments of principal and interest shall be waived by the County as long as the owner who was previously approved by the County as an eligible buyer or as an owner-builder continues to own and reside in the Inclusionary unit as his or her principal residence, and also continues to be a legal resident of the County of San Luis Obispo. Upon resale to a non-eligible buyer the County loan amount shall be determined by the Planning and Building Department and shall be adjusted to ensure that the resale price is not lower than the original affordable price, and to allow recovery of any downpayment and value of structural improvements.

The provisions of this Section shall not impair the rights of a first mortgage lender secured by a recorded deed of trust. The purchase money lender shall have a higher priority than the County's loan. The County's security shall be prioritized as a second mortgage. This first priority applies to the purchase money lender's assignee or successor in interest, to:

- (iv) Foreclose on the subject property pursuant to the remedies permitted by law and written in a recorded contract or deed of trust; or
- (v) Accept a deed of trust or assignment to the extent of the value of the unpaid first mortgage to the current market value in lieu of foreclosure in the event of default by a trustor; or
- (vi) Sell the property to any person at a fair market value price subsequent to exercising its rights under the deed of trust. Any value in excess of the unpaid mortgage and costs of sale administration shall be used to satisfy the county loan. In no case may a first mortgage lender, exercising foreclosure assignment in-lieu of foreclosure or sale, obtain value or rights to value greater than the value of the outstanding indebtedness on the first mortgage at the time of the debt clearing action.

In addition, the following types of transfers shall remain subject to the requirements of the county's loan and right of first refusal: transfer by gift, devise, or inheritance to the owner's spouse; transfer to a surviving joint tenant; transfer to a spouse as part of divorce or dissolution proceedings; or acquisition in conjunction with a marriage.

**2.3 Rental units:** Rent levels shall be based on the same criteria as those used to compute the original rent ceiling in Subsection c of this section. Such rent levels will be enforced through the Review Authority imposing applicable conditions at the time of land use permit or subdivision approval for the project, and by recorded deed restriction on each affordable unit.

**3.4 Exception to resale restrictions:** At the time of sale to a qualified buyer or at the time of occupancy by an owner-builder, if the fair market value of any designated affordable housing units is equivalent to the affordable sales price determined above, no affordable housing agreement shall be required. Additionally, no affordable housing agreement shall be required for housing units purchased with mortgage financing provided through the federal Rural Housing Service Section 502 program.

## 23.04.090

**23.04.090 - Affordable Housing Density Bonus:** Within the Residential Single-Family and Residential Multi-Family land use categories, an applicant may request a density bonus and other incentives in return for agreeing to construct and sell or rent affordable housing pursuant to Government Code Section 65915, as provided in this section. Such housing developments may include: vacant subdivided lots for sale; lots developed with single-family dwellings; or, where allowed, lots developed with multi-family units. However, the affordable housing units required under this section must consist of completed single-family or multi-family dwellings. Standards for maximum rents, sales prices and long-term affordability of the designated affordable housing units provided pursuant to this section are contained in Section 23.04.094 of this title. The purpose of this section is to make the provision of affordable housing more attractive to the private developer while retaining good design and neighborhood character.

- a. **Permit requirement:** A project proposing an affordable housing density bonus shall be subject to Development Plan approval as set forth in Section 23.02.034 (Development Plan), except that:
- (1) The purpose of the Development Plan review shall be to evaluate the entire project with respect to its compliance with the provisions of this section and Section 23.04.094, and with the findings specified by Section 23.02.034c(4).
  - (2) The Development Plan approval process in this case does not include the discretion to limit or disallow the development bonus provided by this section, but does include the authority to approve or disapprove the overall project, or to approve the project subject to conditions that do not affect the development bonus.
- b. **Determining base density:** Base density is the maximum number of dwellings, or in the case of a residential land division, the maximum number of residential parcels that may be allowable on a given site under the county code, not including any density bonuses as provided under this title or state statute. Establishing the base density is necessary for purposes of determining whether a housing development is eligible for the density bonus, how many affordable dwellings must be provided in exchange for the density bonus, and the total number of dwellings that may be allowable including the density bonus. However, base density as determined under this section does not affect the provisions of the county code for review of proposed developments or land divisions which are not proposed to include the density bonus provided under this section, and such developments or land divisions may not necessarily be approved by the county at a density equal to this base density. Base density is determined as follows:
- (1) **Residential Multi-Family category:** The base density for a site in the Residential Multi-Family land use category is the number of multi-family dwellings that are allowable on the site pursuant to Section 23.04.084 (Multi-Family Dwellings).
  - (2) **Residential Single-Family category:** The base density for a site in the Residential Single-Family land use category is equal to the total usable site area divided by the applicable minimum parcel size pursuant to subsections 23.04.028a, b and c, except that average slope for the entire site may be used for the slope test under subsection 23.04.028b instead of the average slope for each proposed parcel.

- c. **Eligibility for bonus and allowable density including bonus:** A proposed residential project must satisfy the following standards in order to qualify for a density bonus pursuant to this section:
- (1) **Project size:** Housing developments eligible for density bonus under this section must include five or more dwelling units, not including the bonus units. Whether a housing development includes five or more dwelling units shall be determined as provided under Subsection b of this section.
  - (2) **Type of eligible projects:** Housing units developed for sale or rental; but not including transient housing, such as time-share and hotel/motel projects.
  - (3) **Eligible buyers and renters:** The project shall be administered so that affordable units may be purchased or rented only by families of very low-income as defined in Section 50105 of the California Health and Safety Code; lower-income as defined in Section 50079.5 of the California Health and Safety Code; or senior citizens as defined in Section 51.3 of the California Civil Code, if they also qualify as low or moderate income as defined in Section 50093 of the California Health and Safety Code.
  - (4) **Project location:** The site must be within an urban or village area and in either the Residential Single-Family or Residential Multi-Family land use categories.
  - (5) **Amount of affordable housing:** In order to be eligible for a density bonus under this section, the project must satisfy the provisions of Government Code Section 65915 by providing affordable housing pursuant to Section 23.04.094 of this title in an amount equal to or exceeding those listed below. The density bonus units are not included when computing the ten, twenty or fifty percent of the base density.
    - (i) Ten percent of the base density as determined under Subsection b of this section for families of very low-income; or
    - (ii) Twenty percent of the base density as determined under Subsection b of this section for families of lower-income; or
    - (iii) Fifty percent of the base density as determined under Subsection b of this section for senior citizens of low or moderate-income.
  - (6) **Continued availability of affordable housing:** Affordable housing units provided under this section shall be subject to the long-term housing affordability provisions described in Section 23.04.094 of this title for a period of 30 years, or a longer period of time if required by construction or mortgage assistance program, mortgage insurance program, or rental subsidy program. If the project receives only a 25 percent increase in density under this section and no other incentives described in Government Code Section 65915(h), then continued affordability shall be ensured as described in Section 23.04.094 for a period of 10 years. For purposes of this section, other incentives of financial value may include, but are not limited to, one or more of the following:

23.04.090

- (i) The additional increase in allowable density (above 25 percent) as described in Subsection e of this section;
  - (ii) A reduction in the open area required for cluster divisions under Section 23.04.036d of this title pursuant to Subsection g(8) of this section;
  - (iii) Any financial assistance that the county provides directly or administers on behalf of state or federal funding programs;
  - (iv) A concession or incentive described in Government Code Section 65915(h) that is suitable to the project site and the project.
- (7) **Site and neighborhood characteristics:** The project site and vicinity shall be determined by the Review Authority to be capable of accommodating the allowable density bonus without significant adverse effects on the environmental characteristics of the site or the character and public service facilities of the neighborhood and community.
- d. **Density bonus and other incentives:** The developer of a project eligible under this section shall be granted a density bonus as calculated in Subsection e of this section or other incentives of equivalent financial value based on land cost per dwelling unit as determined by the Review Authority.
- e. **Determining allowable density with bonus:**
  - (1) **Residential Single-Family land use category:** The maximum allowable density is determined by multiplying the base density as determined under Subsection b of this section by a factor of 1.35 if the affordable housing units are proposed to be provided on the site proposed to receive a density bonus, or a factor of 1.30 if the affordable housing units are proposed to be provided on a site separate from that proposed to receive a density bonus. The minimum parcel size permitted under Section 23.04.028 of this title in the Residential Single-Family land use category may be decreased by the same percentage factor that is used to increase the number of housing units. However, where an applicant has requested only a 25 percent increase in density, and no other incentives or concessions will be granted by the county, the minimum parcel size permitted under Section 23.04.028 may be decreased by only 25 percent. Where a proposed project may otherwise qualify for other density bonuses in addition to the provisions of this section (e.g. through the cluster division provisions of Section 23.04.036 of this title) only one such bonus may be used.
  - (2) **Residential Multi-Family land use category:** The maximum allowable density is determined by multiplying the base density as determined under Subsection b of this section by a factor of 1.35 if the affordable housing units are proposed to be provided on the site proposed to receive a density bonus, or a factor of 1.30 if the affordable housing units are proposed to be provided on a site separate from that proposed to receive a density bonus. The maximum floor area permitted under Section 23.04.084 of this title in the Residential Multi-Family land use category may be increased by the same percentage factor that is used to increase the number of housing units. However, where an applicant has requested only a 25 percent increase in density, and no other incentives or concessions will be granted by the county, the maximum floor area permitted under Section 23.04.084 can be increased by only 25 percent.

- f. **Location and timing for provision of affordable units:** Affordable housing units provided to qualify a project to receive a density bonus under this section need not be located within the same site as the bonus units, but they must be located within the same urban or village area. Also, the affordable housing units must be completed, and their final building inspection granted by the Building Official verifying completion of the structures and related improvements, before the Building Official shall grant final building inspection for the market rate units, except where the developer has posted a performance bond or entered into an alternative agreement ensuring provision of the affordable housing units, subject to approval by the Office of County Counsel and the Director of the County Department of Planning and Building.
- g. **Site design standards:** The following minimum site design standards apply to projects consisting of single-family dwellings on individual lots, receiving a density bonus under this section and located in the Residential Single-Family or Residential Multi-Family land use categories.
- (1) **Lot width:** The minimum lot width for each parcel shall be 35 feet measured at the front setback.
  - (2) **Front setback:** The minimum front setback shall be 18 feet, except for cluster divisions authorized under section 23.04.036 of this title.
  - (3) **Side setbacks:** The minimum combined side setbacks shall be 10 feet, and structures shall be separated by at least 10 feet except for structures sharing common walls.
  - (4) **Rear setback:** The minimum rear setback shall be 10 feet.
  - (5) **Off-street parking:** The minimum average number of off-street parking spaces per dwelling shall be two spaces. At least one of the two spaces shall be within a garage, unless at least 50 square feet of enclosed utility storage space is provided.
  - (6) **Site coverage:** The coverage of each residential parcel by structures shall not exceed 40 percent of the total area of the parcel, except for cluster divisions authorized under Section 23.04.036 of this title, in which case the structural coverage shall not exceed 70 percent of the total area of each parcel.
  - (7) **Private open area:** Each residential parcel shall include within its own boundaries a minimum of 10 percent, but no less than 400 square feet, of the total area of the parcel as usable private open area. Usable private open area is defined as an area within a residential parcel enclosed by walls or fences, not encumbered by structures, driveways, parking spaces or slopes greater than 15 percent, not less than 10 feet in width, and visible and accessible from the kitchen, dining room or living room of the dwelling.
  - (8) **Common open area:** Common open area is not required for projects receiving a density bonus under this section, except for cluster divisions. Open area requirements of this title for cluster divisions may be reduced by up to 50% where feasible given the physical characteristics of the site.

[Amended 1992, Ord. 2579; 2004, Ord. 2995]

## 23.04.092

**23.04.092 - Affordable Housing Required in the Coastal Zone:** This section provides for the implementation of California Government Code Section 65590, which requires that housing opportunities in the Coastal Zone for persons and families of low or moderate income shall be protected, encouraged and where feasible, provided. It also recognizes that the provision of affordable housing may not be feasible in some developments.

a. **Applicability of standards:** The standards of this section apply only to the following types of projects located within the Coastal Zone:

- (1) New housing projects containing 11 or more dwelling units or parcels, created by a single developer. Such projects include multi-family rental or ownership units, single-family units where 11 or more units are proposed on a single building site or within a subdivision, or a subdivision of 11 or more residential lots for sale.
- (2) Demolition or conversion of one or more single-family dwellings, multi-family dwellings, mobilehomes, mobilehome lots in a mobilehome park, hotel or motel to condominium, cooperative or similar form of ownership, where the proposed demolition or conversion involves three or more dwelling units in one structure, or 11 or more dwelling units in two or more structures if any such units were occupied by persons or families of low or moderate income (as defined by California Health and Safety Code Section 50093) in the 12 months prior to filing the land use or division application for the project, except where demolition or conversion is to provide for a "coastal dependent" or "coastal related" use as defined in Section 23.11.030 of this title and Sections 30101 and 30101.3 of the California Public Resources Code.
- (3) Demolition or conversion of one or more single-family dwellings, multi-family dwellings, mobilehomes, mobilehome lots in a mobilehome park, hotel or motel to a non-residential use which is not "coastal dependent" as defined in Section 23.11.030 of this title and Section 30101 of the California Public Resources Code.

b. **Requirements applicable to proposed demolitions or conversions:**

- (1) **Demolition or conversion to non-residential use:** The demolition or conversion of any residential structure to a non-residential use as described in Subsection a(3) of this section shall not be authorized unless the Review Authority finds that any residential use at that site is no longer feasible, based on substantial evidence provided by the applicant. If the Review Authority makes this finding, and the proposed demolition or conversion involves three or more dwelling units in one structure or 11 or more dwelling units in two or more structures, and the proposed demolition or conversion is not to provide for a "coastal dependent" or "coastal related" use as defined in Section 23.11.030 of this title and Sections 30101 and 30101.3 of the California Public Resources Code, then affordable replacement units as defined in Section 23.04.094 of this title shall be provided at a ratio of one affordable unit for each demolished or converted unit that currently houses or has housed a family of low or moderate income within 12 months prior to filing of the request for a demolition or conversion permit.

- (2) **Demolition or conversion to condominium, cooperative or similar form of ownership:** Replacement units affordable to persons and families of low or moderate income as defined in Section 23.04.094 of this title shall be provided at a ratio of one affordable unit for each demolished or converted unit that currently houses or has housed a family of low or moderate income within 12 months prior to filing of the request for a demolition or conversion permit.
- (3) **Continued availability of affordable housing:** Affordable replacement housing units provided under Subsection b(1) or b(2) of this section shall be subject to the long-term housing affordability provisions described in Section 23.04.094 for a minimum period of time equal to 30 years minus the number of years beyond 10 years that the structure proposed for conversion or demolition has existed, but in no case less than 10 years.
- c. **Requirements applicable to proposed new housing projects:** The following standards apply to the types of projects described in Subsection a(1) of this section:
- (1) **Amount of required affordable housing:** Except as provided in Subsection c(2) of this section, 15 percent of the units will be provided as affordable housing for persons and families of low or moderate income as defined in Section 23.04.094. Provision of 15 percent of the project as affordable housing shall be presumed feasible unless the Review Authority finds that the project should not be reasonably expected to provide that level of affordable housing, as provided in Subsection c(2) of this section. Projects receiving a density bonus in return for agreeing to provide affordable housing for persons or families of very low-income or lower-income pursuant to Section 23.04.090 of this title are not required by this section to provide more affordable housing than is required to qualify for the density bonus.
- (2) **Feasibility finding required for fewer affordable housing units:** In order to approve a new housing project with fewer affordable housing units than otherwise provided by Subsection c(1) of this section, the Review Authority shall first find, based on substantial evidence provided by the applicant, that the level of affordable housing provided by the proposed project is all that may be feasibly accomplished in a successful manner within a reasonable period of time, taking into account the economic, environmental, social and technical factors affecting the project.
- (3) **Continued availability of affordable housing:** Affordable housing units provided under Subsection c(1) or c(2) of this section shall be subject to the long-term housing affordability provisions described in Section 23.04.094 for a period of 30 years.
- d. **Location and timing for provision of affordable units:** New or replacement affordable housing units required by this section may be placed on the same site as the other new housing units or demolished or converted units, or at some other site in the same community, provided that all other requirements of this title allow for such development. The affordable housing units must be completed, and their county construction permits finalized, before the construction permits for the market rate units shall be finalized by the county, except where the developer has posted a performance bond or entered into an alternative agreement ensuring provision of the affordable housing units, subject to approval by the Office of County Counsel and the Director of the County Department of Planning and Building. In any case, the period of time for provision of the new or replacement housing units required by this section shall not exceed that established by Section 65590 of the California Government Code.

[Added 1992, Ord. 2579; Amended 2004, Ord. 3001; 2004, Ord. 2995]